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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from Darlington County Court of Common Pleas
The Honorable Michael G. Nettles, Circuit Court Judge

Case No. 2021-CP-16-0230

Cephas Cowick, # 383684,.....Petitioner,

v.

State of South Carolina,.....Respondent.

NOTICE OF APPEAL

The Petitioner, Cephas Cowick, hereby appeals the Order of Dismissal issued by the Honorable Michael G. Nettles. The Order of Dismissal was filed with the Darlington County Clerk of Court on October 7, 2021. Undersigned Counsel received notice of its filing October 11, 2021 by email. A copy of the Order is attached to this Notice.

Respectfully submitted,

William G. Yarborough, III
Lauren Carole Hobbis

By: /s/ Lauren C. Hobbis, #103190

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ALAN WILSON
ATTORNEY GENERAL

October 5, 2021

The Honorable Scott B. Suggs
Clerk of Court, Darlington County
1 Public Square, Room 404
Darlington, South Carolina 29532

Re: Cephias Cowick, #383684 v. State of South Carolina
2021-CP-16-0230

Dear Mr. Suggs:

Enclosed please find the original Order of Dismissal, signed by the Honorable Michael G. Nettles, in the above-captioned case for filing in your office. Please forward a time stamped copy back to our office for our file.

Sincerely,

William H. Ray
Assistant Attorney General

WHR/ks
Enclosure(s)

cc: William G. Yarborough, III, Counsel for Applicant

STATE OF SOUTH CAROLINA)
COUNTY OF DARLINGTON)
Cephas Cowick, SCDC No. 383684)
Applicant,)
v.)
State of South Carolina)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTH JUDICIAL CIRCUIT

Case No. 2021-CP-16-0230

ORDER OF DISMISSAL

This matter comes before the Court by way of Applicant Cephas Cowick’s March 11, 2021 application for post-conviction relief. Respondent made its return and partial motion to dismiss on June 10, 2021, and requested a hearing pursuant to *Sanders v. State*, 412 S.C. 611, 773 S.E.2d 580 (2015), to determine whether Applicant’s plea counsel was ineffective in advising him on waiving his rights to challenge his conviction through post-conviction relief. Respondent filed an amended return and motion to dismiss on July 27, 2021, and again requested a hearing pursuant to *Sanders*. An evidentiary hearing on this narrow issue was convened on August 24, 2021, before the Honorable Michael G. Nettles via the WebEx virtual platform. Applicant was present and represented by Attorney William G. Yarborough, III, and Attorney Lauren C. Hobbis. Respondent was represented by Assistant Attorney General William H. Ray, of the South Carolina Attorney General’s Office. Also present at the hearing was Assistant Solicitor Kernard Redmond, of the Fourth Judicial Circuit Solicitor’s Office, and Applicant’s plea counsels, Attorney William S. McGuire, of the South Carolina Commission on Indigent Defense, and Attorney Nathan R. Scales.

Applicant testified on his own behalf at the hearing. The hearing also saw testimony from Assistant Solicitor Redmond, and plea counsel McGuire. Before this Court are the records from the South Carolina Department of Corrections, the Darlington County Clerk of Court’s Office, the

plea transcript, the subject application for post-conviction relief, a plea affidavit, and the pleadings. This Court has reviewed the record and all evidence presented and finds that Applicant has failed to meet his requisite burden of proof, denies relief, and dismisses the application with prejudice.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was indicted for two counts of murder (2016-GS-16-1433; 2016-GS-16-1434), criminal conspiracy (2016-GS-16-1435); armed robbery (2016-GS-16-1436); burglary, first degree (2016-GS-16-1437); grand larceny (2016-GS-16-1438); possession of a weapon during the commission of a violent crime (2016-GS-16-1439); and arson, third degree (2016-GS-16-1440) by the Darlington County Grand Jury at its October 2016 term. Applicant was represented by Attorneys Emily Kuchar and William S. McGuire, and Assistant Solicitor Kernard Redmond, of the Fourth Circuit Solicitor's Office, prosecuted the case. On June 24, 2020, Applicant appeared before the Honorable Eugene C. Griffith, Jr., via the WebEx virtual platform and entered a guilty plea, as indicted. Applicant was sentenced to life sentences without the possibility of parole for the murders and possession of a weapon during the commission of a violent crime, five years' imprisonment for criminal conspiracy, thirty years' imprisonment for armed robbery, thirty years' imprisonment for burglary, first degree, five years' imprisonment for grand larceny, and fifteen years' imprisonment for arson, third degree. All sentences were imposed pursuant to negotiations with the State, and were scheduled to be served concurrently.

II. FACTUAL HISTORY

On July 17, 2016 at approximately 6:20 in the morning, Applicant and his wife, Katherine Cowick, were captured on surveillance footage outside a convenient store in a Geo Tracker. (Tr. 14, 1-3). The Geo Tracker, driven by Katherine, was again picked up on the store's surveillance

footage shortly after the initial sighting. (Tr. 18, 1-2). The Geo Tracker left the store once more, before returning at approximately 7:40 A.M. alongside a black Cadillac Escalade driven by Applicant. (Tr. 18, 2-13). During the approximate hour and a half between the first and final sightings, Applicant had been dropped off at Ms. Couplin's residence where he proceeded to shoot and kill Ms. Couplin and her nine year old granddaughter, De'Ziyah Chatman-Davis. (Tr. 16, 6-8). Applicant took pills, money, and a debit card from the home, before stealing her Escalade and returning to the convenient store with his wife. (Tr. 16, 23 – Tr. 17, 3).

Around 11:50 that morning, Denise Couplin's son awoke in the upstairs bedroom, walked downstairs, and found De'Ziyah's body. (Tr. 14, 7-12). Byron then took his six year old niece to the neighbor's house to call 911 and other family members. (Tr. 14, 14-18). When law enforcement arrived, they found Ms. Couplin's body near De'Ziyah's body. (Tr. 14, 18-21). Law enforcement was immediately made aware of Applicant's possible involvement through information provided by family members about harassing calls he had previously made. (Tr. 14, 24 – Tr. 15, 10). During this time, law enforcement found Ms. Couplin's Escalade burned and abandoned, a short distance from the crime scene. (Tr. 15, 10-14).

That same day, Applicant was picked up by law enforcement and interviewed, where he initially denied the charges. (Tr. 15, 22-25). However, Applicant confessed after being presented with information about witness testimonies from the Darlington County Sheriff's Office. (Tr. 16, 1-5). Applicant admitted to being dropped off at Ms. Couplin's home, going into the residence, shooting Ms. Couplin and De'Ziyah twice, then leaving in Ms. Couplin's Escalade. (Tr. 16, 5-10).

At the plea hearing, Applicant explicitly waived his right to a direct appeal as well as his right to challenge his conviction or sentence with a post-conviction relief application, to the extent allowed by law. (Tr. 2, 17-20; Tr. 23, 16 – Tr. 24, 3; Tr. 27, 17 – Tr. 28, 13). His plea counsel

stated that he was waiving any issues then known to him. (Tr. 28, 14-21). His plea counsel further explained that Applicant was waiving claims unrelated to ineffective assistance, because ethical concerns rendered them “unable to encourage him to do that.” (Tr. 29, 22 – Tr. 30, 3). Counsel Scales then stated that Applicant was waiving “a maximum of what we can allow him to waive.” (Tr. 30, 4-7). Applicant stated that he understood that he would be waiving his right to collateral attacks on his conviction unless “something new arises.” (Tr. 28, 22 – Tr. 29, 16).

III. CURRENT APPLICATION

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

1. **Ineffective Assistance of Counsel**
 - a. Counsel failed to undertake reasonable measures to engage in plea negotiation and bargaining opportunities with the State on the basis of Applicant’s potential cooperation against his codefendant and assistance to the State.
 - b. Counsel likewise failed to adequately inform or explain to Applicant any previously extended proffer and plea offers and the terms thereof, including cooperation against his codefendant, and advise him accordingly.
 - c. Counsel failed to investigate evidence, witnesses, potential defenses, legal theories and potential dispositive pre-trial motions available to Applicant. *See e.g., Edwards v. State*, 392 S.C. 449, 456 710 S.E.2d 60, 63 (2011).
 - d. Counsel failed to explain the nature of the charges and the extent of the State’s evidence against him. Counsel failed to adequately review discovery with Applicant and advise him accordingly, particularly in regard to whether certain incriminating hearsay statements and co-conspirator statements may or may not be admissible against him. Counsel likewise failed to advise him accordingly relative to his potential strategy and his chances of gaining a favorable outcome at trial.
 - e. Counsel failed to adequately explain the plea agreement’s terms and its relative advantages and disadvantages as opposed to proceeding to trial in light of the State’s evidence against him. Counsel also failed to sufficiently advise Applicant on the nature and implications of entering a plea of guilty, including a sufficient advisement of the rights he would be waiving. Likewise, Applicant unknowingly, unintelligently, and involuntarily waived his rights to direct appeal

of his conviction and sentence, as well as post-conviction relief because of Counsel's errors.

- f. Each of these errors not only impacted Applicant's decision on whether to plead guilty or proceed to trial, but also rendered his guilty plea not knowingly, intelligently, or voluntarily entered. But for these errors, Applicant would not have pleaded guilty and instead would have proceeded to trial.
- g. Counsel failed to adequately investigate mitigating circumstances relevant to sentencing, and consequently failed to adequately present these mitigating circumstances to the court during sentencing.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the evidence presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony and evidence accordingly in its discussion below. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the plea agreement and transcript, and the exhibits entered into evidence. This Court has also considered the legal arguments made by the attorneys. This Court finds the combined record of the plea agreement and transcript of the testimony from the evidentiary hearing establishes Applicant received effective assistance of counsel, and this application should be denied. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. §17-27-80 (2014).

Two issues were raised at the evidentiary hearing: Whether Applicant's plea agreement encompassed a waiver of the right to bring claims of ineffective assistance of counsel in a post-conviction relief action, and if so, whether plea counsel was constitutionally ineffective in advising Applicant on the terms and effects of that waiver. This Court finds that the plea agreement's terms did encompass the claims of ineffective assistance of counsel that he now seeks to raise, and it also finds that the advice Applicant received on the waiver was constitutionally sufficient. Therefore,

the application for post-conviction relief is barred, and Respondent's motion to dismiss shall be granted.

In a PCR action, Applicant bears the burden of proving the allegations in his 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, Applicant 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 v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP. 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*, 286 S.C. at 442, 334 S.E.2d at 814. "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). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196

(2011); *Harrington v. Richter*, 562 U.S. 86, 109-10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also* *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”). Applicant 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 Applicant such 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, 386 S.E.2d at 625. “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between *Strickland's* prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” *United States v. Basham*, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he/she would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant’s right to contest the validity of such a plea is usually, but not invariably, foreclosed. *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.”). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. *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 plea bargain rests on contractual principles, and each party should receive the benefit of the bargain. *State v. Thrift*, 312 S.C. 282, 292, 440 S.E.2d 341, 347 (1994) (citing *United States v. Ringling*, 988 F.2d 504 (4th Cir. 1993)). A defendant may waive statutory rights to both an appeal and post-conviction relief, so long as the waiver is made knowingly, voluntarily, and intelligently. *Spoone v. State*, 379 S.C. 138, 665 S.E.2d 605 (2008). There is no reason to distinguish the enforceability of a waiver of direct-appeal rights from a waiver of collateral-attack rights in a plea agreement. *United States v. Lemaster*, 403 F.3d 216 (4th Cir. 2005).

The South Carolina Supreme Court has expressed concerns about the ethical implications of a waiver of ineffective assistance of counsel claims because they may create a conflict of interest between the defendant and the attorney. *Sanders v. State*, 412 S.C. 611, 773 S.E.2d 580 (2015). The Rules of Professional Conduct, which address the responsibilities of an attorney who represents a client with conflicting interests, have no bearing on the constitutionality of a criminal

conviction. *Langford v. State*, 310 S.C. 357, 360, 426 S.E.2d 793, 795. Until a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for his claim of ineffective assistance. *Lomax v. State*, 379 S.C. 93, 102, 665 S.E.2d 164, 168 (2008). To prevail on a claim that counsel was ineffective for failing to properly advise a defendant about the consequences of a guilty plea, the Applicant must “convince the court that a decision to reject the plea bargain would have been rational under the circumstances.” *Padilla v. Kentucky*, 559 U.S. 356, 372, 130 S.Ct. 1473, 1485 (2010).

To determine whether a waiver is effective, the court must examine the particular facts and circumstances surrounding the case, including (1) the background, experience and conduct of the accused, (2) the text of the plea agreement, and (3) the transcript of the plea hearing. *Spoone*, 379 S.C. at 143, 665 S.E.2d at 608. A criminal defendant who previously waived collateral review may nevertheless bring a challenge to the limited issue of his counsel’s advice in connection with entering into the agreement. *Sanders*, 412 S.C. 611, 773 S.E.2d 580.

At the outset of the hearing, Applicant stated that he understood the relief available to him and the risks inherent in proceeding with his application given the severity of his crimes and the potential sentence he would be facing should he prevail with his claims. The State called Assistant Solicitor Redmond, who testified that he was involved in the case since its inception in 2016. He described an egregious crime where Applicant planned the robbery and murder of Ms. Denise Couplin, spoke openly about his desire to commit the crime, and solicited the use of a handgun to carry out the offense. He explained that Applicant carried out the crime by murdering Ms. Couplin, as well as fatally shooting her eight year old granddaughter twice in the head. The Assistant Solicitor explained that the State’s intention was to seek the death penalty. Plea counsel reached out to him in a written letter stating Applicant’s desire to enter a guilty plea, waive his right to

direct appeal, and also waive his right to pursue post-conviction relief, in exchange for a sentence of life without parole. A subsequent letter was sent, reiterating Applicant's desire to enter a guilty plea to life without parole and waive "all appeals and collateral relief." The letter stated that Applicant would never be eligible for a reduction in sentence and would die in prison.

Assistant Solicitor Redmond explained that the COVID-19 pandemic had limited the State's ability to move the case, and the offer was ultimately accepted given the case's age. He stated that his understanding of the plea agreement was that Applicant's waiver of his right to bring collateral attacks encompassed the subject PCR application, and was as broad as it could be under the law. He specifically stated that the agreement encompassed claims of ineffective assistance of counsel, and that the only exception was for claims related to new information that could not have been known prior to the guilty plea. He expressed his view that the application itself may void the agreement such that sentencing could be reopened.

On cross-examination, Assistant Solicitor Redmond explained that he did not ever speak directly with Applicant. He explained that no specific terms of the plea agreement were ever reduced to a separate writing, which is why he brought up the waiver of PCR at the plea hearing. He stated that Applicant's waiver of PCR is what induced the State's acceptance of the plea, and the whole agreement was conditioned upon the waiver of collateral matters.

Plea Counsel McGuire testified that he entered into the plea negotiations with the State on Applicant's behalf because he needed to get the best plea offer for his client, even if he was not personally in favor of its terms. He explained that initially there were no negotiations, and they began in September, 2019 when he sent the first letter stating Applicant's desire to enter the plea to the Assistant Solicitor. He did not recall any offers being extended from the State, and he said that the letter itself effectively represents the contents of the plea agreement. No subsequent

negotiations altered its content. He stated that he informed Applicant about the terms of the agreement and the waiver of post-conviction relief.

Plea counsel explained that Applicant had completed a plea affidavit that represented the plea agreement, but the affidavit did not include terms about waiving collateral relief. He stated that he had discussed the *Sanders* case with the Solicitor, and they were of the understanding that Applicant would be waiving issues that were known to him at the time. For example, plea counsel stated that Applicant may be able to bring a claim if it is discovered that law enforcement was hiding exculpatory information, but that the exception was not necessarily limited to claims of newly discovered evidence. He stated that he told the judge at the plea hearing that he believed it would be unethical for him to encourage the waiver of ineffective assistance of counsel claims, in light of *Sanders*.

Plea counsel also explained that Applicant was competent to stand trial, and he had no reason to believe he had trouble understanding their discussions. He acknowledged that Applicant had prior head injuries, but stated that they had all of his medical records and had spoken with an expert in great detail on this point. Applicant never reported issues with focus or memory, and their assessment of him did not reveal any significant issues with his executive functions or impulse control.

Applicant testified and said that he met primarily with plea counsel Emily Kuchar. He stated that he had been held in solitary confinement, which made discussing the case with his lawyers difficult. He stated that he understood the terms of the plea but believed he could raise certain PCR matters after the plea hearing. He stated that he believed he could make a new PCR action based on "new information" based on what the judge said at the plea hearing. On cross-

examination he stated that he recalled telling the court he was waiving his right to post-conviction relief.

This Court finds that Applicant's plea was made knowingly, voluntarily, and intelligently, and that it encompassed a broad waiver of post-conviction relief claims, limited only by the requirements of *Sanders* and its progeny, and by the mutual understanding of the parties that Applicant would be permitted to bring a PCR action should he discover some information then unknown to him which justifies relief. Applicant's current PCR application contains garden variety claims of ineffective assistance of counsel which all implicate counsel's performance *prior to his guilty plea*. Clearly, each of these claims are covered by the waiver.

Applicant appeared competent at the PCR hearing, testified without issue, and stated that he understood the proceedings. Plea counsel's testimony shows that Applicant's appearance is not a façade, as no doubt was ever expressed about his ability to understand the advice given to him. The background, experience, and conduct of the accused cut in favor of the waiver being effective.

While there is no formally written plea agreement, this Court interprets the testimony of the parties to indicate that the letters sent from plea counsel to the Assistant Solicitor encompass the entirety of the plea agreement. Those letters are clear: "[Applicant] will further waive any appeals or collateral relief from his sentence. Under the proposed plea, [Applicant]'s sentence will be final." The text of the plea agreement cuts in favor of the waiver being effective.

Furthermore, this Court finds that any limitation placed on claims of ineffective of assistance of counsel—to the extent that such a limitation even exists in this agreement—was a product of plea counsel's ethical concerns about encouraging Applicant to waive claims against him. A finding that these claims were excluded from the waiver would conflict with the express terms of the agreement, as well as common sense. A waiver of post-conviction relief that entirely

excludes claims of ineffective assistance of counsel is effectively reduced to a nullity, and certainly would not induce the concessions the State made in a case such as this. Counsel's ethical concerns about encouraging Applicant to waive claims of ineffective assistance of counsel does not by itself rise to the level of ineffective assistance. The transcript shows that the plea court took great efforts to ensure that Applicant understood the waiver and its limitations. Applicant indicated that he understood. Therefore, this Court finds that the waiver of post-conviction relief is effective.

As for whether Applicant received ineffective assistance on the waiver, the evidence presented at the PCR hearing shows that counsel advised Applicant that he was waiving post-conviction relief and explained the waiver's limitations, which Applicant understood. Applicant has not shown that he was prejudiced by his counsel's performance in any regard. Plea counsel may have effectively saved Applicant's life by getting the State to take the death penalty off the table in exchange for the guilty plea. Rejecting the offer because of hesitancy to waive PCR or claims of ineffective assistance of counsel would have been patently irrational under the circumstances. Given that reality, Applicant has not shown that his counsels' errors or omissions are what induced the plea, and that but for deficient performance he would have proceeded to trial. This Court finds that counsel did not encourage Applicant to waive claims of ineffective assistance so as to avoid a conflict of interest, but that counsel properly informed Applicant about the consequences of his guilty plea and the accompanying waiver of post-conviction relief. Applicant cannot be permitted to proceed with his application if the parties to this agreement are to receive the benefit of the bargained for plea agreement. Applicant simply has not shown that counsel ineffectively failed to advise him about the waiver of collateral relief. Therefore, this Court finds that Applicant waived his right to post-conviction relief, the waiver's limitations do not permit this application to proceed, and Applicant received effective assistance upon being advised on the

consequences of the waiver and the guilty plea. The State's motion to dismiss shall be **GRANTED** and the application shall be **DISMISSED** with prejudice.

III. 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 application for post-conviction relief 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 from the receipt by counsel 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), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections to serve the duration of his sentence.

AND IT IS SO ORDERED this 30 day of Sept, 2021.


MICHAEL G. NETTLES
Presiding Judge
Fourth Judicial Circuit

 _____, South Carolina