STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
William H. Seals, Jr., Circuit Court Judge

2018-CP-21-03142

Antwan Jett, # 358650,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Antwan Jett, # 358650, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed May 18, 2022, issued by the Honorable William H. Seals, Jr., Presiding Judge, Twelfth Judicial Circuit.

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STATE OF SOUTH CAROLINA COUNTY OF FLORENCE	IN THE COURT OF COMMON PLEAS TWELFTH JUDICIAL CIRCUIT
Antwan Jamal Jett, #358650 Applicant, v. State of South Carolina, Respondent.	CASE NO. 2018–CP–21–3142 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Applicant, Antwan Jamal Jett, on December 10, 2018. Respondent made its Return and Motion for a More Definite Statement on March 13, 2019. An evidentiary hearing into the matter was convened on September 6, 2019, at the Florence County Courthouse before the Honorable William H. Seals, Jr. Applicant was present at the hearing and represented by Jonathan D. Waller, Esquire. Samuel L. Key, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Testimony was additionally provided by Lanelle C. Durant and Vick Meetze, Esquires. 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

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections (SCDC). Applicant was indicted during the April 2014 term of the Florence County Grand Jury for: first-degree burglary; assault with intent to commit first-

degree criminal sexual conduct; possession of a weapon during the commission of a violent crime; two counts of armed robbery; and criminal conspiracy. (2014-GS-21-0525). Applicant was represented by Assistant Public Defender Vick Meetze, and Deputy Solicitor John Jepertinger prosecuted the case. Applicant proceeded to a jury trial on April 20, 2015, before the Honorable D. Craig Brown. Applicant was convicted as indicted and Judge Brown sentenced Applicant to concurrent terms of imprisonment of thirty years for first-degree burglary, time served for the weapons charge, twenty-five years for armed robbery, and five years for criminal conspiracy.

A timely Noice of Appeal was filed on Applicant's behalf, and the appeal was perfected by Appellate Defender LaNelle Cantey Durant of the South Carolina Office of Indigent Defense. The Court of Appeals affirmed Applicant's convictions and sentences. State v. Jett, 423 S.C. 415, 814 S.E.2d 635 (Ct. App. 2018). Thereafter, Applicant petitioned the Supreme Court of South Carolina for a writ of certiorari to review the Court of Appeals' decision; however, the Court denied certiorari on October 18, 2018. State v. Jett, S.C. Sup. Ct. Order dated October 18, 2018. The Remittitur was issued on November 20, 2018. Applicant commenced this PCR action December 10, 2018.

FACTS

Michael Barr was awoken by a knock at his door at approximately 3:30 a.m. on December 31, 2013. (Trial Tr. pp. 83–85). When he opened the door, "[t]hree people with hoodies on tied across their face came in," assaulted him, and demanded money. (Trial Tr. pp. 85–86). Barr stated the three men were African American and gave general descriptions of their height, weight, skin color, and clothing. (Trial Tr. pp. 87–93). Barr said the green hoodie man put "a small Derringer" in his face. (Trial Tr. pp. 86–87; p. 93). Barr said one of the men picked up his hunting knife. (Trial Tr. pp. 94–95). Barr testified the three men eventually ran out the back door. (Trial Tr. p.

88; p. 98). Barr stated pill bottles were missing from his room. (Trial Tr. p. 96). Barr's female roommate was in her bedroom when two of the men entered her room, and Barr heard her screaming. (Trial Tr. p. 88).

Officer William Blackmon responded to the scene and saw two suspects running away, one of whom was wearing a green hoodie. (Trial Tr. pp. 136–137). Though Blackmon gave chase, he did not apprehend anyone. (Trial Tr. pp. 139–141). Blackmon retraced the path he had taken and found a hunting knife on the ground. (Trial Tr. pp. 142–143).

Officer Thomas Herman, Jr., responded to the scene for "a possible home invasion." (Trial Tr. pp. 123–124). As he arrived, he saw "two subjects running" (one of whom was wearing a "green or gray" hoodie) and Officer Blackmon in a foot chase with them. (Trial Tr. pp. 125–126; pp. 134–135). Herman did not apprehend anyone but walked along their probable path and found "a small caliber handgun, a small revolver style Derringer." (Trial Tr. pp. 126–130; p. 135).

Officer Lacey Allen and Corporal Legrande Gowdy also responded to the scene—after Herman and Blackmon chased the potential suspects. (Trial Tr. pp. 144–146; pp. 178–188). Allen and Gowdy found pill bottles, a green hoodie, a gray pullover,[1] mask, and hat that "matched the description of the one that the suspect was wearing." (Trial Tr. pp. 148–151; p. 155; pp. 189–190; p. 199). Allen then noticed someone was lying underneath a car. (Trial Tr. pp. 150–151). Allen drew her weapon and ordered the individual to get out from under the car. Though the individual began to move from under the car, he hesitated when Gowdy appeared. (Trial Tr. p. 152; pp. 191–192; pp. 209–210). Gowdy told the individual he identified in court as Applicant to get out from under the car. When Applicant did not do so, Gowdy tased him, and Applicant was handcuffed.[2]

[1] A SLED forensic scientist identified Applicant's DNA on the gray sweatshirt. (Trial Tr. p. 173; p. 179).

(Trial Tr. p. 153; pp. 192–193). While Gowdy was reading Applicant his *Miranda* rights, Applicant said, "I don't know anything about that gun." (Trial Tr. pp. 193–194).

Corporal Felicia Jones—who was an investigator at the time—met with Applicant while he was detained in the back of a patrol vehicle. (Trial Tr. pp. 237–238). Jones borrowed Gowdy's voice recorder for this conversation, read Applicant his Miranda warnings, and questioned him about the incident. (Trial Tr. pp. 238–239). Jones stated Applicant was arrested after giving his statement because his story—he simply fell asleep under that car—was implausible. (Trial Tr. pp. 244–245).

As a result, Applicant was charged with first-degree burglary, assault with intent to commit criminal sexual conduct – first degree, possession of a weapon during the commission of a violent crime, one count of armed robbery, and criminal conspiracy.

ISSUES RAISED

Applicant *timely* commenced this post-conviction relief action on December 10, 2018. In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance Co[u]nsel"
   a. "Trial counsel failed to act as my diligent advocate"
2. "Ineffective Assistance Trial Counsel"
3. "Ineffective Appellate Counsel Miranda v. Arizona"
   a. "Appellate counsel failed to act as my diligent advocate"
4. "I was denied my constitutional rights fif[t]h, sixth, and fourteenth amendment violations"

At the evidentiary hearing, PCR counsel for Applicant proceeded on the following allegations:

1. Ineffective Assistance of Appellate Counsel
   a. Failure to petition for writ of certiorari to the Supreme Court of the United States.
2. Ineffective Assistance of Trial Counsel
   a. Failure to properly investigate and prepare for trial.

SUMMARY OF RELEVANT TESTIMONY

APPLICANT'S TESTIMONY[3]

On direct examination, Applicant testified that his "YOA parole" was being revoked because of his arrest, and trial counsel was appointed to his case before the revocation. (PCR Tr. pp. 6, l. 19 – 7, l. 5). Applicant testified that while he was in the jail in Florence, trial counsel never came to see him. (PCR Tr. p. 7, ll. 3 – 7). Applicant testified that trial counsel came to see him when he was transferred to Turbeville about ten to eleven months after his arrest. (PCR Tr. p. 7, ll. 8 – 20). Applicant testified that when trial counsel finally went to see him, they only discussed a plea bargain of twenty-five years. (PCR Tr. p. 7, ll. 21 -24). Applicant testified that trial counsel never discussed his charges with him and did not discuss the potential penalties of those charges. (PCR Tr. p. 8, ll. 7 – 11). Applicant testified that trial counsel did not discuss what the State would have to prove for him to be found guilty of the charges. (PCR Tr. p. 8, ll. 12 -14).

Applicant further testified that trial counsel did not discuss the DNA evidence with him. (PCR Tr. p. 8, ll. 18 – 23). Applicant stated that trial counsel never discussed the articles of clothing that were tested for DNA until the trial. (PCR Tr. p. 9, ll. 5 – 15). Applicant provided that "during the trial, [trial counsel told him] don't get on the stand because [his] prior arrests before [he] got locked up for the burglary first and armed robbery. (PCR Tr. p. 9, ll. 13 -22). Applicant then stated trial counsel never spoke to him about the DNA evidence. (PCR Tr. p. 9, ll. 23 – 25).

Applicant then testified that he gave two statements to the police, but he did not remember any of them, and trial counsel never discussed those statements with him. (PCR Tr. p. 10, ll. 1 – 19). Applicant further testified that he never gave trial counsel names of people he wanted him to talk to or any information to investigate because trial counsel never discussed any of that with him.

[3] PCR Counsel did not ask Applicant questions regarding his Ineffective Assistance of Appellate Counsel allegation.

(PCR Tr. p. 10, ll. 17 – 23). Applicant stated the only thing trial counsel discussed with him was the plea deal of twenty-five years and not to take the stand at trial. (PCR Tr. pp. 10, l. 24 – 11, l. 3).

Applicant then testified to the following regarding why he felt like he should not have been arrested:

> Because I feel like the place and time I been at, I just feel like it wasn't a proper arrest because I ain't never was in that situation before. So I couldn't never secure or represent myself at that point in time. And I barely didn't know what I was speaking about because I was intoxicated and drunk, that's when I was telling the investigator. And I was trying to plead the Fifth as much as possible, you know what I'm saying, but I still end up getting locked up behind them saying a statement that I made.

(PCR Tr. p. 11, ll. 6 – 15). Applicant then testified that trial counsel met with him three times. (PCR Tr. p. 12, ll. 1 – 3). Applicant testified that on trial counsel's first meeting with him, they discussed a plea of twenty-five years; on his second meeting, a plea of fifteen years, and on the third meeting, he told him he had a grand jury indictment for charges. (PCR Tr. p. 12, ll. 4 – 20). Then, Applicant testified that trial counsel could not hold a conversation with him "because of his attitude problem." (PCR Tr. p. 13, ll. 2 – 4).

At the end of direct examination, PCR counsel asked Applicant if there was anything else he wanted the Court to know, and he responded:

> Well, another thing Mr. Meetze he didn't never tell me about anything about my case at all. He didn't never let me know anything before trial that I suppose know. He didn't never have -- showed me anything or went over anything with me before the trial.

(PCR Tr. pp. 13, l. 19 – 14, l. 2).

On cross-examination, Applicant testified that he remembered being arrested for "this crime," but he did not remember making statements to the police because he was intoxicated. (PCR Tr. p. 14, ll. 7 – 13). Applicant testified that he found out about the statements in court when trial counsel "whisper[ed] something into his ear," but he did not recall the statement. (PCR Tr. pp. 14, l 11 – 15, l. 6). Applicant testified that trial counsel presented a twenty-five-year plea, a fifteen-year plea, and he rejected those because he wanted something better, but he did not know his charges. (PCR Tr. p. 15, ll. 9 – 20). Applicant then testified that he did receive discovery but could not remember when and that all he received from trial counsel was the grand jury indictment. (PCR Tr. pp. 15. l. 21 – 22, l. 6).

Applicant testified that he tried to give trial counsel names of family members and their numbers, but trial counsel "brushed away" when he tried to provide the information. (PCR Tr. pp. 16, l. 22 – 17, l. 4).

APPELLATE DEFENDER DURANT'S TESTIMONY

On direct examination, LaNelle DuRant (DuRant) testified as to what decisions go into what issues to raise and provided the following:

> Well, the process is most of you probably know, we get the transcript. We review the transcript for any objections a trial attorney has to make an objection under the appellate court rules. Then we look to see if the judge made an error of law in his ruling on admitting evidence or not admitting evidence. And then we have to look at the case law, the statute to see if we think the judge was correct in his ruling, so we review the transcript and any exhibits. So in doing that, I think there was an excellent issue because I think Mr. Jett was requesting an attorney under the case law and the statutes. And we had the tape that was admitted as an exhibit. And I think it was very clear on the tape where he was saying where's my attorney, where's my attorney at. So I felt like that was a really strong issue.

(PCR Tr. pp. 18, l. 15 – 19, l. 4). DuRant testified that she did not remember any issues that were not preserved and that once you have a strong issue, any secondary issue could weaken the strong issue. (PCR Tr. p. 19, ll. 9 – 18). DuRant was asked by PCR counsel whether there were strong issues present but that she could not raise because they were not preserved, to which she replied, "I honestly do not remember." (PCR Tr. p. 19, ll. 9 – 23).

DuRant then provided how she prepared for briefing and provided the following:

> Well, first we look at the law to make sure we had the issue preserved, that's the first issue because there are steps to preserving the issue and the trial counsel did make excellent preservation of this issue. And then we look to the law to see if we thought the judge was right. We read case law related to the Miranda issue, interrogation, the Davis case, Wannamaker. Those cases that I raised and any other cases that might have been secondary to that. You also want to shepardize to see if there were any new issues. We look at the U.S. Supreme Court issues, and, of course, the South Carolina Supreme Court. And in reviewing the case law and the issues and any statutes, you come up with the issue and make sure I worded it carefully and then the brief history and then the arguments.

(PCR Tr. p. 20, ll. 2 – 16). DuRant then testified that after the South Carolina Supreme Court denied her petition for cert. (PCR Tr. p. 21, ll. 1 – 3). DuRant was then asked if there was anything else she could have done after the South Carolina Supreme Court denied certiorari to which she provided the following:

> There is one. If there's a constitutional issue, we can file a separate petition to the United States Supreme Court and I think probably could have done that in Mr. Jett's case. I have done it in other cases not all of them, but some of that I felt very strongly about. I never -- the Supreme Court has never accepted one of my cases unfortunately, but I could have done that in Mr. Jett's case, but for some reason, I did not follow through with that.

(PCR Tr. p. 21, ll. 6 – 14). DuRant then testified that she thought Applicant clearly asked for an attorney twice, and that issue was winnable. (PCR Tr. pp. 21, l. 20 – 22, l. 2).

On cross-examination, DuRant testified to the standard of invoking the persons 5th Amendment right to counsel. (PCR Tr. p. 23, ll. 11 – 18). DuRant testified that Judge Brown found Applicant's request for counsel was ambiguous, and so did the Court of Appeals in a 2-1 vote. (PCR Tr. p. 23, ll. 11 – 24). DuRant testified that the Court of Appeals rehearing was denied. (PCR Tr. p. 24, ll. 10 – 14). DuRant further testified that the South Carolina Supreme Court denied a petition for rehearing because the Court of Appeals did not issue an opinion and just issued an order. (PCR Tr. p. 24, ll. 17 – 24).

ASSISTANT PUBLIC DEFENDER MEETZE'S TESTIMONY

On direct examination, Vick Meetze (Meetze) testified that he met with Applicant on a number of occasions to include at the jail and at court for his bond hearing. (PCR Tr. p. 27, ll. 10 – 18). Meetze testified that he received and reviewed discovery with Applicant. (PCR Tr. p. 27, ll. 19 – 24). Meetze then provided a brief recitation of the discovery as follows:

> This was a home invasion with, I think, three folks going into in a home. There were two people, I think, in the home a male and a female. A female ran into a bedroom I believe. And at that time was calling, I think, calling 9-1-1. You could hear some things, I think, on a recording from them I believe. There was other charges involved in the case that did not go to trial because that witness did not make herself available for trial, but there were also charges separately from the burglary and armed robbery and all that he went to trial on that could have gone to trial, but the State wasn't able to go forward on those because she wasn't there. But it was an armed home invasion at night with a few -- three people I believe that police got relatively quickly, were able to follow a trail of evidence different things away from the home, that led them to a -- not a housing development, but I think Mr. Jett characterized it as the projects, so I'll go with his characterizations and say some homes that would be considered in the projects in Florence. They found some

> clothes that was discarded there. I think on the way they found the gun. They might have found a toboggan on the way there on a sort of just cement porch, I guess, what you would call it outside of a house. They found discarded clothes like a hoodie and a sweatshirt like layers of clothes somebody would wear in the wintertime. And then not far from that location they found Mr. Jett underneath a car. He had on jeans and a T-shirt and, of course, it was like December 31st. It was like -- I want to say it was New Year's Eve without looking and cold outside and they found him there. And then arrested him at that point in time. And some of the clothes that were found there was -- an item that they found on the way along the path that they followed looking for Mr. Jett, there was items that had his DNA on it or at least an item.

(PCR Tr. pp. 28, l. 2 – 29, l. 11). Meetze testified that Applicant's version of the events of that night was that he was drunk and decided to sleep underneath a vehicle. (PCR Tr. p. 30, ll. 13 – 14).

Meetze then testified that during the Jackson v. Denno hearing, he argued that Applicant invoked his right to counsel and felt he had an argument about the second statement Applicant provided law enforcement. (PCR Tr. pp. 30, l. 22 – 31, l. 4; p. 32, ll. 13 – 20). Meetze then provided the following regarding discussions with Applicant about his defenses:

> I mean, we discussed his case fully and discussed the evidence against him and all of that. This was always a he didn't do it defense, okay. It wasn't we were – there weren't any legal defenses to discuss with him as far as, you know, self defense nothing like that in this kind of case. There weren't legal defenses to discuss with him. This was always defense of he didn't do this and we're going to present a case to the jury that the jury would find him not guilty based on the evidence not supporting the charges and all that. They haven't proven beyond a reasonable doubt that Mr. Jett was involved in this matter.

(PCR Tr. pp. 32, l. 23 – 33, l. 9). Meetze testified to the DNA evidence on a sweatshirt matching Applicant's. (PCR Tr. o. 33, ll. 10 – 23).

Meetze testified that Applicant did not provide any witnesses, although he may have had two witnesses on the witness list, but did not call them for strategic reasons. (PCR Tr. pp. 34, l. 8 – 35, l. 3). Meetze testified that he went over Applicant's rights to testify and the pros and cons of that decision. (PCR Tr. pp. 35, l.. 9 – 36, l. 1). Meetze testified that Applicant refused both plea offers the Solicitor made for twenty-five years and fifteen years. (PCR Tr. p. 36, ll. 4 – 13). Meetze testified that he easily met with Applicant three times or more because two of those meetings were to present the plea offers from the Solicitor, which Applicant rejected. (PCR Tr. p. 38, ll. 5 – 20).

On cross-examination, Meetze testified that there was a sweatshirt found at the scene that had a CODIS hit on a person that was presently in prison. (PCR Tr. pp. 39, l. 9 – 40, l. 20). Meetze testified to the process of preparing a case as follows:

> It's not a one size fits all thing. I mean, it's often times that that's how you go at a case. There's many times that you're trying a case your client says they didn't do it and so that's your focus at trial is convincing a jury either they didn't do it or whether the State couldn't prove it, but there's not a one necessarily cookie-cutter way to prepare those trials. It's all based on the facts of each individual case and, you know, you take what the facts give you and do your best to fashion an argument that supports your position.

(PCR Tr. p. 41, ll. 14 – 23). Meetze testified that Applicant was never identified by the victims and never provided names of other people who may have been involved. (PCR Tr. pp. 42, l. 2 – 43, l. 9). Meetze testified that because Applicant did not provide other names that it went to his defense that he was not involved in the crime. (PCR Tr. p. 43, ll. 10 – 12).

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 trial transcript, and the testimony and evidence presented at the evidentiary hearing establishes Applicant received effective assistance of counsel. 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 § 17-27-80 of the South Carolina Code.

Ineffective Assistance of Trial Counsel

Applicant alleges that he received ineffective assistance of his trial 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).

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 his claims of ineffective assistance of trial counsel. The specific claim is addressed below:

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL FOR FAILURE TO INVESTIGATE AND PREPARE

Applicant alleges Trial Counsel was ineffective for failing to properly investigate and prepare to defend Applicant at trial. This Court finds Applicant has failed to meet his burden.

Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant and make an independent investigation of the facts and circumstances of the case. Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011); Walker v. State, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). To support a claim that trial counsel was ineffective for failing to interview or call potential witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). The applicant's mere speculation about what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. Id.

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

prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

This Court finds Trial Counsel credibly testified that Applicant did not provide any witnesses that could support Applicant. Trial Counsel credibly testified that there were no defenses to prepare for because this was a case of Applicant did not do it. Trial Counsel credibly testified they presented to the jury that the evidence did not support the charges beyond a reasonable doubt. Furthermore, this Court finds Applicant has failed to present any additional information that could have been discerned through further investigation; additionally, Applicant's allegation that Trial Counsel failed to prepare is refuted by Trial Counsel's testimony. Applicant has failed to establish how Trial Counsel's performance was deficient or how Trial Counsel's performance prejudiced Applicant. Therefore, this allegation is **denied and dismissed with prejudice.**

Ineffective Assistance of Appellate Counsel

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL FOR FAILING TO SEEK DISCRETIONARY REVIEW

Applicant alleges Appellate Counsel was ineffective for failing to petition for writ of certiorari to the Supreme Court of the United States in his direct appeal. However, Applicant had no right to seek discretionary review, and therefore, no right to effective representation when seeking discretionary review. See Douglas v. State, 369 S.C. 213, 216, 631 S.E.2d 542, 543–44 (2006) ("We find that the decision whether to pursue certiorari is a matter left solely to the appellant's attorney's professional discretion.") Cf. Jones v. Barnes, 463 U.S. 745 (1983) (Appellate counsel must be allowed to exercise reasonable professional judgment in determining which non-frivolous issues to raise on direct appeal).

This Court finds Appellate Counsel credibly testified that she perfected Applicant's direct appeal. Appellate Counsel credibly testified that the South Carolina Court of Appeals affirmed

Applicant's convictions and sentences and denied her petition for rehearing. Appellate Counsel credibly testified that the South Carolina Supreme Court denied her petition for a writ of certiorari. Appellate Counsel credibly testified that she *could* have petitioned the United States Supreme Court but did not and does not always do it in every case that it is possible.

Furthermore, this Court finds Applicant has additionally failed in his burden to prove ineffective assistance of Appellate Counsel. Applicant had no right to seek discretionary review, and therefore, no right to effective representation when seeking discretionary review. Applicant has failed to prove deficiency on the part of Appellate Counsel and any prejudice therefrom. Therefore, for the reasons stated above, the Court **denies relief and dismisses the allegations with prejudice.**

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 and Appellate Counsel's representation was neither deficient nor prejudicial. Therefore, this application for post-conviction relief **must be denied and dismissed with prejudice.**

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 10 day of May, 2022.

WILLIAM H. SEALS, JR.
Presiding Judge
Twelfth Judicial Circuit

FORM 4

FILED

2022 MAY 18 PM 2:49

DORIS POULOS O'HARA
CCCP & CS
FLORENCE COUNTY SC

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2018CP2103142

Antwan Jamal Jett	**South Carolina State Of**
PLAINTIFF(S)	**DEFENDANT(S)**
Submitted by:	**Attorney for:** ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment In Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	**Judge Code**	5/18/2022 **Date**

For Clerk of Court Office Use Only

This judgment was entered on **May 18, 2022**, and a copy mailed first class or placed in the appropriate attorney's box on **May 19, 2022**, to attorneys of record or to parties (when appearing pro se) as follows:

Jonathan D Waller 210 Newberry Street, NW Aiken, SC 29801

D Russell Barlow II PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Doris P O'Hara

Court Reporter

Doris Poulos O'Hara - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.