

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
APPEAL FROM CHEROKEE COUNTY  
Court of Common Pleas  
HONORABLE WILLIAM A. MCKINNON  
2019-CP-11-00779

ROBERT J. HORD, SCDC# 368056

APPELLANT,

vs.

STATE OF SOUTH CAROLINA,

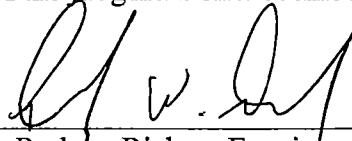
RESPONDENT.

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**NOTICE OF APPEAL**

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Robert J. Hord appeals the denial of his Post-Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable William A. McKinnon, Circuit Judge on September 17, 2021 an Order issued on November 24, 2021 and filed on December 3, 2021. The Appellant received notice of the judgment on December 15, 2021.



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**RECEIVED**

**JAN 18 2022**

**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA )  
COUNTY OF CHEROKEE )  
)   
Robert J. Hord, SCDC No. 368056 )  
)   
Applicant, )  
)   
v. )  
)   
State of South Carolina )  
)   
Respondent. )

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IN THE COURT OF COMMON PLEAS  
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2019-CP-11-00779

**ORDER OF DISMISSAL**

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.  
2021 DEC -3 PM 12:47  
BRANDY M. MORRIS

This matter comes before the Court by way of Applicant Robert Hord's November 1, 2019 application for post-conviction relief. Respondent made its return, moved for a more definite statement, and requested an evidentiary hearing on March 5, 2020. A hearing was convened on September 17, 2021 before the undersigned at the Spartanburg County Courthouse in Spartanburg, South Carolina. Applicant was present at the hearing and represented by Attorney Rodney Richey. Assistant Attorney General William H. Ray, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Attorney Tracy Racine, also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, the Clerk of Court's records, the plea transcript, and the pleadings. The Court has reviewed the record, observed the witnesses, heard the testimony, and finds as follows:

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was indicted for possession with intent to distribute methamphetamine and armed robbery by the Cherokee County Grand Jury at its September 2016 term. (2016-GS-22-01268; -

01269). Applicant was subsequently indicted for armed robbery and possession of a weapon during a violent crime by the Cherokee County Grand Jury at its December 2016 term. (2016-GS-11-01618). Applicant was again indicted for murder and possession of a weapon during the commission of a violent crime by the Cherokee County Grand Jury at its March 2019 term. (2019-GS-11-00493). Applicant was represented by Attorney Tracy Racine and Assistant Solicitor Matthew Kendall, of the Seventh Circuit Solicitor's Office, prosecuted the case. On March 25, 2019, Applicant appeared before the Honorable J. Mark Hayes, II, and entered an *Alford* plea, as indicted, with a negotiated thirty year sentence.<sup>1</sup> Judge Hayes accepted the plea and sentenced Applicant to thirty years' imprisonment, with all sentences set to be served concurrently. Applicant did not pursue a direct appeal.

## II. FACTUAL HISTORY

The Assistant Solicitor provided the factual basis for Applicant's guilty plea at his plea hearing:

Your Honor, this occurred or began on March 29<sup>th</sup>, 2016, and began with a dispute over a tattoo kit.

At that time there was a tattoo kit that the victim in the case believed that he owned at the house of a Ms. Gallman. It was retrieved by the victim's wife Terri Burden, who put the tattoo supplies in the car of the victim, a Mr. C.J. Burden, who drove away.

At that point this defendant, Mr. Hord, as well as Joseph Smith, attempted to locate Mr. Burden, as they were upset that he had taken this tattoo kit. Basically at that point they contacted Steven Neal and Teresa Roberts to come and pick him up. I believe they had give him a tattoo earlier in the evening. Steven was driving and Teresa was in the front passenger seat.

In the early morning hours of March 30<sup>th</sup>, 2016 Justin, Steve and Teresa drove to a number of locations here in Cherokee County, including Aunty M's, the Kangaroo -- or excuse me, Auntie M's Kangaroo, Crystal Kangaroo in attempt to locate them.

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<sup>1</sup> *North Carolina v. Alford*, 400 U.S. 25 (1970)

They ultimately located them kind of near the cement plant on—at 889 Blacksburg Highway, the concrete plant here in Cherokee County.

(Tr. 10-14).

### III. CURRENT APPLICATION

In Applicant's initial *pro se* application, he alleged he was being held in custody unlawfully for the following reasons:

1. Defense counsel was ineffective because:
  - a. Did not maintain contact with me at all in order to properly go over the case, or to prepare any defense for trial.
  - b. Did not assist me in obtaining any legal books or case material when the county jail did not provide these things also.
  - c. Counsel waived my right to a preliminary hearing without my knowledge or consent.
  - d. Counsel failed to investigate all available defense[s] for trial I.E. no *corpus delecti* to the Armed Robbery offense.
2. The judge committed misconduct when:
  - a. [He] lacked the authority to enter a sentence for Armed Robbery [but did so anyway]

At the outset of the evidentiary hearing, Applicant stated that he was going forward on the following allegations:

1. Ineffective Assistance of Counsel
  - a. Failure to present defenses
  - b. Failure to investigate a favorable letter sent by the victim's wife.

Applicant did not proceed forward on the allegations contained in his initial *pro se* application. Therefore those allegations have been abandoned and waived and will not be addressed elsewhere herein.

### IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the

attorneys. Pursuant to S.C. Code Ann. §17-27-80, this Court makes the following findings based upon all of the probative evidence presented:

*Ineffective Assistance of Counsel*

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), SCRPC. 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 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.

#### ***Failure to Investigate***

“[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation.” *Strickland*, 466 U.S. at 690-91. “In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” *Id.* at 691. “In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments.” *Id.*

“The reasonableness of counsel’s actions may be determined or substantially influenced by the defendant’s own statements or actions.” *Id.* “Counsel’s actions are usually based, quite

properly, on informed strategic choices made by the defendant and on information supplied by the defendant." *Id.* "In particular, what investigation decisions are reasonable depends critically on such information." *Id.*

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. *Harris v. State*, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. *Id.* (citing *Davis v. State*, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); *Skeen v. State*, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.*, 377 S.C. at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Applicant asserts that Counsel should have investigated a letter written by the victim's wife, who was in the vehicle with the victim at the time of the shooting, stating that she did not believe Applicant intended to murder anyone. He stated that the letter showed that he did not want to kill anyone. Applicant explained that he spoke with his lawyer about the letter and believed that it showed that the victim's wife was on his side. He stated that he would have gone to trial with this letter, but acknowledged that he ultimately decided to enter his plea. He said that the letter would have provided a defense to the armed robbery charge.

Counsel testified that she was aware of the letter written by the victim's wife. She explained that she had gotten the victim's wife to write the letter recently after the incident but later became

aware that the victim's wife did not intend to testify in accordance with the letter's content. She stated that she had spoken with the victim's wife prior to the letter being written, but the woman disappeared shortly thereafter. She stated that she had received and reviewed all the discovery with Applicant, and did not believe that there was any impeachable material that would support his defense. She stated that the co-defendants all offered consistent statements, and there were numerous other witnesses who were prepared to testify.

This Court finds that Applicant's claims are without merit. The record shows that letter in question was written by the victim's wife at Counsel's request. Without Counsel's performance there likely would be no letter at all. Therefore, Applicant's claim that Counsel's performance was deficient in failing to investigate the letter lacks merit. Counsel was well aware of the letter, and in her professional judgment determined that it would not provide much benefit after its author became unresponsive to the defense. Counsel's performance was not deficient in this regard.

Furthermore, the letter alone would have been of no benefit to Applicant if its author was not willing to testify to its contents at trial. There is nothing in the record that indicates what the victim's wife would have testified to at trial if called. The letter alone would not have refuted all of the other incriminating evidence that likely would have been presented. Applicant explicitly acknowledged this at the plea hearing when he stated that he could likely be convicted. Therefore, he has not met his burden of proving he was prejudiced by counsel's performance. As such, the allegation must be denied and dismissed with prejudice.

#### *Failure to Present Defenses*

Applicant alleges that counsel provided ineffective assistance of counsel when she failed to present a defense against his charges. This allegation is without merit.

At the guilty plea hearing Applicant stated that he understood his constitutional rights and wished to waive his right to present a defense. (Tr. 18, 7-18). He stated that he believed there was a defense against the charges, but stated that there was sufficient evidence against him to lead to a conviction should he go to trial. (Tr. 16, 19-24). At the evidentiary hearing he stated that he felt Counsel did not properly represent him because the shooting arose out of self-defense. He stated that he went with his brother to go retrieve his belongings from the victim, approached the vehicle they were in, and then fired the fatal shots after they presented the firearm and the vehicle backed towards them. He stated that this constituted self-defense because he was afraid that the car would back over him or pin him against a wall if he did not shoot. He acknowledge that he pulled the trigger. He stated that he felt as if his life was in danger, but also stated that he did not aim the gun at any specific person when he fired the fatal shots. He stated that his counsel never discussed defenses beyond his self-defense theory, and there was no plan for defending against the charges at trial. He stated that he did not go to trial because he did not believe the representation was adequate to prevail at trial.

At the guilty plea hearing counsel stated that she had explained the hand of one, hand of all concept and that he could be found guilty for the actions of his co-defendant. (Tr. 22, 4-10). She stated that she discussed self-defense with Applicant and had explained to him that it did not fit because "he and his brother were in the process of committing an armed robbery when the murder occurred." (Tr. 22, 17-24). At the evidentiary hearing she stated that the evidence showed that Applicant and his codefendant were armed, went out searching for the victim, opened the doors of their vehicle, and attacked the passengers inside. The self-defense argument was his idea, and upon her review of the evidence she determined that it would not be successful. She noted that there were around a dozen witness statements, and many of them were prepared to testify against

him at trial. She stated that she discussed his right to pursue a jury trial with him and he did not want to take the chance due to the likelihood that he would be convicted and would face life in prison.

This Court finds that Applicant's allegations are without merit. Applicant entered a guilty plea and knowingly waived his right to present a defense against these charges. The record shows that Counsel discussed this right with him, and also discussed the likelihood of succeeding on a self-defense theory at trial. The facts of this case do not support self-defense. Applicant sought out the victim with the intent to rob him, and did actually engage in the armed robbery when the shooting occurred. Counsel's performance was not deficient in advising Applicant of the improbable likelihood of success at trial based upon a self-defense theory of the case.

Furthermore, Applicant cannot show that he has been prejudiced by Counsel's performance because he freely made a knowing and voluntary waiver of his right to present a defense by entering his guilty plea. He expressed his concern at the plea hearing about counsel's performance, the Court engaged him in a colloquy to advise him of his rights, and he nevertheless opted to proceed forward with his plea. He is not entitled to invalidate that solemn declaration of guilt with his present allegation that counsel failed to present a defense. Therefore the application for post-conviction relief must be denied and dismissed with prejudice.

V. CONCLUSION

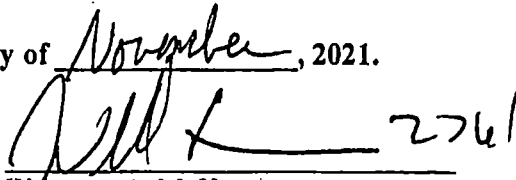
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

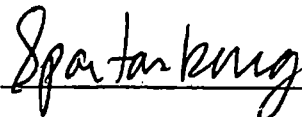
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), 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 24 day of November, 2021.

  
WILLIAM A. MCKINNON  
Presiding Judge  
Seventh Judicial Circuit

  
Spartanburg, South Carolina

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JAN 18 2022

S.C. SUPREME COURT