NOTICE OF APPEAL FROM COMMON PLEAS REGARDING A

POST CONVICTION RELIEF

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

Grace Gilchrist Knee, Circuit Court Judge

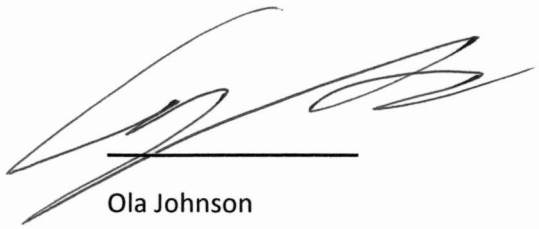
Case No. 2018-CP-40-00908

The State,.....Respondent,

Perez Brooks,.....Appellant,

Notice of Appeal

Perez Brooks appeals the order of the Honorable Grace Gilchrist Knee, dated April 6, 2022 which denied his application for Post-Conviction Relief with prejudice. Appellant received written notice of the order on April 20, 2022.



Ola Johnson

PO Box 549

Lexington, South Carolina 29071

(803) 360-8692

Other Counsel of Record:
Joshua Edwards
Post Office Box 11549
Columbia, SC 29211

(803)734-3737

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Perez A. Brooks, #372744 Applicant v. State of South Carolina, Respondent	2018-CP-40-00908 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by counsel William G. Yarbrough, III, on behalf of Applicant, Perez A. Brooks on February 13, 2018. Respondent made its Return on April 17, 2018. Mr. Yarbrough moved to be relieved as counsel on May 8, 2019, and his motion was granted on May 23, 2019. Attorney Ola Johnson was appointed to represent Applicant on July 12, 2019. Applicant moved for a competency evaluation and an evaluation was ordered by the Honorable D. Craig Brown on February 18, 2020. Dr. Alicia Hall evaluated Applicant and issued a report on April 15, 2021 finding Applicant was not currently competent to stand trial. Applicant submitted an amended PCR application on May 28, 2021. An evidentiary hearing into the matter was convened on March 31, 2022 at the Richland County Courthouse. Applicant was present at the hearing and represented by Ola Johnson, Esquire. Josh Edwards, Esquire, and Russ Barlow, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant presented the testimony of Dr. Hall. Applicant did not testify. Respondent presented testimony from trial counsel Reginald Lloyd, Esquire.

Following a thorough review of the record in its entirety, and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to meet his requisite burden of proof, denies relief, and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted at the June 2014 term of the Richland County Grand Jury for felony driving under the influence (DUI) resulting in death (2014-GS-40-03853). Applicant was subsequently indicted by direct presentment in January 2016 for reckless homicide (2016-GS-40-0587). The charges stem from a May 2014 incident in which the Applicant, driving at a speed of 101 miles per hour while under the influence of marijuana and perscription medications, drifted across three lanes of I-20 before striking a vehicle being driven by Victim, Lamont Hampton. The collision caused Victim's vehicle to go off the right side of the interstate where it stuck several trees. The impact with the tree drove Victim's engine block and the engine compartment through the front row of the vehicle severing the Victim's aorta in addition to severe blunt force trauma to the head, killing him.

Reginald I. Lloyd, Esquire, represented Applicant, and Assistant Solicitors Joshua Golson, Joseph Leventis, and John Steadman, Esquires, of the Fifth Circuit Solicitor's Office, prosecuted the case on behalf of the State. On January 23-25, 2017, Applicant appeared in the Richland County Court of General Sessions before the Honorable R. Knox McMahon where, after beginning a jury trial, he pleaded no contest to both charges. After accepting the plea, Judge McMahon requested a pre-sentence investigation. On May 25, 2017, Judge McMahon sentenced Applicant to imprisonment for concurrent terms of twenty years for felony DUI and ten years for reckless homicide.

Applicant filed a timely notice of appeal. On September 19, 2017, the South Carolina Court of Appeals dismissed Applicant's appeal for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv), SCACR. The Remittitur was issued on October 5, 2017.

ISSUES RAISED

In his application and amended application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
    a. Counsel failed to request that Applicant be evaluated for competency prior to trial;
    b. Counsel failed to meet with Applicant a sufficient number of times prior to trial;
    c. Counsel failed to inform Applicant of the maximum penalties for the crimes with which he was charged;
    d. Counsel failed to object to hearsay testimony from Victim's brother;
    e. Counsel failed to object to hearsay testimony identifying Applicant as the driver;
    f. Counsel failed to object to Applicant's statements regarding his drug use, the cause of the accident, and his statements to police at the hospital;
    g. Counsel failed to object to testimony regarding marijuana found in his car and a marijuana grinder found on his person;
    h. Counsel failed to object to opinion testimony that he was intoxicated;
    i. Counsel failed to move to exclude Applicant's blood and urine test results;
    j. Counsel failed to move for a mistrial or continuance when Applicant was taken into custody after his bond was revoked;
    k. Counsel abandoned Applicant's direct appeal;
    l. Counsel failed to retain a copy of his defense file;
    m. Prosecutorial misconduct;
    n. Counsel failed to present expert testimony at sentencing regarding Applicant's medical records;
    o. Counsel failed to object to the direct indictment for Reckless Homicide.

At the evidentiary hearing, PCR counsel for Applicant expressly abandoned the allegation pertaining to the direct presentment. Applicant also did not pursue a claim of prosecutorial misconduct or counsel's abandonment of Applicant's appeal.

SUMMARY OF RELEVANT TESTIMONY

Dr. Hall's testimony

Applicant called Dr. Alicia Hall as his only witness. Dr. Hall is a clinical psychologist at the Department of Mental Health. Dr. Hall explained she examined Applicant for competency in April of 2021 and found him to be not competent to stand trial at that time. She explained Applicant was not intellectually disabled, but that he developed mental health problems due largely to a traumatic brain injury Applicant suffered during his military service in Iraq. She referenced a medical report from the Department of Veteran's Affairs diagnosing Applicant with "stable mild frontal lobe volume loss." She also referenced medical reports diagnosing Applicant with PTSD and diagnosed Applicant with "Double Depression," which she described as a sustained depressive disorder. She testified Applicant had trouble concentrating during their interviews and had trouble learning and retaining information relevant to his case. Dr. Hall explained Applicant met the qualification for Major Neurological Disorder Unspecified, which is applicable in a situation where the "precise etiology . . . cannot be determined." She could not rule out a diagnosis of early-onset dementia. She opined that Applicant's traumatic brain injury was a major factor in his mental illness, and this condition existed prior to 2017. She testified that her diagnosis of Applicant with a "major" disorder was based largely on her understanding that Applicant could not live independently and relied on his wife and family to help him function. She testified her evaluation gave her concern that Applicant should have been evaluated for competency in 2017. Her report was offered as an exhibit without objection.

On cross-examination, Dr. Hall admitted Applicant's mental illness could have been exacerbated by his incarceration following his conviction. Specifically, she explained early-onset dementia is a degenerative disease that could have significantly worsened in the 4-year period between trial and her evaluation. She testified she was not aware that Applicant had been living independently for a time before his trial. She testified there was no reason to believe Applicant has a below-average IQ. She testified it was possible the severity of Applicant's symptoms could vary on a given day, but that generally his condition would be reasonably stable. She testified that she could not state with a reasonable degree of medical certainty that Applicant was not competent to stand trial in 2017.

Reginald Lloyd's testimony

The State called trial/ plea counsel Reginald Lloyd as its only witness. Trial counsel testified he had been practicing law since 1993. He has had extensive experience in criminal law, not only as a criminal defense attorney but through employment with the South Carolina Attorney General's Office, as the United States Attorney for the District of South Carolina, and as the director of the State Law Enforcement Division (SLED). Trial counsel testified than he met with Applicant "a couple dozen" times during the course of his representation. He never had any concerns about Applicant's competency. He testified Applicant was able to intelligently discuss the facts of the case, potential defenses, and trial strategy. He testified he was very familiar with Applicant's medical history and that he took this into consideration when developing his trial strategy. He testified Applicant separated from his wife and lived independently in the months leading up to trial.

Applicant cross-examined trial counsel about his decisions not to object at various points throughout trial. His answers will be discussed individually below, but he explained generally that

he did not object at various times because he did not the objections would be fruitful, the objections were not relevant to his trial strategy, or that he could not remember why he did not object.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court further had the opportunity to observe the witnesses at the evidentiary hearing and evaluate their credibility, and the Court has weighed their testimony accordingly in its discussion below. This Court finds the combined record of the plea transcript and the testimony and evidence presented at the evidentiary hearing establishes Applicant received effective assistance of counsel, and his plea was freely and voluntarily entered. Applicant has not shown a reasonable probability that he was incompetent to stand trial or plead guilty in 2017. Accordingly, this Court denies relief and dismisses this application with prejudice. Set forth below are the relevant findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code.

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered

adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Strickland*, 466 U.S. 668. As such, an applicant must overcome this presumption in order to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989). In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP.

Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109-10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578,

592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable."). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.*, 300 S.C. at 117-18, 386 S.E.2d at 625. "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." *United States v. Basham*, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985); *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. *See Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Statements made during a guilty plea should be considered conclusive, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. *Dalton v. State*, 376 S.C. 130, 137-

38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. *See Harris v. Leeke*, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

An applicant who enters a plea on the advice of counsel may "only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the [applicant] would not have pled guilty, but would have insisted on going to trial." *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and will be treated as such. When an applicant alleges he was incompetent to stand trial at the time of his guilty plea, he bears the burden of proof and is required to show a reasonable probability he was incompetent at the time of his plea. *Jeter v. State*, 308 S.C. 230, 233, 417 S.E.2d 594, 596 (1992).

This Court finds Applicant has failed to meet his burden of proving he is entitled to post-conviction relief on his allegation of ineffective assistance of counsel. Applicant has failed to prove both deficiency on the part of Plea Counsel and any prejudice therefrom. Therefore, for the reasons stated below, the Court denies relief and dismisses the allegations with prejudice.

Failure to request a competency evaluation.

Applicant argues plea counsel was ineffective for failing to have him evaluated for competency prior to his trial and subsequent plea. This Court finds Applicant has failed to meet his burden of showing a reasonable probability he was incompetent at the time of his plea. *See Jeter v. State*, 308 S.C. 230, 233, 417 S.E.2d 594, 596 (1992). While Dr. Hall found Applicant

incompetent to stand trial in April of 2021,[1] the question is whether Applicant was incompetent at the time of his plea in 2017. While Dr. Hall expressed concerns about Applicant's competence at the time of plea based on her 2021 evaluation, she testified that she could not give an opinion with a reasonable degree of certainty that Applicant was incompetent in 2017. She admitted that Applicant's incarceration following his conviction could have had a deleterious effect on his mental health issues.

Plea counsel testified credibly that he met with Applicant "a couple dozen" times over three years in the course of his representation. He testified he never had any concerns about Applicant's competency. He testified Applicant was able to assist in his defense by discussing the facts of the case, his medical history, and potential defenses. He testified Applicant appeared to understand the nature of the proceedings against him. He further testified Applicant separated from his wife and lived independently for a period leading up to trial. He testified Applicant's decision to proceed to trial and his subsequent decision to plead guilty appeared to be knowing and intelligent.

This Court finds Mr. Lloyd's testimony to be credible. Mr. Lloyd is a highly experienced attorney and the Court gives great weight to his testimony that he never had concerns about Applicant's competency. An attorney may "reasonably rel[y] on his own perceptions" when assessing a client's competency. *Jeter v. State*, 308 S.C. 230, 233, 417 S.E.2d 594, 596 (1992). Furthermore, it appears from the trial transcript that Applicant was able to communicate effectively with the trial court during his plea colloquy, and neither the court, counsel, nor Applicant's family

[1] An applicant cannot delay PCR proceedings because of his incompetency, and Applicant did not attempt to do so in this case. If, however, at a later date Applicant regains competency and discovers his incompetency hindered his ability to assist his counsel on a fact-based claim of ineffective assistance of counsel at this PCR hearing, Applicant shall not be precluded from raising that claim in a subsequent proceeding. *See Council v. Catoe*, 359 S.C. 120, 597 S.E.2d 782 (2004). The Court finds Applicant is represented by competent counsel who has a fiduciary duty to protect his client's interest.

expressed any concerns about his competency. This Court finds Applicant has failed to show deficiency in or prejudice from trial counsel's decision not to request a competency hearing.

Failure to object to a hearsay statement from Victim's brother.

Applicant alleges counsel was deficient for failing to object to testimony from the Victim's brother that his father called to inform him that his brother had been killed in a car accident. (Tr.p.199–200). The Court finds this testimony was not material to guilt or innocence because it was undisputed Victim died as a result of the crash. Furthermore, trial counsel did apparently make an off-the-record objection, and the judge instructed the solicitor to "ask the next question." (Tr.p.200, line 6). Because this testimony could not have reasonably affected Applicant's decision to plead guilty, Applicant was not prejudiced by counsel's failure to object to make an on-the-record objection to this testimony.

Failure to object to hearsay testimony identifying Applicant as the driver.

Applicant alleges trial counsel was ineffective for failing to object to hearsay testimony from a responding State Trooper that Applicant was driving the vehicle that struck Victim. The testimony was as follows: "The driver wasn't in the vehicle. There was an ambulance up there with that vehicle. At that time, I went to the paramedics to find out where the driver was at, and there was at least one paramedic with the driver of that vehicle then. Got into the ambulance with that person and began speaking with them." (Tr.p.231). The Court finds Appellant failed to show deficiency and prejudice regarding this claim. It is not completely clear from the testimony whether a paramedic identified Applicant as the driver, or whether Applicant identified himself. In either case, Applicant admitted he was driving to officers at the hospital, and this was not a contested fact at trial. Applicant has not shown deficiency or prejudice from counsel's failure to object to this testimony.

Failure to object to opinion testimony that Applicant was the "at fault" driver.

Applicant alleges counsel was ineffective for failing to object to testimony from a State Trooper that he determined Applicant was the "at fault" driver in the collision. (Tr.p.231, line 15). While the Trooper arguably expressed an opinion, the Court finds Applicant failed to show counsel was deficient for not objecting, or that he was prejudiced. Counsel Lloyd explained it was not his trial strategy to contest whether Applicant was the "at fault" driver, which was not seriously in dispute. It was clear from the evidence that Applicant caused the accident, and counsel testified Applicant admitted he was at fault. Rather, the issue was whether Applicant was materially impaired when he struck Victim's vehicle. The Court finds counsel's failure to object did not harm Applicant's case such that it caused him to plead guilty.

Failure to object to hearsay by defendant about the cause of the accident.

Applicant claims counsel was ineffective for failing to object to testimony from a Trooper regarding what Applicant told him about how the accident occurred. (Tr.p.232). Applicant has failed to show deficiency or prejudice. These statement were admissible under Rule 801, SCRE as admissions of a party opponent, and the testimony could not reasonably have caused Applicant to change his mind and plead guilty rather than proceed to verdict.

Failure to object to officer testimony that he observed marijuana in Applicant's vehicle and discovered a marijuana grinder in his pocket.

Applicant claims counsel was ineffective because he did not object to evidence that police discovered marijuana in Applicant's vehicle and a marijuana grinder in his pocket. (Tr.p.235). While trial counsel testified he could not remember why he did not object, the testimony was relevant to the charged crime and admissible as a direct observation of the officer. Counsel was not ineffective for failing to object, and Applicant has not shown prejudice.

Failure to object to Applicant's testimony about his drug use.

Applicant alleges counsel was ineffective for failing to object to Applicant's statement admitting he used drugs on the morning of the accident. (Tr.p.237). This evidence was admissible as an admission of a party opponent. *See* Rule 801, SCRE. Counsel was not ineffective for failing to object because such an objection would have been overruled. Furthermore, Applicant was not prejudiced because his blood test results showed the presence of drugs in his blood.

Failure to object to an officer's opinion testimony that Applicant was under the influence.

Applicant claims counsel was ineffective for failing to object to testimony from a Trooper that he believed Applicant was under the influence. (Tr.p.237–38). This testimony was an admissible lay opinion. *See State v. Ramey*, 221 S.C. 10, 13–14, 68 S.E.2d 634, 635 (1952) (explaining "it is well settled that a lay witness may testify whether or not in his opinion a person was drunk or sober on a given occasion on which he observed him and that the weight of such testimony is for determination by the jury"). Counsel was not ineffective for failing to object, and the Court does not believe Applicant was prejudiced by this testimony.

Failure to object to a recording of Applicant's statements to officers at the hospital.

Applicant claims counsel was ineffective for failing to object to a recording of his statements to police at the hospital following the accident. (Tr.p.262). At the evidentiary hearing, Applicant asked trial counsel why he did not object to this statement coming in. Trial counsel testified that he did not see a basis on which to object. This testimony was admissible as an admission of a party opponent. *See* Rule 801, SCRE. Furthermore, the court considered the voluntariness of Applicant's statements to police during an extensive pretrial *Jackson v. Denno* hearing. (Tr.p.153). The trial court ruled the statements were admissible, and there is no reason

to believe the trial court would have ruled differently had trial counsel objected when this testimony was offered. Applicant has not shown deficiency or prejudice.

Failure to move to suppress Applicant's blood and urine test results.

Applicant claims trial counsel failed to move to exclude his blood and urine test results. However, trial counsel did move to exclude Applicant's blood results during a pretrial hearing. (Tr.p.155). While the argument was intertwined with a *Jackson v. Denno* hearing focusing on Applicant's statements to police, trial counsel also contested whether applicant gave consent for the blood draw. Trial counsel argued police should have been required to secure a search warrant. (Tr.p.158). The trial court ruled both the statements and blood results admissible. (Tr.p. 162, lines 21–24). This Court finds Applicant has failed to show trial counsel was ineffective in this regard.

Failure to move for a mistrial or continuance after Applicant's bond was revoked during trial

Applicant alleges trial counsel was ineffective for failing to move for a mistrial or continuance after his bond was revoked following the first day of trial. He claims the jail did not provide the correct type of seizure medication. Trial counsel was not deficient. There is no indication Applicant suffered a seizure at the jail that night, nor did he suffer any other adverse consequences. Trial counsel opposed Applicant being taken into custody and convinced the court to order the jail to accept Applicant's seizure medication. Applicant has not shown deficiency or prejudice.

Failure to meet with Applicant a sufficient number of times and failure to explain the maximum possible penalties.

Applicant claims trial counsel failed to meet with him a sufficient number of times and failure to explain the maximum possible penalties. Trial counsel testified at the evidentiary hearing that he met with applicant roughly a "couple dozen" times, and that he did explain the maximum

possible penalties to Applicant. This Court finds trial counsel's testimony credible. Furthermore, Applicant did not offer any evidence of how additional preparation or communication would have resulted in a different outcome. *See Jackson v. State*, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998) (where PCR applicant failed to present any evidence of what counsel could have discovered or what other defenses he would have requested counsel pursue had counsel more fully prepared for the trial, applicant failed to show his counsel's lack of preparation prejudiced him); *Skeen v. State*, 325 S.C. 210, 214–15, 481 S.E.2d 129, 132 (1997) (finding applicant was not entitled to post-conviction relief where there was no evidence presented at the PCR hearing to show how additional preparation would have had any possible effect on the result of the trial). The Court denies relief on this ground.

Failure to retain Applicant's defense file.

Applicant claims trial counsel was ineffective for failing to retain his defense file. Trial counsel testified he gave the hard copy of his file to Applicant's wife so that she could purse a direct appeal. He retained an electronic copy of his file, but it was lost when his hard drive crashed. Applicant has failed to show trial counsel's actions affected his trial performance or caused Applicant to plead guilty. Applicant was not prejudiced because counsel's handling of the file after trial did not influence his decision to plead guilty, and there was no evidence presented that it prevented him from pursuing a direct appeal.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. The Court finds trial counsel's representation was neither deficient nor prejudicial. The Court further finds Applicant voluntarily pled guilty, and that Applicant failed to show a reasonable probability

that he was incompetent at the time of his plea. The Court notes 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. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). 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. Post-conviction relief is denied and the application for post-conviction relief be dismissed with prejudice; and

2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 6th day of April, 2022.

GRACE GILCHRIST KNIE,
Presiding Judge
Fifth Judicial Circuit