

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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Oct 29 2021

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Jennifer B. McCoy, Circuit Court Judge

Case No. 2019-CP-02-01306

Kayla Moore, #378681,

Appellant,

v.

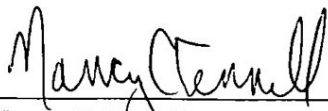
State of South Carolina,

Respondent,

NOTICE OF APPEAL

Kayla Moore appeals the Order of the Honorable Jennifer B. McCoy dated September 1, 2021, a copy of which is attached. Appellant received written notice of entry of this Order on October 11, 2021.

October 29, 2021



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STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Kayla Moore, SCDC # 378681¹,

Case No.: 2019-CP-02-01306

Applicant,

ORDER OF DISMISSAL

v.

FILED 9-27 20 21 4:38 SP

State of South Carolina,

Robert J. Harte
C.C.P. & G.S.

Respondent.

Shadell Parks
Deputy Clerk

This matter comes before this Court by way of an application for post-conviction relief filed by Applicant Kayla Moore on May 28, 2019, asserting various claims of ineffective assistance of counsel, involuntary guilty plea, and newly discovered evidence based on purportedly missing discovery. In response, Respondent the State of South Carolina filed a return, motion for a more definite statement, and requested an evidentiary hearing once the application was amended to include specific allegations with supporting facts. Thereafter, Applicant, through counsel Nancy C. Fennell, served an amended application on Respondent with specific claims of ineffective assistance of counsel.

An evidentiary hearing on this action was convened June 3, 2021, before this Court utilizing the virtual courtroom on the Cisco WebEx platform. Applicant appeared virtually along with her counsel. Respondent was represented by Senior Assistant Deputy Attorney General Megan Harrigan Jameson of the South Carolina Attorney General's Office. Applicant proceeded forward on the claims raised in her amended application. This Court heard testimony from Applicant and her trial counsel, C. David Hayes. At the conclusion hearing, this Court to the matter

¹ Applicant is currently house in the Washington State Department of Corrections at the WA Corrections Center for Women.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Robert J. Harte, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

SEP 27 2021

Robert J. Harte
C.C.P. & G.S., Aiken County, S.C.
Shadell Parks
Deputy Clerk

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under advisement.

Following the hearing, this Court undertook a thorough review of the record, the evidence and testimony presented at the evidentiary hearing. This Court now finds Applicant has failed to establish any constitutional violations or deprivations entitling her to relief and, accordingly, denies and dismissed this action with prejudice. Specific findings of fact and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 are set forth below:

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently incarcerated following her guilty plea and sentence in Aiken County. On April 22, 2017, Applicant and one of her childhood friends brutally beat a seventy-four-year-old man who has been letting Applicant live on his property rent-free to death with a hammer and then set his home on fire before fleeing the state in the victim's car. Applicant and her co-defendant were found in Georgia wandering on the road near the victim's abandoned car, and a search of the car revealed a hammer covered in the victim's blood. After being apprehended in Georgia, Applicant's co-defendant gave a statement implicating both of them in the crime.

In May of 2018, Applicant was subsequently indicted by the Aiken County Grand Jury for murder (2018-GS-02-01067) Applicant was represented by Assistant Public Defender C. David Hayes of the Aiken County Public Defender's Office. Assistant Solicitor Samuel B. Grimes of the Second Circuit Solicitor's Office prosecuted the case. During pre-trial proceedings, the Honorable Doeyt A. Early, III, and the Honorable R. Knox McMahon issued orders that Applicant be evaluated for competency and criminal responsibility. Applicant underwent evaluations at the South Carolina Department of Mental Health to determine if she was competent to stand trial and

was criminally responsible. The evaluations revealed she was both competent and criminally responsible.²

On July 26, 2018, Applicant appeared before Judge Early and pled guilty to murder without any negotiations or recommendations. Following a thorough colloquy with Applicant, Judge Early found the plea was knowingly, voluntarily, and intelligently entered and accepted the guilty plea. At the State's request and over defense objection, Judge Early deferred sentencing and ordered a pre-sentencing report be prepared.

On December 13, 2018, all parties reconvened for a sentencing proceeding. Following presentations by the State and defense counsel, Judge Early sentenced Applicant to life imprisonment without the possibility of parole.

Upon Applicant's request, plea counsel filed a notice of appeal on her behalf. Following Applicant's submission of a Rule 203, SCACR, response, the South Carolina Court of Appeals dismissed the appeal based on failure to provide a sufficient explanation as to why the appeal from the plea should go forward pursuant to Rule 203(d)(1)(B)(iv), SCACR. The remittitur was issued on March 1, 2019.

Applicant then initiated this action with the filing of her pro se application for post-conviction relief on May 28, 2019.

CURRENT PROCEEDING

In her *pro se* application for post-conviction relief filed on May 28, 2019, Applicant asserted the following

1. "Ineffective Assistance of Counsel"
 - a. "deficient performance"

² Reports from these evaluations were entered as Court's Exhibit No. 1 and No. 2 at Applicant's guilty plea proceeding before Judge Early on July 26, 2018.

2. "Involuntary Guilty Plea"
 - a. "Not knowing because of missing discovery"
3. "Incomplete Discovery / newly discovered evidence"
 - a. "forensics"

As relief sought, Applicant stated she was seeking a new trial.

Nancy C. Fennell, Esquire, was thereafter appointed by the Aiken County Clerk of Court to represent Applicant.

In response to the application, Respondent filed a return and motion for a more definite statement, requesting Applicant file an amended return with specific allegations and supporting facts to comply with filing requirements as set forth in the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-50, and the Rule 8(a) of the South Carolina Rules of Civil Procedure. Attached to this return and before this Court are the records from the Aiken County Clerk of Court regarding Applicant's underlying general sessions matter, the transcripts from Applicant's guilty plea and sentencing proceedings, the records from Applicant's direct appeal, Applicant's inmate records from the South Carolina Department of Corrections, and the records from this current action.

On September 24, 2020, Applicant, through counsel Fennell, filed an amended application, setting forth the following additional claims:

- Ineffective assistance of counsel for failure to adequately investigate all available defenses.
- Ineffective assistance of counsel for failure to adequately investigate all available defenses including any available defense related to the fact that Applicant lived at the location of the alleged incident.
- Ineffective assistance of counsel for failure to discuss with her any available defenses.
- Ineffective assistance of counsel for failing to request a change of venue in response to the media exposure regarding Applicant's charges.
- Ineffective assistance of counsel for failure to provide Applicant with her discovery motion.

- Ineffective assistance of counsel for failing to request a speedy trial.

A hearing on was convened June 3, 2021, before this Court. At the hearing, Applicant proceeded forward on the claims set forth in her amended application. Testimony was taken from Applicant and plea counsel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged various claims of ineffective assistance of plea counsel and asserts that as a result of counsel's purported errors, she is entitled to have her guilty plea undone and proceed back to the court of general sessions for a new disposition of her case.

This Court has thoroughly reviewed the record in its entirety, including the plea and sentencing transcripts, the appellate records, and the records for this current action. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented at the evidentiary hearing, which allowed the Court to scrutinize the credibility of all witnesses presented. Based on this comprehensive review, this Court finds Applicant has failed to meet her burden of proof as to any of her allegations and finds this action must be denied and dismissed with prejudice. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Plea Counsel

All of Applicant's claims for relief as set forth in her amended application pertain to ineffective assistance of counsel. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, 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). Ordinarily, post-conviction relief allegations are centered upon an

allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in post-conviction relief actions). The allegation of denial of such representation sets forth a prima facie violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel's performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). 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.

Strickland, however, "does not guarantee perfect representation[—]only a 'reasonably competent attorney.'" Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466

U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is "no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities." Harrington, 562 U.S. at 110.

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 6 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690).

Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Id. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional

assistance.” Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Reviewing courts “must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed at the time of counsel’s conduct.” Strickland, 466 U.S. at 690. An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment.” Id. The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” Id.

The Strickland standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel’s representation is a most deferential one. Harrington, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

The second, or “prejudice” prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691-92. In order to prove prejudice, an applicant

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must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. Thus, it is not enough "to show the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to deprive the defendant of a fair trial." Id. at 687 (emphasis added).

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). A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel's performance was deficient; and second, evidence that counsel's deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. Hill, 474 U.S. 52.

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; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56.

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. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

Surmounting Strickland’s high bar is never an easy task, and the strong societal interest in finality has “special force with respect to convictions based on guilty pleas.” Lee, 582 U.S. ___, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 58 (“[R]equiring a ‘prejudice’ showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel ‘will serve the fundamental interest in the finality of guilty pleas.’”). Reviewing “[c]ourts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney’s deficiencies. Lee, 582 U.S. ___, 137 S. Ct. at 1967. Rather, judges should “look to contemporaneous evidence to substantiate a defendant’s expressed preferences. *Id.* In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge

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must analyze and consider the entire record, including the transcript of the plea and the evidence presented at the PCR hearing. Harres, 282 S.C. at 134, 318 S.E.2d at 361.

The performance and prejudice standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” Id. at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” Id. at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

This Court finds Applicant cannot meet her burden as to any of her claims of ineffective assistance of counsel. Each specific claim is addressed below:

Ineffective assistance of counsel for failure to adequately investigate all available defenses

As first, second and third allegations in her amended application,³ Applicant asserts plea counsel was ineffective for failing to adequately investigate all defense available, including any available defense related to the fact that Applicant lived at the location of the alleged incident, and then failed to discuss these defenses with her.

In support of this allegation, Applicant testified she felt she had viable defenses because she lived at the property and was not involved when her co-defendant killed the victim, essentially arguing she was merely present at the scene. She also asserted she was under duress due to fear of

³ Because the first three allegations set forth in the amended application overlap and cover the same conduct, this Court addresses them together.

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her co-defendant. She testified her handprints were not found anywhere at the scene, but acknowledged that the crime scene was set on fire, which would have destroyed physical evidence like handprints. She testified her co-defendant's statements were filled with inconsistencies that did not match the crime scene. She testified she discussed all of these things with counsel, but counsel told her that none of these things would lead to a viable defense. She testified he explained she would still likely be convicted if she went to trial. She felt like counsel disregarded what she told him. Despite failing to present any additional evidence, she asserts that counsel should have investigated her case more, including more investigation into the crime scene and murder weapon. She also stated she wanted counsel to investigate a Moroccan peace treaty.

However, when he testified, counsel Hayes explained all the reasons why these defenses and others would not have been viable. He testified the evidence did not support that Applicant was merely present but, rather, that she was an active participant in the murder, including the statement from Applicant's co-defendant, the fact that they set the home on fire and fled the State together, and were apprehended together near the victim's abandoned car in rural Georgia with the murder weapon containing the victim's DNA in the car. He similarly testified this was the same reason a duress defense would not likely be successful, as the evidence established Applicant had numerous opportunities to separate herself from her co-defendant and never did. He referenced a surveillance video from a gas station that showed Applicant had ample opportunity to separate herself from her co-defendant if she truly was under duress but she did not do so.

Counsel testified that had Applicant wished to proceed to trial, he would have presented these defense to the jury, but does not believe they would have been successful. Counsel similarly testified the dearth of forensic evidence tying Applicant to the crime scene was not exculpatory

because the house where the murder was committed was set on fire immediately after the murder. Counsel testified Applicant was also evaluated for criminally responsibility due to a history of mental health issues, but this did not lead to a viable defense as she was found criminally responsible. Counsel testified he used his office investigator to assist with this case, which included reviewing the various statements given by Applicant and her co-defendant. He testified they also reviewed all photographs and videos, all available reports, and other evidence provided. Counsel testified he does not believe there was any additional investigation or work he could have done that would have led to a viable defense. He also testified Applicant did not provide any witnesses or other leads to investigate. He elaborated Applicant also refused to let him talk to her family members or anyone else about the case, which hamstrung his ability to defend her.

This Court finds Applicant has failed to meet her burden of proof as to this allegation. Initially, this Court notes that other than her own testimony, Applicant did not present any additional evidence or witnesses to support her claim that counsel was ineffective for failing to adequately investigate her case to develop viable defenses. The testimony Applicant did present does not establish that there were any viable defenses counsel failed to investigate, uncover, or discuss with her. Counsel credibility testified he thoroughly reviewed the evidence, investigated any possible defenses, and determined none yielded a viable defense. This Court agrees and finds that this allegation must be denied and dismissed with prejudice.

Ineffective assistance of counsel for failure to request a change of venue

Next, Applicant asserts plea counsel was ineffective for failing to request a change of venue in response to the media exposure regarding Applicant's charges. Applicant elaborated she believes change of venue was necessary due to the local media slandering her, which she believes

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led to the public having a pre-determined, tainted opinion of her. She testified she requested counsel move to change of venue in early 2018, but counsel replied that he did not see a reason to request a change of venue. She conceded on cross-examination that she agreed with counsel's decision not to seek a change of venue at the time, but now, following her conviction, she believes it was error for counsel to fail to move to change venue. Applicant did not provide this Court with any evidence of excessive media coverage, let alone unduly negative media coverage that would have impacted her ability to select a fair and impartial jury.

In response to this allegation, counsel testified that any motion to change venue would be premature until the parties attempt to pick a jury, so he would not have made such a motion until after the jury selection process.

This Court agrees with trial counsel that any motion to change venue would have been premature before jury selection had been attempted. Additionally, this Court notes Applicant has failed to provide any evidence of excessive media coverage that would have impacted her ability to select a fair and impartial jury. This Court finds this allegation must be denied and dismissed with prejudice.

Ineffective assistance of counsel for failure to provide Applicant with full discovery

Applicant also asserts plea counsel was ineffective for failing to provide her with all discovery prior to her guilty plea. She testified she was not provided with reports from the South Carolina Law Enforcement Division (SLED) until after her plea. She testified she recalled discussing with counsel that these reports were not yet available when she pled guilty and she pled guilty despite knowing SLED had not completed its analysis. However, despite discussing this with counsel before her plea and electing to go forward with her plea despite the on-going SLED

analysis, Applicant now asserts she would not have pled guilty had she seen these reports. She failed to offer these reports into evidence or otherwise state what in these reports would have led to a viable defense.

Counsel testified that Applicant wanted to resolve her case as quick as possible, which was evidenced by the filing of a speedy trial motion. He testified that Applicant wanted to plead guilty as soon as possible, despite knowing all the SLED analysis was not complete. Counsel testified he discussed that the SLED analysis was not complete, specifically noting that the DNA analysis had not been finished, but Applicant still wanted to plead guilty. Counsel testified any additional evidence that came from SLED following the plea was not exculpatory. He testified he reviewed all available discovery with Applicant thoroughly prior to her plea.

This Court finds Applicant cannot meet her burden of proof as to this allegation. This Court finds counsel and Applicant both testified that they discussed that additional analysis from SLED had not been completed, but despite this, Applicant wished to plead guilty to resolve her case as quickly as possible. The transcript from the sentencing proceeding supports counsel's testimony that the DNA report had not been complete at the time of the plea but was at the time of sentencing and was not exculpatory. (Dec. 13, 2018 Tr. 15-16). This Court finds counsel properly reviewed all available discovery with Applicant prior to her plea, discussed that SLED analysis was still forthcoming, and that following this review and discussion, Applicant made a decision to enter a knowing, voluntary, and intelligent guilty plea. This Court finds this allegation must be denied and dismissed with prejudice.

Ineffective assistance of counsel for failure to request a speedy trial

Finally, Applicant asserts plea counsel was ineffective for failing to request a speedy trial

to resolve her case as expeditiously as possible. She testified she asked Applicant to file a motion for a speedy trial and ended up pleading guilty because she wanted to resolve her charges as soon as possible.

Regarding this allegation and the speed with which Applicant's charges were resolved, counsel testified that Applicant pled guilty within a few months of the Aiken County Grand Jury indicting her for murder, although Applicant had been in the incarcerated at the local detention center since she was detained in Georgia and brought back to South Carolina. He testified that the Solicitor's Office was actively gearing this case up for trial, and when he communicated this to Applicant, she replied she wanted counsel to obtain a plea deal for four years of imprisonment to the lesser-included offense of involuntary manslaughter. He testified the State rejected this proposal. He testified Applicant told him she did not want a trial and wanted to plead guilty. He testified he discussed the right to a speedy trial with Applicant and she asked him to file a motion for a speedy trial on her behalf in an attempt to resolve the case as quickly as possible. He testified he served a motion for a speedy trial on April 30, 2018, it was filed on May 2, 2018. He elaborated that Applicant's case was then on the trial docket every term in June until she pled guilty.

This Court finds this allegation is without merit. Counsel credibility testified he discussed the right to a speedy trial with Applicant, filed a motion for a speedy trial at her request, and then her case was on the trial docket within a month and remained on the trial docket until she pled guilty. This credible testimony is supported by the records from Applicant's general sessions file, which establish that counsel filed a motion for a speedy trial on May 2, 2018. This Court finds this allegation must be denied and dismissed with prejudice.

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CONCLUSION

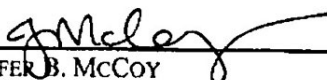
Based on all the foregoing, this Court finds Applicant has not established any other constitutional violations or deprivations that would require this Court to grant her application for post-conviction relief. Therefore, this application for post-conviction relief is denied and dismissed with prejudice.

This Court notes that if Applicant wishes to appeal this order, Applicant, though her counsel of record, must file and serve a notice of appeal within thirty days from the receipt of this Order. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant Kayla Moore shall remain remanded to the custody of the State of South Carolina.

AND IT IS SO ORDERED this 21 day of September, 2021.



JENNIFER B. MCCOY
Presiding Judge
Second Judicial Circuit

Charleston, South Carolina