

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

S.C. SUPREME COURT

G.D. Morgan, Jr., Circuit Court Judge

2017-CP-23-7332

Brandon Dashun Adams, Appellant,
v.
The State, Respondent.

NOTICE OF APPEAL

Brandon Dashun Adams appeals the Honorable G.D. Morgan Jr.'s Order of Dismissal filed April 5, 2022.

This 11th day of April, 2022.

s/Elizabeth P. Wiygul
Elizabeth P. Wiygul, Attorney at Law
1218 Laurens Road
Greenville, SC 29607
(864) 608-1059
Attorney for Appellant

Other Counsel of Record:
Lilly Meadows, Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3970
Attorney for Respondent

merit. For the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

II. FACTS & PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. Applicant was arrested on February 15, 2013, following an investigation into the murder of the victim, Joseph Crite. During its July 2015 term, the Greenville County Grand Jury indicted Applicant for murder (2013-GS-23-5553); armed robbery (2013-GS-5556); first-degree burglary (2013-GS-23-5554); kidnapping (2013-GS-23-5555); conspiracy (2013-GS-23-5557); and possession of a weapon during the commission of a violent crime (2013-GS-23-5556). Ivan J. Toney, Esquire (Trial Counsel) represented Applicant. Assistant Deputy Solicitor Lucas C. Marchant and Assistant Solicitor Ryan Holloway prosecuted the case.

On January 4, 2016, Applicant proceeded to a jury trial before the Honorable R. Knox McMahon. On January 6, 2016, the jury convicted Applicant as indicted of murder, first-degree burglary, armed robbery, and possession of a weapon during the commission of a violent crime. The kidnapping and conspiracy charges were dismissed pre-trial. Judge McMahon sentenced Applicant to concurrent terms of forty years' imprisonment for murder, thirty years for first-degree burglary, thirty years for armed robbery, and five years for possession of a weapon during the commission of a violent crime.

Applicant filed a timely notice of appeal. Appellate Defender Susan B. Hackett perfected Applicant's appeal by filing an *Anders*¹ brief with the Court of Appeals on the following issue:

¹ In *Anders v. California*, the United States Supreme Court announced the procedure an appointed attorney should follow if that attorney believes the client's appeal is frivolous and without merit. 386 U.S. 738 (1967). Following a "conscientious examination" of the record, the attorney

Did the trial judge err in failing to order a competency evaluation to determine [Applicant]’s fitness to stand trial where evidence in the record demonstrated (1) Appellant was learning disabled, (2) [Applicant] had undergone a competency evaluation six years prior to his trial in connection to charges against him as a juvenile, and (3) his trial counsel expressed some concerns regarding [Applicant]’s competency?

Applicant filed a *pro se* brief in response. On July 5, 2017, the Court issued an unpublished per curiam opinion affirming Applicant’s convictions and granting appellate counsel’s request to be relieved. *State v. Adams*, Op. No. 2017-UP-277 (S.C. Ct. App. filed July 5, 2017). The case was remitted back to the circuit court on July 21, 2017.

III. ISSUES BEFORE THIS COURT

In his original application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following reasons (excerpted verbatim):

- (10) State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (a) Ineffective assistance of trial counsel
 - 1) “Failing to assist applicant in timely moving to set aside indictment(s) for denial of Speedy Trial . . .”
 - i) “Applicant’s arrest; indictment; or other formal accusation and trial was sufficiently long and characterized as to be ‘presumptively prejudicial.’ “
 - 2) “Failing to assist applicant in timely manner for hearing to determining

seeking to withdraw must submit a brief referencing anything in the record that arguably could support an appeal and furnish a copy of that brief to the defendant. *Id.* at 744. After providing the defendant with an opportunity to respond and raise any additional points in a *pro se* brief, the reviewing court must conduct a “full examination” of the record to determine whether the appeal is “wholly frivolous.” *Id.* If no issue of arguable merit is discovered, the appeal will be dismissed and counsel’s petition to be relieved will be granted. In the event the reviewing court finds any issues of arguable merit, the parties will be directed to submit new briefs. *See generally State v. Williams*, 305 S.C. 116, 406 S.E.2d 357 (1991) (clarifying the procedural guidelines for *Anders* review in accordance with the South Carolina Appellate Court Rules).

applicant's present competency to stand trial; and applicant's convictions or sentence was obtained in violation of State v. Locklair or Drope v. Missouri . . .”

- i) “Applicant’s mental condition is such that applicant lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense.”
- 3) “Failing to assist Applicant in timely moving to compel the prosecution to reveal or disclose ALL material evidence that would in its nature be exculpatory of guilt and/or mitigation of punishment . . .”
- 4) “Failing to assist applicant in timely moving to challenge the veracity of the warrant affidavit(s) after the warrant(s) had been issued and executed . . .”
- 5) “Failing to assist applicant in timely moving to challenge indictment(s) as insufficient or defective before the jury is sworn and not afterwards . . .”
 - i) “Applicant is suffering from a pre-indictment delay that has caused such substantial prejudice to the defendant as to outweigh the State’s reasons for delay”
- 6) “Failing to assist applicant in timely moving to conduct a reasonably substantial investigation on the totality of all the circumstances surrounding any statements alleged to have been made by applicant and recorded by any prosecution witness or not during the length of custody; and applicant’s conviction or sentence violated Jackson v. Denno or Dickerson v. United States . . .”
 - i) “Applicant’s age, background, and intelligence, included in the totality of all the circumstances, were not presented to the court to properly determine the voluntariness of any statements

alleged to have been made by applicant.”

- 7) “Failing to assist applicant in timely moving to present evidence and witnesses in applicant’s own defense; effectively cross-examine prosecution witnesses to show a prototypical form of bias on the part of the witnesses; [and] guarantee applicant the right to a meaningful opportunity to present a complete defense . . .”
 - 8) “Failing to assist applicant in timely moving to hold the prosecution to its heavy burden of proving beyond a reasonable doubt the existence of every fact necessary to constitute the crime(s) charged . . .”
 - 9) “Failing to assist applicant in timely moving to challenge any prosecutorial misconduct typically involving a prosecutor’s improper efforts or unfair trial tactics . . .”
 - 10) “Failing to assist applicant in timely moving to challenge a jury charge instructing that malice may be inferred from the use of a deadly weapon . . .”
 - 11) “Failing to assist applicant in timely moving to reasonably challenge the reasonableness of a district court’s sentencing decision . . .”
 - 12) “Failing to assist applicant in timely moving to conduct a reasonably substantial investigation into mitigating circumstances . . .”
- (b) Ineffective assistance of appellate counsel
- 1) “Failing to assist applicant in timely moving to secure access to or perfect appeal; communicate with applicant on non-frivolous issues and raise a specified issue on appeal . . .”

On November 8, 2018, the Honorable Perry H. Gravely issued a consent order for a competency evaluation pursuant to *State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981) and S.C. Code Ann. § 44-23-410. The evaluation was completed on January 14, 2019. See Applicant’s Exhibit #3. Applicant was found competent to stand trial.

On August 27, 2019, a hearing on the State's motion for a more definite statement convened before the Honorable Letitia H. Verdin. At the hearing, Applicant, through PCR counsel, withdrew allegations 10(a)(1), 10(a)(3)–(5), 10(a)(7)–(11), and 10(a)(13).

At the start of the hearing before this Court, PCR counsel indicated Applicant would be proceeding only on the following claims:

1. Ineffective assistance of trial counsel for failure to investigate issues related to Applicant's competency following the pre-trial hearing before Judge Verdin.
2. Ineffective assistance of trial counsel for failure to investigate the circumstances surrounding Applicant's statements to law enforcement regarding how his competency and low IQ may have affected the voluntariness of the statements pursuant to *Jackson v. Denno*.
3. Ineffective assistance of trial counsel for failure to investigate and present mitigating circumstances regarding Applicant's competency at sentencing.

IV. SUMMARY OF RELEVANT TRIAL PROCEEDINGS

1. Pre-trial Hearing on Motion for a Competency Evaluation

On May 11, 2015, Counsel filed a motion for a competency evaluation pursuant to S.C. Code Ann. § 44-23-410. A hearing on Counsel's motion subsequently convened before the Honorable Letitia H. Verdin on May 15, 2015. *See* Applicant's Exhibit #1 (2015 Tr. 1–10); (R. 441–50). Counsel stated that Applicant was listed as learning disabled in his high school records. (2015 Tr. 4; R. 444). He noted that Applicant had received a competency evaluation six years prior when he was facing charges as a juvenile, but that Counsel had not yet been able to obtain the report. (2015 Tr. 4; R. 444).

Assistant Solicitor Marchant then advised the court of his concerns with the age of the case. (2015 Tr. 5–6; R. 445–46). He further noted that, prior to Mr. Toney being retained, Matt Canady represented Applicant for approximately sixteen or eighteen months. (2015 Tr. 5; R. 445). Assistant

Solicitor Marchant himself had met with Applicant and Mr. Canady up to a dozen times. (2015 Tr. 5; R. 445). He advised the Court that, throughout these several meetings, Assistant Solicitor Marchant never noticed anything in Applicant's behavior or otherwise that would indicate he had any problem communicating with himself, Mr. Canady, or Investigator Campbell regarding the case, seriousness of the charges, or Applicant's involvement. (2015 Tr. 5-6; R. 445-46). He further opined that a sufficient showing had not been made that Applicant could not effectively communicate with Counsel about the charges or assist in preparing his defense. (2015 Tr. 6; R. 446).

Judge Verdin then asked Counsel to respond regarding his conversations with Applicant and any concerns he had. (2015 Tr. 7; R. 447). Counsel advised the Court that he believes Applicant is intelligent and they were able to have meaningful conversations. (2015 Tr. 7; R. 447). Rather, Counsel's concerns were about Applicant's ability to comprehend right versus wrong and appreciate the consequences of his actions. (2015 Tr. 7; R. 447). Counsel again mentioned that Applicant was learning disabled, and that he believed he had a duty to bring this matter before the court. (2015 Tr. 8; R. 448). Judge Verdin found that Counsel's general concerns and Applicant's classification as learning disabled did not constitute a sufficient showing for her to order an evaluation. (2015 Tr. 8; R. 448). She further stated she would sign an order for DJJ to release the 2009 competency evaluation within thirty days. (2015 Tr. 8-9; R. 448-49). She further advised that, rather than filing a *Brady* motion, should the juvenile competency evaluation bring to light any concerns or issues not previously presented, to let her know and they could have a conference call. (2015 Tr. 9; R. 449).

2. Pre-Trial Jackson v. Denno² Hearing

Following jury selection on January 4, 2016, Judge McMahon held a *Denno* hearing regarding the admissibility of Applicant's February 11, 2013, and September 18, 2014, statements to law enforcement. (R. 37–68). The State called Investigator Wayne Campbell from the Greenville County Sheriff's Office, who testified about his initial interview with Applicant on February 11, 2013. (R. 37–38). At that time, Applicant was being held at the Greenville County Detention Center on unrelated charges. (R. 38).

Investigator Campbell testified he first introduced himself to Applicant, stating that he is a homicide investigator investigating the murder of Joseph Crite. (R. 40). Investigator Campbell testified that, prior to asking any questions, he read Applicant his *Miranda* rights. (R. 39–40). Investigator Campbell specifically recalled emphasizing to Applicant that, should he decide to answer questions at that time without a lawyer present, he had a right to stop answering at any time. (R. 39–40). He also advised Applicant that he has the right to stop answering at any time should he wish to speak with a lawyer. (R. 40).

Assistant Solicitor Marchant then asked Investigator Campbell if he was able to determine at that time whether Applicant was under the influence of drugs or alcohol. (R. 40). Investigator Campbell informed the Court that Applicant had been incarcerated long enough for any drugs or alcohol to be out of his system. (R. 40). Assistant Solicitor Marchant then asked Investigator Campbell if he ever asked Applicant about his education level. (R. 40). Investigator Campbell testified that Applicant told him he had difficulty reading the waiver document. (R. 40–41).

² 378 U.S. 368 (1964). In *Jackson v. Denno*, the United States Supreme Court held that a criminal defendant has a constitutional due process right to litigate, at some stage of his criminal trial, whether his pre-trial statement to law enforcement, sought to be introduced against him by the prosecution, had been voluntarily rendered and to have a fair hearing and reliable determination on that issue uninfluenced by the truth or falsity of the statement itself.

Consequently, Investigator Campbell further inquired into Applicant's education level. (R. 41). Applicant informed Investigator Campbell that he had completed the tenth grade at Carolina High School prior to withdrawing from school. (R. 41). Considering this information, Investigator Campbell walked through the waiver with Applicant. (R. 41).

Next, Investigator Campbell explained that he was making no way making promises or threats or attempting to pressure or coerce Applicant. (R. 41). Following the reading and thorough explanation of the waiver, Investigator Campbell asked Applicant if he understood everything they discussed. (R. 41). Applicant answered in the affirmative. (R. 41). Investigator Campbell then informed Applicant that he had to sign the waiver form before they could continue their conversation. (R. 41). Subsequently, Applicant signed the waiver. (R. 41). Throughout this interaction with the Applicant, Investigator Campbell stated he had no doubt, hesitation, or reservation that Applicant understood what was going on. (R. 41).

Assistant Solicitor Marchant asked Investigator Campbell if anyone else was present in the room when he interviewed Applicant on February 11, 2013. (R. 42). While no one else was in the room during the interview, Investigator Campbell ensured the Court that the interview was recorded. (R. 43). At this time, Investigator Campbell identified State's Exhibit #40 as the footage from the interview room on February 11, 2013. (R. 43). He further verified to the Court that the video recording was a true and accurate depiction of the interview as it occurred that day. (R. 43). Investigator Campbell testified that this interview was short, and that Applicant denied any involvement in the murder at that time. (R. 43). Investigator Campbell testified that Applicant never asked nor was denied an attorney; a bathroom break; or any water during the interview. (R. 42-43).

Assistant Solicitor Marchant asked Investigator Campbell to explain what Applicant told him after signing the waiver. (R. 43). He specifically asked whether Investigator Campbell asked Applicant if he knew where Landford Drive was located. (R. 43). Investigator Campbell confirmed that he had asked Applicant if he knew where Landford Drive was located; however, Applicant stated he did not know where that was. (R. 43). Further, Investigator Campbell asked Applicant about a firearm that law enforcement had located while executing a search warrant at the Executive Inn in Anderson County. (R. 43). Applicant responded that his brother had been charged in that incident and that he did not nor had he ever owned a gun. (R. 43). Investigator Campbell then asked Applicant if he knew anything about a gray car, to which Applicant responded that he knew nothing about a gray car. (R. 43). Investigator Campbell again asked Applicant if he had ever been to or knew anything about Landford Drive, to which he responded again that he did not know where Landford Drive was located. (R. 43).

As Investigator Campbell was getting ready to leave, Applicant remarked that he “heard Tab did it.” (R. 43). Investigator Campbell was already familiar with Tab and informed Applicant that he did not think Tab did it before leaving the room. (R. 43–44). Investigator Campbell clarified that he ended the interview at that time because nothing good was coming from it and he believed their conversation was about to become argumentative due to Applicant denying all involvement while trying to figure out who implicated him in the crime. (R. 44).

Assistant Solicitor Marchant then transitioned to questions regarding the interview on September 18, 2014. (R. 44). Investigator Campbell testified that he conducted that interview in the Greenville County homicide interview room. (R. 44). Applicant, his former attorney, Matt Canady, and Assistant Solicitor Marchant were all present. (R. 44–45). Before beginning the interview, Applicant was given an opportunity to speak with his attorney in private. (R. 45).

Following their private conversation, Applicant agreed to speak to Investigator Campbell and Assistant Solicitor Marchant. (R. 45).

Investigator Campbell ensured the Court that, like the first interview, no promises were made nor threats or coercion used to entice Applicant to speak to them. (R. 45). Investigator Campbell further testified that Applicant never asked for nor was denied any water or restroom breaks. (R. 45). Investigator Campbell went on to describe the interview room, which was approximately fourteen-by-fourteen feet in size and contained four chairs and a table against one wall. (R. 45). Investigator Campbell further clarified that this interview was not recorded. (R. 45). Throughout the thirty to forty-five minute interview, Applicant nor his lawyer every indicated that they wanted to end the interview. (R. 45–46).

Investigator Campbell was then asked to summarize the information they obtained from Applicant. (R. 46). During this interview, Applicant stated that he drove his sister, Mercedes Adams, and a man named Michael, whose last name was unknown to him, to Landford Drive to purchase forty dollars' worth of marijuana. (R. 46). When they arrived, Applicant noticed Sweet Pea and Tab in the parking lot. (R. 46). After parking, they went inside Joseph Crite's apartment and the marijuana. (R. 46). Before leaving, Applicant went to the restroom. (R. 46). While in the restroom, he heard multiple gunshots. (R. 46). Applicant ran from the apartment with a firearm in his left hand. (R. 46). Applicant stated that, while running to the car, his firearm accidentally discharged as he was leaving the apartment. (R. 46). Mercedes was in the driver's seat. (R. 46). Shortly thereafter, Michael returned to the car and they drove off. (R. 46–47). Mercedes dropped Michael off at the upper end of Boulder Creek before she and Applicant returned to their mother's home on the back end of Boulder Creek. (R. 47).

Investigator Campbell asked what their discussions were like on the ride home. (R. 47). Applicant stated that no one really spoke, and that they just listened to music. (R. 47). Investigator Campbell further testified that Applicant stated the car they were driving was rented by his other sister, Porchae Adams. (R. 47). Applicant also admitted to Investigator Campbell that the gun located in the air conditioning unit of the motel room belonged to him. (R. 47). Applicant further confirmed that the gun located in the motel room was the same gun that accidentally discharged in the apartment. (R. 47).

Since Applicant already mentioned that Tab and Sweet Pea were outside the apartment, Investigator Campbell asked him about a cigarette. (R. 47–48). Though hesitant at first, Applicant ultimately admitted that he had given Sweet Pea fifty cents and asked him to go to the apartment and obtain a cigarette. (R. 47–48). Sweet Pea complied, bringing the cigarette to Applicant before they approached the apartment. (R. 48). Investigator Campbell then asked Applicant about the money they had found in the apartment. (R. 48). Applicant responded that there was no firearm or money located in the apartment. (R. 48). Applicant then dodged Investigator Campbell's question about what happened to the forty dollars Applicant had allegedly used to buy the marijuana. (R. 48). He also denied knowing anything about a bottle of liquor that had been taken from the home. (R. 48).

Investigator Campbell continued the interview by asking Applicant who he spoke with about what occurred that day once he was back at Boulder Creek. (R. 48). Applicant stated he had spoken about it with Michael Anderson over a blunt the following morning. (R. 48). Applicant told Michael Anderson that they had gone to the apartment to do a "lick," or robbery, before something went horribly wrong. (R. 48). He said that while they were in the apartment, the "old guy" would not sit still and ultimately went for Applicant's gun. (R. 48–49). Consequently, the "old guy" was

shot. (R. 49). After the shooting, Applicant ran out of the apartment, taking only a bottle of liquor. (R. 49).

Investigator Campbell then inquired about the other individual named Michael that was involved in the robbery. (R. 49). Applicant said that he met Michael through Mercedes and Michael Anderson. (R. 49). The Michael who was involved in the robbery lived with his grandmother in Boulder Creek and was roughly the same size as Applicant. (R. 49). At the time, Applicant did not know Michael's last name. (R. 49). Investigator Campbell would later learn that Applicant was referring to Michael Todd Evans. (R. 49).

Assistant Solicitor Marchant completed his direct examination of Investigator Campbell by discussing the logistics of the interviews with Applicant. (R. 49–50). Investigator Campbell confirmed again that Applicant's attorney was sitting next to him throughout the duration of the September 18, 2014 interview. (R. 49–50). Neither the February 11, 2013, nor the September 18, 2014, interviews were reduced to writing. (R. 50). However, the September 18, 2014, interview was documented through a supplemental report. (R. 50).

On cross examination, Counsel confirmed that Investigator Campbell repeatedly asked Applicant on camera during the February 11, 2013, interview, whether he understood his rights. (R. 50–1). However, Counsel stated that he never once heard Applicant say “yes” or “I understand” throughout the interview. (R. 50–51). Investigator Campbell explained that Applicant would use the phrase “uh-huh” in response to his inquiries. (R. 51). They then re-played the video, and Counsel asked Investigator Campbell to identify when, if ever, Applicant responded in the affirmative to understanding his rights. (R. 51–52). At some point, Investigator Campbell identified a time on the clip where Applicant responded “uh-huh” in response to being asked if he understood his rights. (R. 52).

Next, Counsel challenged Investigator Campbell on the meaning of “uh-huh.” (R. 54). Investigator Campbell stated that “uh-huh” was used to show agreement or understanding. (R. 54). Counsel then expressed his opinion that “uh-huh” was not English, but was a mere “grunt” that was non-specific. (R. 55). Investigator Campbell explained that he did not agree with Counsel on this matter given the many ways he has been told “no.” (R. 54). Investigator Campbell further testified that it was clear to him from Applicant’s response that he understood his rights. (R. 55). Applicant even signed a waiver to that extent. (R. 55).

Counsel then asked if Applicant informed Investigator Campbell that he could barely read English. (R. 55). Investigator Campbell clarified that Applicant had only told him that he had difficulty reading. (R. 55). Applicant also told Investigator Campbell that he barely reads although he finished the tenth grade. (R. 55). Counsel then asked Investigator Campbell if he knew whether Applicant was in some kind of special education classes. (R. 55). Investigator Campbell responded that he was unaware which classes Applicant took or how well he performed in high school. (R. 55).

Investigator Campbell then testified that after Applicant signed the waiver, they continued their conversation. (R. 55). He confirmed that Applicant was handcuffed during the interview. (R. 55). Investigator Campbell then testified again that he told Applicant repeatedly that he could stop the interview or could request to speak with an attorney at any time. (R. 55–56). When asked if Applicant was scared at that time, Investigator Campbell clarified that he could not speak to whether Applicant was scared during the interview. (R. 56). Counsel insisted that Investigator Campbell draw a conclusion on whether Applicant was scared based on being an 18–19 year-old speaking to a homicide detective in the sheriff’s office. (R. 56). Investigator Campbell reaffirmed that he could not testify to Applicant’s state-of-mind. (R. 56). However, he stated that Applicant

was “not the normal kid right off the street” and that he had been in trouble with the law before. (R. 56).

Counsel then noted that Investigator Campbell seemed to get impatient with Applicant toward the end of the video. (R. 56). Investigator Campbell explained that he only asked Applicant if he wanted to sign, and that Applicant repeatedly asked who was implicating him. (R. 56). When asked if this indicated that Applicant understood his rights, Investigator Campbell responded again that Applicant signed the form acknowledging he understood his rights. (R. 57–59). He explained that when someone signs the waiver form without asking any questions it typically means they understand their rights. (R. 58–59). Investigator Campbell stated that Applicant understood what was going on and he signed the form knowing what it meant. (R. 59). He then confirmed that Applicant was never presented with nor did he sign a waiver form during the September 18, 2014, interview. (R. 59–60). However, Investigator Campbell once again confirmed that he signed a waiver form during the February 2013 interview. (R. 60).

After concluding Investigator Campbell’s testimony, Assistant Solicitor Marchant advised that Applicant’s prior attorney, Matt Canady, was available for questioning should the Court see fit to do so. (R. 60). However, the State did not plan on calling him as a witness. (R. 60–61). The Court then heard arguments from both sides as to the admissibility of the statements. (R. 61).

Counsel argued essentially that Applicant did not knowingly and intelligently waive his *Miranda* rights because he had difficulty reading and because the unintelligible “grunts” Applicant made when asked if he understood the various rights he was waiving were not sufficient to definitively convey an answer either way. (R. 61–62). Regarding the second statement, Counsel again argued Investigator Campbell failed to obtain a waiver of rights. (R. 62). Thus, Counsel

moved to suppress both the February 11, 2013, and September 18, 2014, statements based on the totality of the circumstances. (R. 62, 63–64).

Mr. Marchant responded that while did not advise Applicant of his *Miranda* rights at the second interview, they discussed with Applicant the nature of why we were there; that he was under arrest; that his lawyer was present; and that if he had any questions or did not want to talk at any further time, they would stop the questioning. (R. 62). Mr. Marchant went on to explain that Applicant had already been placed under arrest and been in the detention center for roughly eighteen months at that time. (R. 63). He also pointed out that Applicant had the opportunity to and did speak with Mr. Canady prior to any conversation occurring in September 2014. (R. 63). While they did not go over the standard waiver of rights form, Assistant Solicitor Marchant opined that it was clear to him that Applicant knew what they were doing there, and that anything Applicant said could potentially be used against him in court. (R. 63).

Counsel continued to vigorously advocate for suppression of the statements on the basis that there was no definitive indication that Applicant understood his rights, and therefore he could not have knowingly waived them. (R. 63–66). After playing the video a third time, Judge McMahon ultimately made the following ruling:

That wasn't a grunt. That was a "yes." You can hear it, and you can see it.

So, also, I thought it was interesting, as far as cognitive ability, when the officer mentions Landford Drive while he's there, he questions him about it. And later on in the tape, he, actually, remembers that name and asked him again about it. "He" is Mr. Adams.

So under the totality of the circumstances, there's no threats. There's, obviously, no coercion. There are no promises. His will has not been overborne in any way. He was properly advised of his rights. Under *Miranda*, he had the intellectual ability to waive those rights, which he did.

Actually, that statement is, quite frankly, no more than self-serving hearsay under *State v. Sweet* and *State v. Terry*, and that line of cases.

But it's, clearly, not inadmissible because of a violation of Miranda, nor with his attorney being present on the . . . 9/18/14 conversation.

So based on the totality of the circumstances and the preponderate of the standard that I look at now, it is -- both the 2/11/13 and 9/18/14 are admissible.

(R. 67-68).

3. *Sentencing*

During sentencing, Counsel made the following statement in mitigation:

When this occurred, my client was 19 years of age. And you've heard about his limited education.

I would respectfully ask that you impose a 30-year sentence. The reason- for that is the Solicitor did make the statement outside the presence of the jury there's no question that this weapon was not the murder weapon. There's every indication that my client did not directly shoot Mr. Crites[sic]. Given those facts, and given his age, and lack of education, I would ask for a 30-year sentence.

(R. 436). Applicant did not make a statement. (R. 436).

Judge McMahon subsequently stated the following prior to sentencing Applicant:

All right. I do take into account, of course, Mr. Adams' age, his educational level, that he did not finish high school. I believe the testimony was that he finished the tenth grade. I take that into account.

I take into account, also, he has had family support in the courtroom throughout the course of this proceeding. Both -- I don't know who all the parties were, but I know it was referred to as his mother, grandmother. I know his sister was here and, perhaps, other family and friends within that group.

I take into account that he has been respectful throughout these proceedings, also, as far as non-disruptive. That's not always the case.

I, also, take into account the severity of the crimes charged. That this was a nighttime non-forcible burglary with a premeditated intent to commit an armed robbery. And, of course, they would have had to have committed the burglary first as a rouse allegedly to purchase marijuana.

And of all the testimony that was presented, there was never any testimony that Mr. Crite dealt in marijuana, only the other

substances, as testified to truthfully, I think, throughout the course of this proceeding. There were, at least, two individuals in the early morning hours both armed with deadly weapons. There's no question in my mind that Mr. Adams was one of them.

There's no question in my mind that Ms. Adams' testimony on her video and in her written statement a couple days preceding was truthful. You could observe the video and tell that she was not coerced, that she did not appear to be in any fear or threatening – being threatened in any manner.

You know, a life's a life, regardless. Mr. Crite, nor anyone else, deserved that, to go in an individual's house, a living breathing individual in the middle of the night and within seconds with just little graze of lead turn a human life into a corpse for his child to find.

(R. 437–38).

V. SUMMARY OF TESTIMONY FROM EVIDENTIARY HEARING

Applicant's Case: Ivan Toney

PCR counsel first called Applicant's trial attorney, Ivan Toney, as a witness. Counsel testified that he was retained to represent Applicant approximately a year prior to trial, and that he first met with him on February 5, 2015. (PCR Tr. 7–8). Counsel testified that, throughout their thirty to forty meetings before trial, he found Applicant to be highly intelligent. (PCR Tr. 9). Counsel stated Applicant knew exactly what he was doing, and that Applicant earned Counsel's respect with his insight into his case. (PCR Tr. 9).

When asked about his concerns regarding Applicant's competency, Counsel testified he did not personally have any concerns based on his conversations with Applicant. (PCR Tr. 9). Rather, he filed the motion for a competency evaluation out of an abundance of caution after Applicant's mother advised Counsel that Applicant had an Individualized Education Program in high school and had a learning disability. (PCR Tr. 9–10). Counsel further stated that Applicant was ultimately

found competent according to the 2009 and 2019 evaluations. (PCR Tr. 9–10). *See* Applicant’s Exhibit #2 and Applicant’s Exhibit #3.

When asked about the hearing before Judge Verdin, Counsel noted that Judge Verdin asked him if he believed Applicant had any problems understanding him, and Counsel did not. (PCR Tr. 9). Counsel was then asked specifically about the end of the hearing where Judge Verdin stated she would sign an order requiring DJJ to release the 2009 competency evaluation and that, if any issues came to light based on that report, that she would be happy to have a conference call with Counsel and the solicitor. (PCR Tr. 10–11). Counsel agreed that those were the instructions Judge Verdin gave him. (PCR Tr. 10–11).

Counsel was then asked why he did not bring to Judge Verdin’s attention that Applicant had been receiving benefits from the Social Security Administration for a learning disability since 2004. (PCR Tr. 11–10). *See* Applicant’s Exhibit #2. Counsel testified that he did not know Applicant received SSA benefits, which is why he did not advise Judge Verdin of that information. (PCR Tr. 12). Counsel admitted that he never requested the juvenile competency evaluation from 2009. (PCR Tr. 12). He further testified that, following the hearing with Judge Verdin, he considered whether he should further investigate Applicant’s competency, but he ultimately chose not to do so. (PCR Tr. 12). Counsel then reiterated what he told Judge Verdin in 2015—that Applicant was intelligent, and that they had meaningful conversations. (PCR Tr. 13). His main concerns at that time were Applicant’s ability to comprehend right versus wrong and appreciate the consequences of his actions. (PCR Tr. 13). PCR counsel then noted that both the 2009 and 2019 competency evaluations indicate Applicant has an IQ of sixty-eight. (PCR Tr. 13).

Counsel was then asked about the juvenile competency evaluation as it related to the pre-trial *Denno* hearing, where Judge McMahon ultimately concluded Applicant’s statements were

voluntary based on the totality of the circumstances. (PCR Tr. 14–15) (R. 64). Specifically, Counsel was asked whether he feels that having the information from that evaluation would have benefitted his questioning of Investigator Campbell during the *Denno* hearing. (PCR Tr. 15). Counsel responded that he does not believe anything contained in that 2009 competency evaluation would have affected his argument or questioning of witnesses during the *Denno* hearing. (PCR Tr. 15).

PCR counsel then directed Counsel to the following comments made by Judge McMahon during the *Denno* hearing:

He's able to respond to -- well, he's able to ask questions that are focused, attentive, legitimate, subject oriented. I don't see where you just say from just reading -- I know of no case such as that.

I mean, I know I balance the totality of the circumstances. And, sometimes, this one may weigh more balance and have more weight than that one, depending on the situation.

If you have an individual that may have an IQ of 70, 65, or below, I mean, that weight may weigh more than if you have an individual that has a higher intellectual level. And, of course, you can have individuals with very high intellectual levels and very low educational levels. You know, the educational level doesn't measure intellectual ability.

(PCR Tr. 15–16) (R. 64–65).

The following exchange subsequently took place:

TONEY: Well, I -- the fact is he was found to be competent to stand trial. And I really don't believe that IQ score any ways. I think that's the kind of thing that you go in and you try to flunk if you know you're going for a competency exam. And I found him to be very intelligent and know exactly what he was doing. And in my opinion, it would not have altered the Judge's decision.

WYGUL: Mr. Toney, do you feel like it would have been important for the Judge to know when making the decision, that Mr. Adams could not read a simple sentence?

TONEY: That is not true. I will tell you right now, he had his discovery, he had his copy. He went over it. I would

point out different things. And he would, actually, flip over, you know, 200 pages later and say, what about this and what about this. Not only can he read a simple sentence, Mr. Adams is able to look through hundreds of pages of exhibits, most of which -- a lot of which, in his case, were not correlated, bring them out at the right time. And, you know, analyze them and explain their effect. I'm going to tell you right now, if he's not as smart as anyone in this room or, you know, I think he's close to it. He's highly intelligent. He can look through hundreds of pages of exhibits and read them and understand them. And in his own way I came to respect his intelligence. And it is what it is. That's how intelligent he is. The idea that he can't read a simple sentence is -- it's just a -- I don't know what the right word is, it's just false.

WYGUL: Mr. Toney, would it surprise you to know that these evaluations reflect that Mr. Adams cannot tell time from an analogue clock?

TONEY: Certainly doesn't prevent him, if that is true, which I do not for a moment believe that, when looking through hundreds of pages of exhibits and interviews and incident reports and commenting on them in great detail, analyzing things. By the way, you say he can't read a sentence, he had written plans, which they seized from his house or somewhere, of how he was going to run his business. I mean, I remember those plans. One of them was he set limits. Said don't bring so much money in with you everyday. Said you're blowing too much on drugs, using your own stash, getting high on your own supply. Another one was something to the effect of don't be packing a weapon when murder's on your mind. So he knew he had murderous rage. And he had enough insight to realize, I have a self-control problem, I need to not carry, you know, in these particular circumstances.

He had written goals. Like, I'm going to set up a grow house, a greenhouse, is what he called it. And what he wanted was a house with some lights where he could grow his own stash and increase his business. So I had his record with his own written business plans. So if you tell me that he can't read a clock and he can't read a sentence, you have to sort of figure out a way to explain his written business plans, which would, actually, probably pass mustard

down at the SBA when he's applying for a loan, if it wasn't for an illegal thing. He knows what he's doing, he can read and write and articulate. He can correlate hundreds of pages. And he's able to write corrigibly. As you've seen in his PCR application, I might add.

WYGUL: Mr. Toney, are you aware that Mr. Adams routinely has other inmates write documents for him and read those documents to him?

TONEY: That would be for you to call the witnesses to prove.

(PCR Tr. 16–18).

Counsel was then asked about the number of times he met with Applicant over the course of his representation. (PCR Tr. 19). Counsel went through his notes, naming multiple dates that he visited Applicant at the jail. (PCR Tr. 19–21). Counsel was then asked again about his concerns regarding Applicant's competency and hearing before Judge Verdin in May of 2015. (PCR Tr. 21; 23–24). He was specifically asked whether he, "as the Judge instructed, and request a copy of Mr. Adams' juvenile competency evaluation?" (PCR Tr. 24). Counsel disagreed that Judge Verdin instructed him or requested he obtain the 2009 evaluation. (PCR Tr. 24). Counsel was then asked again whether he had the information from the juvenile competency evaluation during the *Denno* hearing in which he questioned Investigator Campbell. (PCR Tr. 25). He responded that he did not. (PCR Tr. 25). Finally, he was asked whether he requested a conference call with Judge Verdin. (PCR Tr. 25). He responded that he did not. (PCR Tr. 25).

On cross-examination, the State questioned Counsel regarding his understanding of Judge Verdin's ruling at the end of the May 15, 2015, hearing. (PCR Tr. 26–27). Counsel responded that it was clear to him Judge Verdin was not ordering him to follow up with her after receiving the 2009 competency evaluation. (PCR Tr. 26–27). Rather, she was giving him the opportunity to do. (PCR Tr. 27).

Counsel was then asked about his argument at the *Denno* hearing that Applicant did have a low IQ and therefore the statements should be suppressed. (PCR Tr. 27, 30) (R. 61). Counsel agreed that he did make that argument. (PCR Tr. 28, 30). He further testified that, had he possessed the 2009 evaluation at that time, wherein Applicant was found competent, it would not have affected his argument or, in his opinion, Judge McMahon's ruling on the voluntariness of the statements. (PCR Tr. 28–29, 30). In fact, Counsel surmised that having the report would have backfired since Applicant was found competent. (PCR Tr. 30).

On redirect, Counsel testified that he did not have any formal education in IQ testing. (PCR Tr. 31). Counsel was then asked whether, had he known Applicant had an IQ of sixty-eight according to the 2009 evaluation, it would have assisted in his defense during the *Denno* hearing. (PCR Tr. 31). Counsel responded that he believed Applicant's IQ was much higher than sixty-eight; however, he did not believe advising Judge McMahon of Applicant's IQ according to the evaluation would have changed the outcome of the hearing. (PCR Tr. 31–32).

Counsel was then asked about his argument during the *Denno* hearing that Applicant could not read or could barely read. (PCR Tr. 33) (R. 61). Counsel clarified that he did not tell the court that it was his opinion Applicant could not read; rather, he stated at the *Denno* hearing that *Applicant* said he could not read a document that was given to him. (PCR Tr. 32–33) (R. 61). Finally, Counsel was asked whether he was aware of Applicant's intelligence as measured by himself or the Department of Mental Health. (PCR Tr. 34). Counsel responded that he believes he can roughly estimate whether someone is intelligent; however, he noted general concerns about possible malingering and motivation to fail the test when administered by DMH. (PCR Tr. 34).

Counsel further reiterated his believe that Applicant has average to above-average intelligence. (PCR Tr. 34). He stated that he is confident Applicant understood everything, and that DMH further made a determination that Applicant could understand his proceedings. (PCR Tr. 35).

Applicant's Case: Brandon Adams

PCR counsel then called Applicant. Applicant testified that, during his first couple meetings with Counsel, he told Counsel he did not understand what he was telling him and the conversations they were having. (PCR Tr. 36). Applicant further testified that he told Counsel he could not read. (PCR Tr. 36). Applicant stated that another inmate helped him write a letter to Counsel on one occasion, but that they otherwise communicated in person. (PCR Tr. 36–37).

Applicant further recalled the hearing before Judge Verdin in May of 2015. (PCR Tr. 37). He stated that Counsel told him after that hearing that he would receive a competency evaluation. (PCR Tr. 37). He claimed Counsel never mentioned the hearing to him again, but that Counsel came to him three months later with a plea offer. (PCR Tr. 37). Applicant further testified Counsel never mentioned getting a copy of the 2009 competency evaluation. (PCR Tr. 37–38).

Applicant stated that when he was being transported to the courthouse on the morning of trial, he did not know he was going to court for his trial. (PCR Tr. 38). He stated that Counsel only told him when he got to the courthouse that his trial was starting that day. (PCR Tr. 38). Applicant further testified that Counsel never explained to him that he had the right to testify at trial. (PCR Tr. 38). He stated that the first time he heard anything about his right to testify was when Judge McMahon asked him during the trial if he wanted to testify. (PCR Tr. 38–39). When asked whether he wanted to testify, Applicant stated that he “did not really understand what was going on” and “did not want to make anything worse” so he said nothing. (PCR Tr. 39). He also stated that he received social security benefits his whole life until he was locked up. (PCR Tr. 39).

State's Case: Ivan Toney

After Applicant rested, the State re-called Ivan Toney. Specifically, Counsel was asked whether Applicant told him he did not understand what was going on before trial. (PCR Tr. 42). Counsel expressed strong disagreement with Applicant's testimony that he did not understanding what was going on or that he was going to trial. (PCR Tr. 42). Counsel stated Applicant contributed significantly to his strategy, and spoke with witnesses multiple times. (PCR Tr. 43). He provided examples of Applicant assisting him and strategizing during trial. (PCR Tr. 42). Specifically, Counsel recalled Applicant discussing whether or not he would testify, and telling Counsel which witnesses he had talked to and whether or not they were going to testify. (PCR Tr. 42-43). Counsel further recalled Applicant asking him questions about the judge, what he would wear, etc. (PCR Tr. 43).

Counsel testified that he extensively discussed with Applicant his constitutional rights, including his right to testify. (PCR Tr. 43-44). When Judge McMahon was advising Applicant of his right to testify, Counsel stated Applicant never indicated he did not understand what was going on. (PCR Tr. 43-44). In fact, Counsel stated that Applicant never indicated he did not understand what was going on at any point during trial. (PCR Tr. 44). Finally, Counsel testified that, after reviewing the juvenile evaluation from 2009, there was nothing contained in that report that he would have argued during the *Denno* hearing that would have helped advance his argument as to the voluntariness of the statements. (PCR Tr. 44).

On cross-examination, Counsel testified again that, had he been aware that Applicant had an IQ of sixty-eight at the time of the *Denno* hearing, he would not have mentioned it as part of his argument. (PCR Tr. 45). Counsel testified that he believed Applicant understood exactly what

was going on. (PCR Tr. 45). He further noted again that Applicant did obtain a competency evaluation, and was found competent. (PCR Tr. 45).

VI. STANDARD OF REVIEW

An applicant may seek PCR upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. 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. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); Rule 71.1(e), SCRPC. 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. 466 U.S. at 687. To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

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). 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." *Strickland*, 466 U.S. at 690 (emphasis added). 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" demanded of attorneys in criminal cases. *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 reasonably professional assistance." *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. 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 v. Gentry*, 540 U.S. 1, 6 (2003); *see also* *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Review of counsel’s actions is hallmarked by deference, 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. No particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688–89; *see id.* at 691 (“Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.”).

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.* at 689; *see* *Mazzell v. Evatt*, 88 F.3d 263, 269 (4th Cir. 1996) (declining “to allow an ineffective assistance of counsel claim to create a situation where post-conviction attorneys stroll in with the full benefit of hindsight to second-guess trial lawyers who professionally discharge their duties to their clients under the manifold pressures of a state trial”). The ultimate question is not whether counsel’s actions were reasonable, but whether there is any reasonable argument counsel satisfied *Strickland*’s deferential standard.

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. 466 U.S. at 691–92. In order to prove prejudice, an applicant 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; *see id.* at 695 (explaining that, where a defendant challenges his conviction, he must show that there exists “a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt”).

In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695. It is not sufficient “to show [counsel’s] 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). “An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” *Id.* at 691. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

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 689–90. Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant’s burden of proving both *Strickland* components is heavy in light of the strong presumption that

counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. 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. *Id.* at 686; *see Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding"); *cf. United States v. Morrow*, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.").

VII. FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in this action incorporated by way of the State's return, this Court proceeds to the claims of ineffective assistance of counsel articulated at the start of the hearing and finds each to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

A. Competence to Stand Trial

All three of Applicant's allegations of ineffective assistance of counsel stem from the same underlying claim—that Counsel failed to investigate Applicant's mental health and possible competency issues following the May 11, 2015, hearing before Judge Verdin. Specifically, Applicant claims Counsel's failure to obtain the 2009 juvenile competency evaluation constitutes deficient performance under *Strickland*. This Court disagrees.

As an initial matter, this Court finds Applicant failed to overcome the “strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case.” *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland*, 466 U.S. 668). “A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). “[W]hile the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.” *Ard*, 372 S.C. at 331–32, 642 S.E.2d at 597 (internal quotation marks omitted) (emphasis omitted). Essentially, trial “counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” *Strickland*, 466 U.S. at 691.

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel’s duty to investigate. *See Ard*, 372 S.C. at 331, 642 S.E.2d at 597 (“Without a doubt, [a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation.”). “[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; *see id.* (“In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.”). Thus, in applying the *Strickland* standard to a claim of failure to investigate, counsel’s decision not to undertake a particular investigation must

be evaluated with heavy deference to counsel's judgment. *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 63 (Ct. App. 2014).

“Defense lawyers have ‘limited’ time and resources, and so must choose from among ‘countless’ strategic options.” *Dunn v. Reeves*, 594 U.S. ___, ___, 141 S. Ct. 2405, 2410 (2021) (quoting *Harrington*, 562 U.S. at 106–107). “Such decisions are particularly difficult because certain tactics carry the risk of ‘harm[ing] the defense’ by undermining credibility with the jury or distracting from more important issues.” *Id.* (quoting *Harrington*, 562 U.S. at 108). Thus, [w]hen 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*, 540 U.S. at 5 (citing *Strickland*, 466 U.S. at 690). “The burden of rebutting this presumption ‘rests squarely on the defendant,’ and ‘[i]t should go without saying that the absence of evidence cannot overcome [i]t.’” *Dunn*, 594 U.S. ___, 141 S. Ct. at 2410 (alteration in original) (quoting *Burt v. Titlow*, 571 U.S. 12, 22–23 (2013)). In fact, “even if there is reason to think that counsel’s conduct ‘was far from exemplary,’ a court still may not grant relief if ‘[t]he record does not reveal’ that counsel took an approach that *no competent lawyer would have chosen*.” *Id.* (alteration in original) (emphasis added) (quoting *Titlow*, 571 U.S. at 23–24).

Here, it is indisputable that Counsel moved for a competency evaluation out of an abundance of caution after learning from Applicant’s mother that he was previously diagnosed with a learning disability. *Cf. Lee v. State*, 396 S.C. 314, 322, 721 S.E.2d 442, 447 (Ct. App. 2011) (finding plea counsel was not deficient for failing to investigate the petitioner’s mental health, even though the petitioner had a history of mental retardation, because she had no indication of his mental status). His motion was denied. Judge Verdin’s denial of Counsel’s motion was additionally raised and ultimately rejected on appeal. Further, Counsel credibly testified at the PCR hearing

that he did not have any concerns about Applicant's competency based on their communication and interactions. This testimony is consistent with Counsel's representations to Judge Verdin during the pre-trial hearing—that he believes Applicant is intelligent and they were able to have meaningful conversations.

This Court finds Counsel reasonably relied on his own perception and interactions with Applicant—over the course of thirty to forty meetings—in deciding not to further investigate Applicant's mental health or competency following Judge Verdin's denial of his motion. *See Medina v. California*, 505 U.S. 437, 450 (1992) (noting the significance of trial counsel's opinion regarding competency because trial counsel interacts with the defendant on a daily basis and is in the best position to evaluate whether the defendant is able to participate meaningfully in the proceedings); *Rompilla v. Beard*, 545 U.S. 374, 383 (2005) (“[R]easonably diligent counsel may draw a line when they have good reason to think further investigation would be a waste.”).

Applicant was further questioned by Judge McMahon, and responded—under oath—that he did not have any mental, physical, or emotional issues that would affect his ability to understand the proceedings. (R. 341). Thus, this Court simply cannot conclude that Counsel's decision to not further pursue the competency matter was unreasonable “when there is little evidence anywhere that [Applicant] failed to understand the proceedings and virtually none that he was unable to cooperate with counsel.” *Robidoux v. O'Brien*, 643 F.3d 334, 340 (1st Cir. 2011).

Further, to the extent Applicant claims Counsel's failure to obtain the 2009 juvenile competency evaluation constituted deficient performance because Judge Verdin ordered him to obtain the report, this Court agrees with Counsel's interpretation of Judge Verdin's ruling. When viewed in the context of Assistant Solicitor Marchant's concerns regarding further delay of the case, Judge Verdin was clearly attempting to avoid any further delay by offering to order DJJ to

quickly turn over the evaluation and offering to have a conference call with both parties rather than requiring Counsel to file another motion and having another hearing.

This Court further finds credible Counsel's stated understanding of Judge Verdin's ruling in light of *Strickland*'s instruction to reviewing courts to make every effort scrutinize counsel's performance in a highly deferential manner, to make every effort "to eliminate the distorting effects of hindsight," and to "evaluate the conduct from counsel's perspective at the time" in light of then-existing circumstances. 466 U.S. at 689; cf. *Green v. French*, 143 F.3d 865, 892 (4th Cir. 1998) ("Although counsel should conduct a reasonable investigation into potential defenses, *Strickland* does not impose a constitutional requirement that counsel uncover every scrap of evidence that could conceivably help their client."), *abrogated on other grounds by Williams v. Taylor*, 529 U.S. 362 (2000). Accordingly, this Court finds Applicant failed to establish that Counsel's failure to further investigate potential competency issues following the hearing before Judge Verdin constitutes deficient performance.

Further, even had Counsel been deficient for failing to obtain the 2009 juvenile mental health evaluation, this Court finds Applicant failed to establish prejudice because he was ultimately found competent to stand trial in 2009. To establish *Strickland* prejudice in the context of trial counsel's failure to fully investigate the applicant's mental capacity, the applicant need only show a 'reasonable probability' that he was incompetent to stand trial. *Matthews v. State*, 358 S.C. 456, 459, 596 S.E.2d 49, 51 (2004) (citing *Jeter v. State*, 308 S.C. 230, 233, 417 S.E.2d 594, 596 (1992) (expanding the reasonable probability standard as the burden for proving both the deficiency of counsel and the prejudice prongs)). "The test for competency to stand trial or continue trial is whether the defendant has the sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational, as well as a factual, understanding

of the proceedings against him.” *State v. Kelly*, 331 S.C. 132, 502 S.E.2d 99 (1998). As is the case with any other allegation that a defense attorney failed to adequately investigate some matter, an applicant must present some proof of identifiable mental health issues which undermine his or her competency; mere speculation and conjecture by the applicant is insufficient to establish prejudice. *Garren v. State*, 423 S.C. 1, 13–14, 813 S.E.2d 704, 711 (2018).

This Court similarly finds Applicant failed to establish a reasonable probability he was incompetent at the time of the trial because he was found competent by DMH and/or DDSN according to the 2009 and 2019³ evaluations. (PCR Tr. 9–10). *See* Applicant’s Exhibit #2 and Applicant’s Exhibit #3. Further, this Court finds credible Counsel’s testimony that Applicant contributed significantly to his trial strategy, and never indicated to Counsel he did not understand what was going on at any point during or before his trial. This Court does not find credible Applicant’s testimony that he told Counsel he did not understand what Counsel was telling him and the conversations they were having during their first meetings.

Accordingly, Applicant’s claim pertaining to Counsel’s failure to adequately investigate issues related to his competency following the hearing before Judge Verdin is **DENIED**.

B. Voluntariness of Statements to Law Enforcement Pursuant to *Jackson v. Denno*

Applicant next claims Counsel was ineffective for failing to investigate circumstances surrounding Applicant’s statements to law enforcement regarding how his competency and low IQ may have affected the voluntariness of the statements pursuant to *Jackson v. Denno*. Specifically, Applicant claims that, had Counsel obtained the 2009 juvenile competency evaluation, he could

³ This Court would further note that the consent order for a competency evaluation signed by both parties and issued by Judge Gravely on November 8, 2018, states, “It is the belief of the attorneys for both Applicant and Respondent that a current competency hearing would be dispositive of the majority of the issue in this case.”

have used the information contained in the report to argue that Applicant's competency and low IQ rendered his statements involuntary. Applicant further asserts that, had those statements been suppressed, there is a reasonable probability that the result of his trial would have been different. This Court disagrees.

“A criminal defendant is deprived of due process if his conviction is founded, in whole or in part, upon an involuntary confession.” *State v. Pittman*, 373 S.C. 527, 565, 647 S.E.2d 144, 164 (2007) (citing *Denno*, 378 U.S. at 377). Accordingly, the United States Supreme Court in *Jackson v. Denno* clarified that a defendant has a constitutional right “to object to the use of the confession and to have a fair hearing and a reliable determination on the issue of voluntariness, a determination uninfluenced by the truth or falsity of the confession.” 378 U.S. at 376–77. “In order to introduce into evidence a confession arising from custodial interrogation, the State must prove by a preponderance of the evidence that the statement was made freely and voluntarily, and taken in compliance with *Miranda v. Arizona*, 384 U.S. 436 (1966). *State v. Moses*, 390 S.C. 502, 512, 702 S.E.2d 395, 400 (Ct. App. 2010).

“The test of voluntariness is ‘whether a defendant’s will was overborne’ by the circumstances surrounding the given [statement]. The due process test takes into consideration ‘the totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation.’ “ *State v. Miller*, 375 S.C. 370, 384, 652 S.E.2d 444, 451 (Ct. App. 2007) (quoting *Dickerson v. United States*, 530 U.S. 428, 434 (2000)); see *Moses*, 390 S.C. at 513, 702 S.E.2d at (Ct. App. 2010) (“In South Carolina, the test for determining whether a defendant’s confession was given freely, knowingly, and voluntarily focuses upon whether the defendant’s will was overborne by the totality of the circumstances surrounding the confession.”).

In *State v. Miller*, our Court of Appeals noted:

The process for determining whether a statement is voluntary, and thus admissible, is bifurcated; it involves determinations by both the judge and the jury. First, the trial judge must conduct an evidentiary hearing, outside the presence of the jury, where the State must show the statement was voluntarily made by a preponderance of the evidence. [*Denno*, 378 U.S. at 376]. If the statement is found to have been given voluntarily, it is then submitted to the jury, where its voluntariness must be established beyond a reasonable doubt. *State v. Washington*, 296 S.C. 54, 56, 370 S.E.2d 611, 612 (1988).

375 S.C. at 379, 652 S.E.2d at 448; see *State v. Howard*, 296 S.C. 481, 492, 374 S.E.2d 284, 290 (1988) (“Where there is conflicting evidence as to whether [a] defendant’s statement is voluntary, it is, in the first instance the province of the trial court to determine this factual issue by the preponderance of the evidence.”); *State v. Neeley*, 271 S.C. 33, 40, 244 S.E.2d 522, 526 (1978) (“[T]he burden is on the State to prove by a preponderance of the evidence that [these] rights were voluntarily waived.”); *Miller*, 375 S.C. at 383, 652 S.E.2d at 451 (citing *State v. Von Dohlen*, 322 S.C. 234, 243, 471 S.E.2d 689, 695 (1996), *overruled on other grounds by State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019)) (“Once the trial judge determines that the statement is admissible, it is up to the jury to ultimately determine, beyond a reasonable doubt, whether the statement was voluntarily made.”).

At the *Denno* hearing, “the trial judge must examine the totality of the circumstances surrounding the statement and determine whether the State has carried its burden of showing the statement was made voluntarily.” *Miller*, 375 S.C. at 383, 652 S.E.2d at 450 (citing *State v. Childs*, 299 S.C. 471, 475, 385 S.E.2d 839, 842 (1989)); see *State v. Compton*, 366 S.C. 671, 680, 623 S.E.2d 661, 666 (Ct. App. 2005) (“The test for determining the admissibility of a statement is whether it was knowingly, intelligently, and voluntarily given under the totality of the circumstances.”); *State v. Ledford*, 351 S.C. 83, 87, 567 S.E.2d 904, 906 (Ct. App. 2002) (quoting *State v. Franklin*, 299 S.C. 133, 138, 382 S.E.2d 911, 914 (1989)) (“The trial judge’s

determination of the voluntariness of a statement must be made on the basis of the totality of the circumstances, including the background, experience and conduct of the accused.”); *see also Moran v. Burbine*, 475 U.S. 412, 421 (1986) (citation omitted) (noting that “[o]nly if the ‘totality of the circumstances surrounding the interrogation’ reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived.”).

In looking to the totality of the circumstances to determine the voluntariness of a statement, the trial court should consider factors—in addition to the crucial element of police coercion—such as “the youth of the accused, his lack of education or his low intelligence, the lack of any advice to the accused of his constitutional rights, the length of detention, the repeated and prolonged nature of the questioning, and the use of physical punishment such as the deprivation of food or sleep.” *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973); *Pittman*, 373 S.C. at 566, 647 S.E.2d at 164; *see also Moses*, 390 S.C. at 513–14, 702 S.E.2d at 401 (“Courts have recognized appropriate factors that may be considered in a totality of the circumstances analysis: background; experience; conduct of the accused; age; maturity; physical condition and mental health; length of custody or detention; police misrepresentations; isolation of a minor from his or her parent; the lack of any advice to the accused of his constitutional rights; threats of violence; direct or indirect promises, however slight; lack of education or low intelligence; repeated and prolonged nature of the questioning; exertion of improper influence; and the use of physical punishment, such as the deprivation of food or sleep.”). Further, no single factor is dispositive and each case requires careful scrutiny of all surrounding circumstances. *Pittman*, 373 S.C. at 566, 647 S.E.2d at 164 (citing *Schneckloth*, 412 U.S. at 226–27).

As discussed in Section A, *supra*, Applicant's failure to obtain the 2009 juvenile competency evaluation prior to trial does not constitute deficient performance under *Strickland*. However, the deficient performance analysis pertaining to Applicant's *Denno* claim extends to Counsel's failure to advise the trial court of his low IQ according to the 2009 juvenile competency evaluation. Applicant asserts that, had Counsel known Applicant's IQ, he could have used it to support his argument that Applicant's statements to law enforcement were not voluntary, and that such information would have changed Judge McMahon's totality-of-the-circumstances analysis such that the result of the proceeding would have been different.

This Court finds Applicant failed to establish that Counsel's failure to obtain the 2009 juvenile competency evaluation and inform the trial court of Applicant's low IQ constituted deficient performance under *Strickland*. Specifically, Counsel's failure to present the superfluous—and perhaps detrimental—information contained therein does not support a finding of deficient performance. While in some instances “even an isolated error” can support an ineffective-assistance claim if it is “sufficiently egregious and prejudicial,” it is difficult to establish ineffective assistance when counsel's overall performance indicates active and capable advocacy. *Murray v. Carrier*, 477 U.S. 478, 496 (1986) (citing *Harrington*, 562 U.S. at 105).

Here, Counsel vigorously advocated for suppression of Applicant's statements to law enforcement on the basis that there was no definitive indication that Applicant understood his rights, and therefore he could not have knowingly waived them. Counsel brought up the fact that Applicant told Investigator Campbell during the initial interview that he had difficulty reading the waiver document. Counsel further argued that, although Applicant's September 18, 2014, statement was made with his prior counsel present, the statement was involuntary because he was not *Mirandized*.

Further, Counsel credibly testified at the PCR hearing that there was nothing in the 2009 competency evaluation that would have affected his argument or questioning of witnesses during the *Denno* hearing. Specifically, Counsel testified that he did not believe providing the trial court with the information from the evaluation pertaining to Applicant's IQ of sixty-eight would have helped advance his argument as to the voluntariness of the statements or, in his opinion, Judge McMahon's ruling on the voluntariness of the statements. In fact, Counsel surmised that having the 2009 report would have backfired since Applicant was found competent.

This Court agrees. Specifically, in the "Behavioral Observations/Mental Status Examination" section of the 2009 report, the examiner observed that Applicant "was alert and oriented to place, time, and situation;" that his "concentration and attention skills were within normal limits;" that he "did not appear to have difficulty comprehending questions;" that his "thought process was logical and coherent;" and that his "affect was within normal limits and appropriate to the situation." See Exhibit #2. Further, although the report indicates Applicant was "unable to read a simple sentence," he "could follow directions when the sentence was read to him."

Likewise, after the video recording of the first interview was played at the *Denno* hearing, Judge McMahon observed that Applicant was "able to ask questions that are focused, attentive, legitimate, subject oriented." (R. 64). Judge McMahon further observed that Applicant clearly was able to "track" Investigator Campbell's questions and answers to Applicant's questions, which "is an indication that he has that cognitive ability to understand." (R. 64). For example, Judge McMahon noted that at the end of the interview, Applicant asked Investigator Campbell about information provided to him at the beginning of the interview. (R. 67). Thus, Judge McMahon

found Applicant was properly advised of his *Miranda* rights and “he had the intellectual ability to waive those rights, which he did.” (R. 67).

Further, even had Counsel deficiently failed to obtain the 2009 evaluation and inform the trial court of his low IQ, this Court finds Applicant failed to establish prejudice because there is no evidence or indication that Applicant’s statements to law enforcement were induced by coercion or by an oppressive environment. *See People v. Berry*, 123 Ill. App. 3d 1042, 1045, 463 N.E.2d 1044, 1047 (1984) (recognizing the general rule that sub-normal mentality does not in itself make a confession involuntary as long as the defendant has the capacity to understand the meaning and effect of the confession); *see United States v. Chrismon*, 965 F.2d 1465, 1469 (7th Cir. 1992) (“A diminished mental state is only relevant to the voluntariness inquiry if it made mental or physical coercion by the police more effective.”).

In *Colorado v. Connelly*, the United States Supreme Court clarified that “coercive police activity is a necessary predicate to the finding that a confession is not ‘voluntary’ within the meaning of the Due Process Clause of the Fourteenth Amendment.” 479 U.S. 157, 167 (1986). While the defendant’s mental condition is an important consideration, to find a statement involuntary, the police must somehow overreach by exploiting a weakness or condition known to exist. *Id.* at 164–65; *see State v. Hill*, 361 S.C. 297, 306–07, 604 S.E.2d 696, 701 (2004) (citing *Connelly*, 479 U.S. at 164) (“A defendant’s mental condition in and of itself does not render a statement involuntary in violation of due process. Absent coercive police conduct causally related to a confession, there is no basis for finding a confession constitutionally involuntary.”⁴); *State v. Linnen*, 278 S.C. 175, 293 S.E.2d 851 (1982) (finding statements to law enforcement were given

⁴ “Even where there is causal connection between police misconduct and a defendant’s confession, it does not automatically follow that there has been a violation of the Due Process Clause.” *Connelly*, 479 U.S. at 164 (citing *Frazier v. Cupp*, 394 U.S. 731, 739 (1969)).

freely and voluntarily even though interrogating officers encouraged the statements because the officers were neither coercive nor threatening and the statements were not procured by improper influence); *cf. Connelly*, 479 U.S. at 170 (“The sole concern of the Fifth Amendment, on which *Miranda* was based, is governmental coercion.”).

In ruling the statements were admissible, Judge McMahon found specifically that no threats or promises were made, nor was there any evidence or indication of coercive or deceptive conduct on the part of Investigator Campbell or law enforcement in securing Applicant’s waiver or his statements. (R. 67). Thus, Judge McMahon concluded that Applicant’s will was not overborne by any circumstances surrounding the confession. (R. 67). *See Miller*, 375 S.C. at 384, 652 S.E.2d at 451 (alteration in original) (quoting *Dickerson*, 530 U.S. at 434) (“The test of voluntariness is ‘whether a defendant’s will was overborne by the circumstances surrounding the given [statement] . . .’”). Further, Applicant did not present any evidence, claim, or testimony suggesting the presence of coercive police activity at the PCR hearing. *See id.* at 386, 652 S.E.2d at 452 (citations omitted) (“Coercive police activity is a necessary predicate to finding a statement is not voluntary. Coercion is determined from the perspective of the suspect.”).

Accordingly, Applicant’s claim pertaining to Counsel’s failure to investigate circumstances surrounding Applicant’s statements to law enforcement regarding how his competency and low IQ may have affected the voluntariness of the statements pursuant to *Jackson v. Denno* is **DENIED**.

C. Mitigation

Finally, Applicant claims Counsel was ineffective for failing to investigate and present mitigating circumstances regarding Applicant’s competency at sentencing. Specifically, Applicant claims that, had Counsel obtained the 2009 juvenile competency evaluation, he could have used the information contained in the report in mitigation. Applicant further asserts that, had that

information been presented to the trial court, there is a reasonable probability that he would have received a lower sentence. This Court disagrees.

The *Strickland* test applies during both capital and noncapital sentencing proceedings. *Glover v. United States*, 531 U.S. 198, 202–04 (2001) (establishing that there exists a right to counsel during sentencing in noncapital cases). At sentencing, “the formulation of the standard [for deficient performance, as an element of ineffective assistance of counsel] is the same: reasonable competence in representing the accused.” *Premo v. Moore*, 562 U.S. 115, 126 (2011) (quoting *Strickland*, 466 U.S. at 688) (alteration in original). To establish prejudice, the applicant must show he received a greater sentence than he would have but for counsel’s unprofessional errors. See *Lafler v. Cooper*, 566 U.S. 156, 165 (2012) (alteration in original) (quoting *Glover*, 531 U.S. at 203) (finding that “[e]ven though sentencing does not concern the defendant’s guilt or innocence, ineffective assistance of counsel during a sentencing hearing can result in *Strickland* prejudice because ‘any amount of [additional] jail time has Sixth Amendment significance’ ”).

Here, Applicant failed to identify what information contained in the 2009 report that Counsel ineffectively failed to present to the court at sentencing. As discussed in Section B, *supra*, Judge McMahon was aware from the *Denno* hearing of Applicant’s age and limited education. Judge McMahon even made an express finding that he considered factors in determining the appropriate sentence. Applicant further failed to establish that any information contained in the 2009 report—wherein he was ultimately deemed competent—would have impacted the court’s sentencing decision. The fact that Applicant committed multiple offenses our legislature has

deemed “violent” and “most serious,”⁵ coupled with the life sentence he certainly could have received,⁶ Applicant simply is not entitled to satisfy the prejudice requirement through “rank speculation, defying calculation of a reasonable probability.” *United States v. Fulks*, 683 F.3d 512, 522 (4th Cir. 2012); *cf. State v. Sidell*, 262 S.C. 397, 205 S.E.2d 2d 2 (1974) (a judge has discretion in sentencing within statutory limits); *see also Cummings v. State*, 274 S.C. 26, 260 S.E.2d 187 (1979) (a sentence is not excessive if within statutory limitations and not the result of partiality, prejudice, or corrupt motive).

Accordingly, claim pertaining to Counsel’s failure to adequately investigate and present mitigating circumstances regarding Applicant’s competency at sentencing is **DENIED**.

D. Cumulative Error

In her closing argument, PCR counsel asked this Court to review this case under a “cumulative mistakes type of analysis.” The State replied that our appellate courts have never recognized the cumulative error doctrine, but that each issue must be considered individually. This Court agrees, and nonetheless finds that “multiple errors do not exist in this case to form any cumulative prejudicial effect.” *Green v. State*, 351 S.C. 184, 197, 569 S.E.2d 318, 325 (2002)

In *Green*, our Supreme Court noted that “[w]hether the cumulation of several errors, which by themselves are not prejudicial, would warrant relief is an unsettled question in South Carolina.”

⁵ See S.C. Code Ann. §17-25-45(C)(1) (classifying murder, first-degree burglary, and armed robbery as “most serious” offenses); S.C. Code Ann. § 16-1-60 (classifying murder, first-degree burglary, and armed robbery as “violent” offenses);

⁶ See S.C. Code Ann. § 16-3-20 (A) (“A person who is convicted of or pleads guilty to murder must be punished by death, or by a mandatory minimum term of imprisonment for thirty years to life.”); S.C. Code Ann. § 16-11-311(B) (providing that the first-degree burglary “is a felony punishable by life imprisonment” that carries a mandatory minimum of fifteen years); S.C. Code Ann. § 16-11-330 (armed robbery carries a “mandatory minimum term of not less than ten years or more than thirty years, no part of which may be suspended or probation granted).

Id. at 197, 569 S.E.2d at 324. The Court nonetheless recognized that “the threshold to asking the cumulative prejudicial question is to first find multiple errors.” *Id.* at 197, 569 S.E.2d at 325.

Here, having found that none of the issues raised by Applicant amounted to error, multiple errors do not exist in this case to form any cumulative prejudicial effect nor can he aggregate them to form a constitutional violation. *See Fisher v. Angelone*, 163 F.3d 835, 852–853 (4th Cir. 1998) (holding that various claims of ineffective assistance of counsel, like claims of trial error, would not entitle petitioner to relief because a cumulative error analysis would apply only to the effect of those matters actually determined to be constitutional error and not the cumulative effect of all matters alleged or deemed deficient); *Lorenzen v. State*, 376 S.C. 521, 535, 657 S.E.2d 771, 779 (2008) (holding that where none of the errors alleged by the PCR applicant were meritorious, the alleged errors did not have the cumulative effect of denying the applicant of effective legal representation to the extent that prejudice was presumed), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). Accordingly, Applicant’s allegation of ineffective assistance of Counsel based on cumulative error is **DENIED**.

VIII. ALL OTHER ALLEGATIONS

As to any and all allegations raised in the application or at the hearing in this matter and not specifically addressed in this order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds those claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice. S.C. Code Ann. § 17-27-90.

IX. CONCLUSION

Based on the evidence presented at the PCR hearing and a thorough review of the record, this Court finds and concludes Applicant failed to meet his burden of proof pursuant to *Strickland*

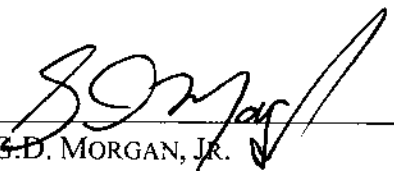
and Rule 71.1, SCRCP. Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, based on the foregoing, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

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

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 30 day of March, 2022.


G.D. MORGAN, JR.
Presiding Circuit Court Judge
Thirteenth Judicial Circuit

Greenville, South Carolina

E. General / Eli Wiggul
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