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**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM FAIRFIELD COUNTY  
Court of Common Pleas

Walton J. McLeod, IV, Circuit Court Judge

Case No. 2019-CP-20-0135

Donald v. Stevenson, Jr. #237814.....Applicant/Appellant

v.

State of South Carolina.....Respondent/Respondent

**NOTICE OF APPEAL**

This is a post-conviction relief case. Appellant appeals from the Order of Dismissal entered in this case on July 23, 2021, and from the Order entered on August 19, 2021, that denies Appellant's timely filed Rule 59(e) SCRCM Motion to Alter or Amend. Appellant received written notice of the entry of the Order entered on August 19, 2021, by email from the South Carolina Attorney General's Office on November 24, 2021. Copies of the Orders appealed from are attached.

December 23, 2021



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STATE OF SOUTH CAROLINA  
COUNTY OF FAIRFIELD

Donald V. Stevenson, Jr., #2018-08  
Applicant,

v.

State of South Carolina,  
Respondent.

2021 JUL 23 AM 9:31  
FAIRFIELD COUNTY  
CLERK OF COURT  
JUDY H. BOWEN

IN THE COURT OF COMMON PLEAS  
FOR THE SIXTH JUDICIAL CIRCUIT

Case No.: 2019-CP-20-0135

**ORDER OF DISMISSAL**

This matter comes before the Court by way of Donald V. Stevenson's ("Applicant") action for post-conviction relief ("PCR") filed April 3, 2019. The State made its return on October 23, 2019. The Court convened an evidentiary hearing into the matter via the Cisco WebEx Virtual Courtroom on February 3, 2021. Applicant was present at the hearing and represented by Arthur Aiken, Esquire. Michael D. Davidson, Esquire, of the South Carolina Attorney General's Office, represented the State.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Creighton Coleman, Esquire ("Plea Counsel"), also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea transcript and the transcript of the PCR hearing, the records of the Clerk of Court regarding the subject convictions, the pleadings, and the exhibits introduced at the evidentiary hearing.

Following a thorough review of the record in its entirety, as well as the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional violations and denies this application.

**I. PROCEDURAL HISTORY AND BACKGROUND**

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Fairfield County Clerk of Court. Applicant was indicted at the April 2016

term of the Fairfield County Grand Jury for Distribution of Methamphetamine (2016-GS-20-145). Applicant was represented by Plea Counsel. Deputy Solicitor Riley Maxwell prosecuted the case.

Approximately ten months later, on February 22, 2017, Applicant pleaded guilty, before the Honorable Brian Gibbons to Distribution of Methamphetamine—First Offense. Applicant pleaded guilty with a recommended sentence of three years' imprisonment. Applicant's sentence was to be deferred to April 17, 2017, based upon an agreement between Applicant and the State to allow him to handle several matters pertaining to his recently deceased father's estate. Applicant was informed of the importance of appearing for his sentencing hearing. Applicant did not appear for sentencing, and instead he absconded, setting up a new life in Key West, Florida. Applicant was ultimately apprehended and returned to South Carolina for sentencing on May 14, 2018. At the sentencing hearing, both Applicant and his attorney had the opportunity to fully address the court. After hearing from the parties, Judge Gibbons sentenced Applicant to serve fifteen (15) years' imprisonment. Applicant did not appeal his conviction or sentence.

#### **Current Application**

Applicant timely commenced this PCR action on April 3, 2019. Applicant alleges by and through PCR counsel that he is being held unlawfully for the following reasons:

**1. Involuntary Guilty Plea:**

- a. Applicant expected to plead guilty with a five-year sentencing cap;
- b. Applicant was misguided by plea counsel; and
- c. Applicant was under extreme duress at the time of his guilty plea.

Applicant amended his application on January 26, 2021, alleging:

**2. Involuntary Guilty Plea:**

- a. Plea Counsel's performance was deficient because he did not adequately explain the important constitutional rights that Stevenson was waiving by pleading guilty. Applicant was

prejudiced by this deficient performance in that he would not have entered a guilty plea if he had understood the important constitutional rights that was waiving by pleading guilty.

3. Ineffective assistance of counsel for failure to file a direct appeal.
  - a. Plea Counsel's performance was deficient because he did not file a direct appeal of Applicant's convictions and sentences. Applicant specifically requested that his plea counsel file an appeal. Applicant was prejudiced by this deficient performance in that he had a viable appellate issue because the plea colloquy between the plea court and Applicant did not foreclose his claim that his plea was not freely and voluntarily entered because he did not understand the important constitutional rights that he was waiving by entering his guilty plea. Applicant specifically asserts his right to a belated, direct appeal under the authority of White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).
  - b. Even if Applicant did not specifically request that Plea Counsel file his direct appeal from his guilty plea, Plea Counsel's performance was deficient because he failed to consult with Applicant about an appeal. There was reason to think that Applicant would want to appeal, so a duty to consult about an appeal was triggered. There were non-frivolous grounds for an appeal because the plea colloquy between the plea court and Applicant did not foreclose an argument on appeal that Applicant's plea was not entered knowingly and intelligently because Applicant did not understand the important constitutional rights that he was waiving by entering a guilty plea. On this ground, Applicant also specifically asserts his right to a belated, direct appeal under the authority of White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

As relief, Applicant requests that this Court issue an order vacating his conviction, and granting him the right to pursue a belated, direct appeal.

At the evidentiary hearing, Applicant proceeded forward on the allegations as set forth in the January 26, 2021, amendment. Specifically, Applicant went forward with allegations of ineffective assistance of counsel for failure to file a direct appeal and involuntary guilty plea. PCR Tr. 3-4.

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court also had before it the records of the Fairfield County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the application, the State's return, the plea transcript, and the transcript from the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has reviewed the plea record from each proceeding and has heard and reviewed the testimony of both Applicant and Counsel. The Court finds Counsel's testimony on these issues to be credible, while also finding Applicant's testimony is not credible. This Court has therefore weighed the testimony accordingly. Pursuant to § 17-27-80 of the Code of Laws of South Carolina, this Court makes the following findings of fact and conclusions of law based upon all of the probative evidence presented.

### A. Involuntary Guilty Plea

Applicant alleges Plea Counsel's performance was deficient because he did not adequately explain the important constitutional rights that Applicant was waiving by pleading guilty. Applicant argues he was prejudiced by this alleged deficient performance in that he would not have entered a guilty plea if he had understood the important constitutional rights that was waiving by pleading guilty. However, this Court finds Applicant's plea was knowingly and voluntarily entered.

In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (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 687; 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 688). 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 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, 104 (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 8; 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, Applicant 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 670. 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.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of the plea and the charges against him or her. Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991); see also Boykin v. Alabama, 395 U.S. 238, 243-44 (1969) (Courts must make sure defendants have "a full understanding of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought, and forestalls the spin-off of collateral proceedings that seek to probe murky memories."). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

When attempting to determine the voluntary and intelligent nature of a plea, the plea colloquy ordinarily serves as confirmation that a criminal defendant is waiving the right to raise certain constitutional claims by pleading guilty. See Rivers v. Strickland, 264 S.C. 121, 124, 213 S.E.2d 97, 98 (1975) ("The general rule is that a plea of guilty, voluntarily and understandingly made, constitutes a waiver of nonjurisdictional defects and defenses, including claims of violation of constitutional rights prior to the plea. An accused also waives the right to trial and the incidents

thereof and the constitutional guarantees with respect to criminal prosecutions.”). However, “[g]iven the seriousness of the matter, the Constitution insists, among other things, that the defendant enter a guilty plea that is ‘voluntary’ and that the defendant must make related waivers ‘knowing[ly], intelligent[ly], [and] with sufficient awareness of the relevant circumstances and likely consequences.’” United States v. Ruiz, 536 U.S. 622, 629 (2002) (quoting Brady v. United States, 397 U.S. 742, 748 (1970)) (alterations in original). Specifically, “a defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000) (citing State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980)).

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel’s representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for trial counsel’s errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001); Richardson v. State, 310 S.C. 360, 363, 362 426 S.E.2d 795, 797 (1993).

In the present case, Applicant alleges Counsel was ineffective, and his guilty plea was not voluntarily entered, because Counsel did not adequately explain the important constitutional rights that Applicant was waiving by pleading guilty. However, this Court disagrees and finds Applicant was aware of—and understood—the rights he was waiving by pleading guilty. Therefore, Applicant’s plea was freely and voluntarily entered and relief must be denied.

At the plea hearing, the judge engaged in the following colloquy regarding Applicant’s constitutional rights:

Q. Did you and [Plea Counsel] go over all of your jury trial rights?

A. Yes, sir.

Q. You understand you give up those rights when you plead guilty?

A. Yes, sir, Your Honor.

Q. Is that what you want to do?

A. Yes, sir.

Plea Tr. 4. At the PCR hearing, Applicant testified Counsel failed to explain the rights that he would be waiving by pleading guilty. PCR Tr. 13–14. Applicant further testified had he understood those rights, he would not have pleaded guilty, but would have gone to trial. PCR Tr. 13. However, Counsel testified he discussed the constitutional rights that Applicant was waiving on two occasions: both at the jail and right before the plea. PCR Tr. 23. Additionally, Counsel explained that Applicant “knows the system” because Applicant “has been in the system a lot.” PCR Tr. 21.

The Court finds the testimony provided by Plea Counsel to be credible and affords it the appropriate probative weight. Plea Counsel was thorough and forthright in each of his answers, and filled any perceived gaps into Applicant’s alleged lack of knowledge. This Court finds Applicant’s testimony not credible. Furthermore, the Court finds Applicant was aware of the rights he was waiving and the consequences of pleading guilty, rather than proceeding to trial, and voluntarily and intelligently relinquished his constitutional rights to a jury trial and all other attendant trial rights during the plea proceeding. See Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000).

Additionally, Applicant asserts that his plea was involuntary, Applicant was misguided by Plea Counsel, and Applicant was under extreme duress at the time of his guilty plea. However, Applicant testified he chose to plead guilty because he “had to get out” to handle personal affairs. PCR Tr. 15–16.

Petitioner's primary basis from vacating his plea, conviction, and sentence is based upon Boykin, but there are distinguishing circumstances that warrant consideration. 395 U.S. 238 (1969). Boykin involved a black male who, in 1966, appeared at an arraignment "for common law robbery – an offense punishable in Alabama by death." At his arraignment, he pled guilty to five robbery charges, and the record showed the judge asked no questions of the defendant, and the defendant did not address the court. The defendant was ultimately sentenced to death on the five charges. Applicant emphasizes the Supreme Court's finding in Boykin that any waiver of a defendant's right of protection from self-incrimination, right to trial by jury, and right to confront one's accuser cannot be presumed "from a silent record."

In the instant case, it is worth noting that Applicant's circumstances are quite different from those in Boykin. Mr. Stevenson's charges were over one year old, and both he and his attorney had negotiated a state recommendation with deferred sentencing to accommodate Mr. Stevenson's personal affairs. The transcript from the pleas, as well as the PCR hearing, indicate that the following subjects were addressed with Mr. Stevenson on the record:

- (1) Additional charges of Distribution, Possession with Intent to Distribute, and Domestic Violence were being dismissed in exchange for the guilty plea.
- (2) The State recommended three (3) years out of a potential fifteen-year sentence.
- (3) Mr. Stevenson understood what he was doing in court that day, and understood the charge of Distribution of Methamphetamine.
- (4) Mr. Stevenson was not forced, pressured or coerced into pleading guilty.
- (5) Mr. Stevenson was not promised anything in exchange for pleading guilty.
- (6) Mr. Stevenson was satisfied with his attorney.
- (7) Mr. Stevenson did "go over" his jury trial rights with his attorney, and he understood he gave up those rights to plead guilty, and that's what he wanted to do. Mr. Stevenson's counsel further testified at the PCR hearing that he explained Mr. Stevenson's constitutional rights to him prior to the guilty plea.
- (8) The State set forth that the case involved a confidential informant, and that Mr. Stevenson purchased the drugs in a "controlled buy" operation which was documented on audio and video – Mr. Stevenson agreed that that was "what happened."
- (9) The plea court informed Mr. Stevenson that if he violated his bond while awaiting sentencing, there was "a pretty good chance I'm going to max you out." Mr. Stevenson responded that he understood.

While this Court can understand Applicant's essential argument that exact compliance with specific plea colloquy verbiage is required to stay within the confines of Boykin, this Court finds the instant record, taken as a whole, is far from "silent." To the contrary, Petitioner appeared to have a full understanding of the plea, admitted the allegations set forth by the State freely, voluntarily, and knowingly. "Although the trial court is not required to direct defendant's attention to each right and obtain a separate waiver, the record should indicate the defendant was fully aware of the consequences of the guilty plea." Roddy v. State, 528 S.E.2d 418, 421, 339 S.C. 29, 34 (2000).

This Court finds Applicant's testimony with regards to why he chose to plead guilty credible and contrary to the assertion his plea was involuntary. Further, the record of the plea transcript establishes that Judge Gibbons thoroughly explained the potential exposure Applicant faced if he did not show up on the date of the sentencing hearing. Plea Tr. 6. This Court finds any misconceptions Applicant had about the sentence he would receive was cured by the colloquy. Any deficiency regarding Plea Counsel's alleged failure to screen Applicant for competence or alleged "pressure" from external parties to plead guilty was cured by the plea colloquy. See Wolfe v. State, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997) (stating any possible misconceptions due to counsel's alleged deficiencies can be cured by the plea court's colloquy). Accordingly, Applicant has failed to present any evidence to meet his burden as to either prong of Hill, and his claim for relief by way of this allegation is **DENIED**.

**B. Ineffective Assistance of Counsel for Failure to file a Direct Appeal**

Applicant argues he is entitled to a belated appeal pursuant to White. This Court disagrees. The United States Supreme Court has rejected a bright-line rule that counsel must always consult with the defendant regarding an appeal. Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000). Instead,

“counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing.” Id. Further, “a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings.” Id.

The Supreme Court of South Carolina has held there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea, absent extraordinary circumstances. Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). However, “the bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief.” Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995). Instead, a defendant must offer proof that extraordinary circumstances exist such that he should have been advised of the right to appeal. Id. One situation in which extraordinary circumstances arise is when a defendant explicitly inquires about his right to appeal following a guilty plea. Jones v. State, 382 S.C. 589, 596, 677 S.E.2d 20, 23 (2009); Weathers, 319 S.C. at 61, 459 S.E.2d at 839.

In a post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove “counsel’s conduct so undermined the proper functioning of the adversarial process that the [proceeding] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984). 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. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 690. A PCR applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland, 466 U.S. at 688). 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." Id. at 117-18, 386 S.E.2d at 625. To show prejudice in these circumstances, a defendant must demonstrate that there is a reasonable probability that, but for plea counsel's deficient failure to consult with him about an appeal, he would have timely appealed. Flores-Ortega, 528 U.S. at 484.

In White v. State, the Supreme Court of South Carolina held that even if the post-conviction relief court finds that the Applicant never voluntarily and intelligently abandoned his appeal, the court has no jurisdiction to grant a belated appeal. 263 S.C. 110, 108 S.E.2d 35 (1974). Therefore, where an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the Supreme Court of South Carolina, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected.

Here, Applicant pleaded guilty on February 22, 2017, and was sentenced on May 14, 2018. At the PCR hearing, Applicant testified he chose to plead guilty because he "had to get out" to

handle personal affairs. PCR Tr. 15–16. Applicant testified he asked Plea Counsel to file an appeal immediately after he was sentenced because he thought he was going to get, at most, five years; however, the record of the plea transcript establishes that Judge Gibbons thoroughly explained the potential exposure Applicant faced if he did not show up on the date of the sentencing hearing. Plea Tr. 6–9.

Further, at the PCR hearing, Plea Counsel testified right after the plea hearing, he emphasized that “[t]he judge gave [Applicant] what he wanted, time to go home to get his affairs in order and that [Applicant] better show up on that specific date because the judge made very clear, crystal clear, that if he didn’t show up on that day, he was going to get the max. And [Plea Counsel] impressed that on [Applicant].” PCR Tr. 27. Plea Counsel testified he did not recall discussing with Applicant the right to a direct appeal. Plea Counsel testified he did not recall Applicant asking Plea Counsel to file an appeal after the plea or sentencing, but if he had, he would have done so. Plea Counsel explained that by the time he met with Applicant months later to discuss a different matter, Applicant asked him to appeal, but by that point, too much time had passed to file one. Plea Counsel further testified after Applicant’s plea and sentencing hearings, Applicant never showed any interest in pursuing a direct appeal; however, if Applicant had done so, Plea Counsel would have filed an appeal. Additionally, Plea Counsel testified he saw no appealable issues with Applicant’s guilty plea hearing, but if there had been any meritorious issues, he would have filed a direct appeal. PCR Tr. 23–24. Applicant and Plea Counsel both testified that they did discuss an appeal a few months after sentencing, and Plea Counsel explained it was too late to file an appeal at that time. PCR Tr. 14; 23–24.

This Court finds Applicant has failed to meet his burden of proving he did not voluntarily and intelligently waive his right to appeal. This Court finds credible Plea Counsel’s testimony that

after Applicant's plea and sentencing hearings, Applicant never asked him to appeal and never showed any interest in pursuing a direct appeal until months later, when it was too late. Further, this Court finds credible Plea Counsel's testimony that he saw no appealable issues with Applicant's guilty plea hearing. Accordingly, this Court finds Applicant has failed to satisfy the requirements set forth in the Roe v. Flores-Ortega test and as such, he has failed to show he is entitled to a belated direct appeal under White v. State. Therefore, Applicant's request for belated review of direct appeal issues pursuant to White is hereby **DENIED**, and the application is 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 (30) 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. Applicant's 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.

AND IT IS SO ORDERED this 16 day of JULY, 2021.

Lexington, South Carolina

  
WALTON J. McLEOD, IV  
Presiding Judge  
Sixth Judicial Circuit

STATE OF SOUTH CAROLINA  
COUNTY OF FAIRFIELD

2021 AUG 19 AM 11:19  
FAIRFIELD COUNTY  
CLERK OF COURT  
JUDY M BOND

IN THE COURT OF COMMON PLEAS  
THE SIXTH JUDICIAL CIRCUIT

Donald V. Stevenson, Jr. #237814,

Case No. 2019-CP-20-0135

Applicant,

v.

**ORDER DENYING MOTION TO  
ALTER OR AMEND PURSUANT  
TO RULE 59(e), SCRPC**

State of South Carolina,

Respondent.

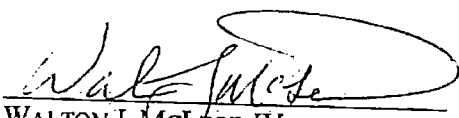
This matter comes before the Court by way of a post-conviction relief (PCR) action commenced by Donald V. Stevenson, Jr. (Applicant). This Court held an evidentiary hearing on February 3, 2021. Applicant was present at the hearing and represented by Arthur Aiken, Esquire. Michael D. Davidson, Esquire, of the South Carolina Attorney General's Office, represented the State. Both the application, and his previous attorney provided sworn testimony at the hearing. An Order of Dismissal was filed on July 23, 2021. Applicant filed a timely Motion to Alter or Amend and for Reconsideration pursuant to Rule 59(e), SCRPC on August 2, 2021.

After careful consideration of the record in this case and the submissions of counsel, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered.

**IT IS THEREFORE ORDERED** that Applicant's Motion to Alter or Amend and for Reconsideration pursuant to Rule 59(e), SCRPC, is **DENIED**. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

This Court hereby advises Applicant he must file and serve a notice of appeal within thirty days of the service of this Order to secure appellate review. *See* Rule 203, SCACR. Applicant's attention is directed to Rule 227, SCACR, for the procedures following the filing and service of the notice of appeal.

**IT IS SO ORDERED.**

  
WALTON J. MCLEOD IV  
Presiding Judge  
Sixth Judicial Circuit

August 16, 2021