

RECEIVED

APR 29 2022

S.C. SUPREME COURT

NOTICE OF APPEAL FROM A PCR DENIAL BY THE COURT OF
COMMON PLEAS

THE STATE OF SOUTH CAROLINA
In Supreme Court of SC

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case #2021-CP-43-1221

The State,

Respondent,

v.

Jaelon Jackson

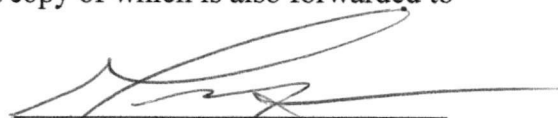
Appellant.

NOTICE OF APPEAL

Jaelon Jackson, appeals the decision of the Court, in the order dated April 21, 2022, received by counsel on April 25, 2022, where Mr. Jackson was denied his request for Post-Conviction Relief. Mr. Jackson was represented at the hearing by Timothy L. Griffith, Attorney at Law who files this notice on behalf of the Appellant. The order herein attached and a copy of which is also forwarded to the SCCID Appellate Division.

Dated

4/26/22



Timothy L. Griffith, Esquire

2338 Mount Vernon Dr.

Sumter, SC 29154

Telephone: (803) 499-2012

Attorney for Appellant (relieved)

Will not be representing on appeal

Other Counsel of Record:

Megan Harrigan Jameson, Esquire

Assistant Attorney General

South Carolina Attorney General's Office

P.O. Box 11549, Columbia, S.C. 29211

Applicant, his mother, and plea counsel, John Furse.²

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

FACTUAL & PROCEDURAL HISTORY

The records before this Court establish Applicant is presently incarcerated within the South Carolina Department of Corrections (SCDC) following his guilty plea and sentence in Sumter County. On April 15, 2018, Applicant and several co-defendants planned an armed robbery guised as a drug deal, and, during this robbery, shot and killed the intended target of the robbery—a high school student. Thereafter, the Sumter County Grand Jury indicted Applicant and three co-defendants for criminal conspiracy, murder, attempted armed robbery, and possession of weapon during the commission of a violent crime pursuant to a multi-count indictment (2019-GS-43-1215). Applicant retained Shaun Kent, Esquire, and John Furse, Esquire, to represent him on these charges. Deputy Solicitor John Meadors of the Third Circuit Solicitor's Office prosecuted the case

Following extensive plea negotiations with the State, Applicant accepted a plea offer to the lesser-included offense of voluntary manslaughter for a determinate twenty-five-year sentence and the dismissal of all other charges. On February 25, 2021, Applicant appeared before the Honorable Kristi F. Curtis, circuit court judge, via Judge Curtis's virtual courtroom utilizing the WebEx

² During his general sessions proceedings, Applicant was also represented by counsel Shaun Kent, who was present for this hearing but was not called as a witness.

platform,³ to plead guilty to the lesser-included offense of voluntary manslaughter pursuant to this plea agreement. Following a thorough plea colloquy with Applicant, Judge Curtis accepted Applicant's plea and imposed a twenty-five-year term of incarceration pursuant to the terms of the plea agreement. Applicant did not pursue an appeal.

Applicant then initiated this action with the filing of his pro se application for post-conviction relief on July 19, 2021.

CURRENT PROCEEDING

In his *pro se* application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following ground of ineffective assistance of counsel:

- (10) State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - a) Failure to investigate
 - i. Counsel "failed to investigate facts and law of case"
 - b) Involuntary guilty plea
 - i. "Guilty plea was involuntary (sic) obtained"
 - c) Failure to object
 - i. Counsel "failed to object to evidence of the State"

As relief sought, Applicant stated he was seeking to, "vacate guilty plea."

Timothy Griffith, Esquire, was thereafter appointed by the Sumter County Clerk of Court to represent Applicant.

In response to the application, Respondent filed a return and a motion for a more definite statement, requesting Applicant, through appointed counsel, file an amended application setting forth specific grounds with supporting facts before an evidentiary hearing. Attached to this return

³ Applicant was questioned regarding his right to appear in-person and waived this right in order to enter his guilty plea virtually. See Plea Tr. p. 3-4.

and before this Court are the records from the Sumter County Clerk of Court regarding Applicant's underlying general sessions matter, the transcript from Applicant's guilty plea proceeding, Applicant's inmate records from the South Carolina Department of Corrections, and the records from this current action.

On February 3, 2022, Applicant, through counsel Griffith, served an amended application, setting forth the following additional claims of ineffective assistance of counsel:

1. Counsel was ineffective for failing to investigate and inform the Solicitor's Office of statements by co-defendants that exonerate Applicant;
2. Counsel was ineffective for failing to file an appeal from his guilty plea; and
3. Newly discovered evidence from co-defendant statements that Applicant was not present during the commission of the crime.

A hearing on was convened February 16, 2022, before this Court in this Court's virtual courtroom. Applicant was present virtually, and consented

At the hearing, Applicant proceeded forward on the claims set forth in his amended application. Applicant testified on his own behalf and presented testimony from his mother.⁴ Respondent presented testimony from Applicant's former plea counsel, John Furse. At the conclusion of the hearing, this Court requested proposed orders from both parties.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged various claims of ineffective assistance of plea counsel and asserts that as a result of counsel's purported errors, he is entitled to have his guilty plea undone and

⁴ Although not called as a witness, Applicant's mother asked to address the Court and this Court allowed her to do so. She was sworn-in as a witness and provided testimony as to the statement from a co-defendant subject to Applicant's amended allegations. Respondent then requested an opportunity to cross-examine Applicant's mother, noting that she had provided substantive testimony regarding the allegations presented to this Court. This Court declined Respondent's request and did not permit cross-examination of Applicant's mother.

proceed back to the court of general sessions for a new disposition of his case. He also asserts he is entitled to relief based on a claim of newly discovered evidence based on statements from co-defendants that establish Applicant was not present for the crime.

Under the Uniform Post-Conviction Procedures Act, an applicant may seek post-conviction relief 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).

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.

This Court has thoroughly reviewed the record in its entirety, including the plea transcript and the records for this current action. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented at the evidentiary hearing,

which allowed the Court to scrutinize the credibility of all witnesses presented. Based on this comprehensive review, this Court finds Applicant has failed to meet his burden of proof as to any of his allegations and finds this action must be denied and dismissed with prejudice. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Plea Counsel

Applicant's first two claims for relief as set forth in his amended application pertain to ineffective assistance of counsel. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, post-conviction relief allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in post-conviction relief actions). The allegation of denial of such representation sets forth a prima facie violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

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

deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel’s representation fell below an objective standard of “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, “does not guarantee perfect representation[—]only a ‘reasonably competent attorney.’” Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is “no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” Harrington, 562 U.S. at 110.

Accordingly, “[j]udicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 6 (2003) (“The Sixth

Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690).

Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. Id. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

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

The Strickland standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance

of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. Harrington, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," **not** whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. Thus, it is not enough "to show the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to deprive the defendant of a fair trial." Id. at 687 (emphasis added).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel." Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to

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

The analysis of counsel's performance under the first prong of Strickland remains unchanged—the applicant must show counsel's representation fell below the objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not “within the competence demanded of attorneys in criminal cases.” Hill, 474 U.S. at 56.

The second, or “prejudice” prong, however, “focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process.” Id. at 58–59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” Id. at 59. This inquiry “focuses on a defendant's decisionmaking” and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. ___, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d

442, 444 (1999).

Surmounting Strickland's high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." Lee, 582 U.S. ___, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 58 ("[R]equiring a 'prejudice' showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.'"). Reviewing "[c]ourts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney's deficiencies. Lee, 582 U.S. ___, 137 S. Ct. at 1967. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences. Id. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the plea and the evidence presented at the PCR hearing. Harres, 282 S.C. at 134, 318 S.E.2d at 361.

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

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

Ineffective assistance of counsel for failure to investigate and inform the State of exonerating co-defendant statements

As his first claim for relief, Applicant asserts plea counsel was ineffective for failing to investigate and inform the State of beneficial statements from co-defendants that exonerated him. In support of this allegation, Applicant testified that he was aware of statements from his co-defendants that exonerated him. Specifically, he testified these statements say he was not present during the crime. He testified he does not have these statements but that the statements were sent to his mother. He testified he told his attorneys about these statements but they did not investigate these statements. He acknowledged he reviewed discovery with his attorneys, including statements implicating him in the crime.

Applicant's mother provided testimony regarding these purported statements. She testified that when Applicant was originally represented by different counsel, she received information of a "kite", a letter sent between inmates at the detention center, in which one of Applicant's co-defendants threatens the life of a witness. She testified that this was mailed directly to her, and she provided it to her son's attorney. She testified that this letter should have been provided to Furse and Kent and claims that her son's attorneys did nothing to investigate this letter. She did not present the statement or "kite."

Applicant did not present any of his co-defendants to testify or otherwise provide evidence of their statements in accordance with the rules of evidence at the hearing.

In response to this allegation, plea counsel John Furse testified that his firm utilized their private investigator to work on this case. He testified their investigator attempted to pursue a

potential alibi defense Applicant provided to them but, after extensive investigation, it was not fruitful.” He testified he attempted to speak with Applicant’s co-defendants, but they were all represented by counsel and their individual attorneys refused to let them speak with the defense team. He testified that based on this, it was impossible to know exactly what co-defendants would have stated if they cooperated with the State and testified against Applicant at his trial. He acknowledged that numerous co-defendants had given statements to law enforcement implicating Applicant in the crime.

Counsel testified he was informed of a “kite”, and it was his understanding that it was from one of Applicant’s co-defendants and could have been interpreted as the co-defendant recanting a prior statement implicating Applicant. Counsel testified he discussed this with Applicant and explained that there would still be a significant risk in proceeding to trial based on the other statements implicating Applicant in the crime, including a statement where Applicant admitted to being the shooter. Counsel testified that after thoroughly reviewing all evidence with Applicant and a through investigation into the facts and circumstances of the case as well as potential defenses, it was his believe that it was in Applicant’s best interest to accept the favorable plea offer from the State.

This Court finds Applicant has failed to meet his requisite burden of proof as to this allegation. As an initial matter, Applicant failed to present any statements or any of the co-defendants as witnesses, or otherwise offer evidence of what their testimony would have been, in accordance with the rules of evidence, and, accordingly, this claim must fail as a matter of law. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (noting our courts have “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 from the witness' failure to testify at trial"); Glover v. State, 318 S.C. 496, 499, 458 S.E.2d 538, 540 (1995) (holding a PCR applicant's mere speculation as to what the witnesses' testimony would have been cannot, by itself, satisfy the burden of showing prejudice); Smith v. State, 404 S.C. 493, 502, 745 S.E.2d 378, 383 (Ct. App. 2012) (holding an applicant failed to meet his burden of proof where he failed to present testimony from any of the witnesses he asserts should have been called at trial). As Applicant failed to present any evidence to support this allegation, this claim fails.

Additionally, this Court finds Applicant cannot establish that counsel was deficient in his performance. Counsel credibly testified that he investigated the case fully and attempted to speak with Applicant's co-defendants but was prohibited by their counsels. He testified that he discussed the "kite" with Applicant and explained that he would still have significant problems if he proceeded to trial based on the statements from other co-defendants implicating him in the crime. This Court finds counsel provided competent representation based on the facts and circumstances of this case, and that this claim is denied.

Ineffective assistance of counsel for failure to file an appeal on Applicant's behalf

As his second claim for relief, Applicant asserts plea counsel was ineffective for failing to file an appeal on his behalf. Applicant provided inconsistent testimony in support of this claim, asserting that he did want to pursue an appeal but then stating he wanted to pursue an action against his attorneys for their performance (i.e., a post-conviction relief action such as he is currently litigating). Applicant also testified that he could not recall asking his attorneys to file an appeal on his behalf, but then stated that he was aware his counsels could not handle his appeal because the

claims would be against them. He later reiterated that he did not ask his attorneys to file an appeal on his behalf. He later claimed the only reason he did not file an appeal was because he was unable to contact his attorneys but admitted he never called, wrote, or otherwise attempted to contact counsels following his plea. He testified he first decided he wanted an appeal when he was at Kirkland Correctional Institution. He acknowledged he was advised on the record during his guilty plea that he has ten days to file a direct appeal and needed to contact his attorneys as soon as possible if he wanted to secure direct appellate review. (Plea Tr. p. 22)

In response to this claim, counsel testified he discussed appellate rights with Applicant prior to the plea proceeding. He testified the plea court also advised him of his appellate rights, including that an appeal must be filed within ten days. Counsel testified he received a call about a possible appeal from Applicant's mom following the plea. Counsel testified the defense team also visited Applicant following the plea on March 2, 2021, where they again reviewed appellate options with Applicant. Counsel testified they did not attempt to talk Applicant out of an appeal but discussed the various options available to applicant. He testified Applicant never requested the defense team file an appeal on his behalf.

This Court finds Applicant has failed to meet his burden of proof as to this allegation, as the uncontradicted evidence before this Court is that Applicant was fully advised of his right to seek appellate review and never asked his attorneys to seek appellate review. Applicant was advised of his appellate rights by his attorneys both before and after his plea, as well as by the plea court during the plea. With this knowledge of the right to pursue an appeal, as well as the timeline required to secure appellate review, Applicant never sought appellate review. Accordingly, this allegation must be denied.

Newly Discovered Evidence

Finally, Applicant claims he is entitled to relief based on a claim of newly discovered evidence. Specifically, Applicant asserts that statements from his co-defendants exonerate him by stating he was not present during the commission of the crime.

To succeed on a claim of newly discovered evidence following a guilty plea, Applicant must establish:

(1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the “interest of justice” requires the applicant’s guilty plea to be vacated. In other words, a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of guilt encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions.

Jamison v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014).

Here, the “interests of justice” do not require vacation of Applicant’s guilty plea. As an initial matter, this claim must fail because Applicant cannot meet his burden of proof. As discussed above in relation to this allegation as one of ineffective assistance of counsel, Applicant did not present any of his co-defendants to testify or otherwise provide evidence of their statements in accordance with the rules of evidence at the hearing, and, accordingly, he can only speculate as to what evidence could be provided, if any. Moreover, the testimony presented regarding the “kite” statement was that it was known before Applicant entered his plea, and, therefore, does not meet the Jamison standard. Additionally, the “kite” statement does not exonerate Applicant but merely impeaches his co-defendant regarding threats he made to another witness. This Court finds

Applicant has failed to present any newly discovered evidence and this claim is denied.

CONCLUSION

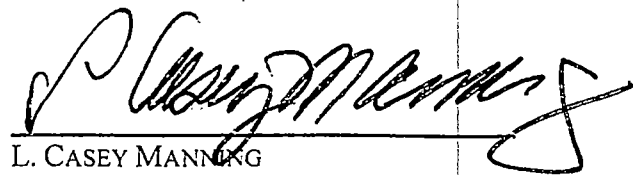
Based on all the foregoing, this Court finds Applicant has not established any other constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief is denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 31 day of March, 2022.



L. CASEY MANNING
Presiding Judge
Third Judicial Circuit

Columbia, South Carolina