STATE OF SOUTH CAROLINA COUNTY OF PICKENS	IN THE COURT OF COMMON PLEAS FOR THE THIRTEENHTH JUDICIAL CIRCUIT
Matthew Benninger, #378932, Applicant, v. State of South Carolina, Respondent.	Case No. 2019-CP-39-920 ORDER OF DISMISSAL

This matter comes before this Court by way of an application for post-conviction relief filed by Matthew Benninger ("Applicant") on July 15, 2019. The State's ("Respondent") return to the application, which was served on June 22, 2020, included a motion for a more definite statement. An evidentiary hearing in this matter was held before the undersigned via the WebEx virtual platform on January 28, 2022. Everyone who participated did so remotely via WebEx. Applicant was present and was represented by Don A. Thompson. Taylor Zane Smith of the South Carolina Attorney General's Office represented Respondent. Following a thorough review of the record in its entirety and the testimony presented at the evidentiary hearing, this Court finds that Applicant has failed to prove that he is entitled to post-conviction relief, and denies the application with prejudice.

PROCEDURAL HISTORY

Applicant is presently imprisoned in the South Carolina Department of Corrections. On January 24, 2019, Applicant appeared before the Honorable Letitia H. Verdin ("the plea court") and pleaded guilty as indicted for first-degree criminal domestic violence (2018-GS-39-1746), and waived presentment of an indictment for second-degree assault and battery by mob (201 8-GS-39-3379) and pleaded guilty to that offense, too. Robert Asher Watson ("plea counsel") represented

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Applicant at that guilty plea hearing, and Shannon Swords Odom ("the solicitor") of the Thirteenth Circuit Solicitor's prosecuted him. At the plea hearing, the solicitor presented the following recitation of facts:

> On [Applicant's] domestic violence charge, this happened on June 6, 2018, in Pickens County. [Applicant] did strike the victim in her face. This was witnessed by a third party.
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> [Applicant] and the victim were having trouble with their moped. They had pulled over into a parking lot and a bystander witnessed the incident. The bystander pulled over and – to check on the situation. [Applicant] left the scene.
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> Law enforcement did respond. They got a written statement from the victim, where she stated [Applicant] had hit her, as well as body cam footage has her stating that he did hit her.
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> . . .
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> Now, on the facts of the other charge, on the assault and battery by a mob, this occurred on August 3, 2018. While incarcerated at the Pickens County jail, a co-defendant struck the victim, Michael Lecroy, in the back of the head, causing him to fall to the ground. And then [Applicant], along with several co-defendants, hit and kicked the victim. The victim did have a broken nose and had to be taken to the hospital for treatment.

Plea Tran. 6-7. The solicitor did not make a sentencing recommendation as to the criminal domestic violence offense, recommended that Applicant be imprisoned for six years for the assault and battery by mob offense, and recommended that the sentences for both offenses be run concurrently. The plea court sentenced Applicant to imprisonment for six years for each offense, with the sentences running concurrently, and with credit for time served.

Applicant did not appeal his convictions or sentences.

CURRENT PROCEEDING

In his application for post-conviction relief, filed on July 15, 2019, Applicant raised multiple claims, which this Court interprets as follows: (1) plea counsel was constitutionally ineffective for conducting an inadequate investigation by not obtaining a recording of a 911 call, an EMS report, the recording from a law enforcement officer's body worn camera, recordings of jail phone calls, and the victim's statements in Applicant's favor; (2) plea counsel was constitutionally ineffective for not obtaining a bond for Applicant on the charges; (3) plea counsel was constitutionally ineffective for not "conduct[ing] Rule 2 and Evidentiary Hearings"; (4) plea counsel was constitutionally ineffective for not requesting a preliminary hearing; (5) plea counsel was constitutionally ineffective for not moving to quash the indictment; (6) plea counsel was constitutionally ineffective for not "provid[ing] Exonerating police Recordings"; (7) Applicant did not knowingly and voluntarily plead guilty, but was coerced into doing so by plea counsel; and (8) plea counsel and the solicitor violated Applicant's constitutional rights.

At the start of the January 28, 2022, hearing before this Court, Applicant, through counsel, clarified that he would be moving forward on three claims only: (1) that plea counsel was constitutionally ineffective for not communicating all plea offers to Applicant; (2) that Applicant did not knowingly and voluntarily plead guilty because he had not been taking his psychiatric medication at the time of the guilty plea hearing; and (3) that Applicant's guilty pleas were not knowing and voluntary because plea counsel told Applicant that the solicitor would charge the victim, who was Applicant's romantic partner, with submitting a false police report unless Applicant pleaded guilty. This Court finds that Applicant has abandoned and waived all claims but these three, and will address only these three in this order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety. Before this Court are: the records of the Pickens County Clerk of Court for Applicant's convictions and sentences; Applicant's records from the Department of Corrections; the transcript from Applicant's guilty plea hearing; and all filings in this matter. Set forth below are the relevant findings of facts and conclusions of law with regards to the claims that Applicant advanced at the evidentiary hearing, as required by S.C. Code Ann. §17-27-80 (1985).

Applicant's claim that plea counsel was constitutionally ineffective for not communicating all plea offers to Applicant.

Applicant testified before this Court. When asked on direct examination if the solicitor extended a plea offer to him, Applicant answered that plea counsel was refusing to speak with Applicant by the time of the guilty plea hearing and that plea counsel told him that he was going to prison, among other things. He testified that the only plea offer that he received was the one that he accepted.

Plea counsel testified before this Court that he met with Applicant on four to six occasions during the course of his representation, though he could not remember the exact number. He testified that, outside of those meetings, he communicated with Applicant by mail and phone. He testified that there were no times at which he had refused to speak with Applicant. He testified that Applicant had been charged originally with the domestic violence offense only, that the solicitor had extended a plea offer related to that charge, that the solicitor had rescinded that original offer when Applicant was subsequently charged with the assault and battery offense, that the solicitor had then extended another offer for six years for the assault and battery offense, and that Applicant had rejected that second plea offer. He testified that he communicated all plea offers to Applicant. He testified that Applicant made counter-offers, which plea counsel communicated to the solicitor,

and that the solicitor did not accept those counter-offers. He testified that he communicated all of Applicant's counter-offers to the solicitor.

The solicitor testified before this Court that she became involved in the prosecution of Applicant for domestic violence immediately after he was charged because she had prosecuted Applicant for multiple domestic violence charges only a couple of weeks beforehand. She testified that she initially extended a five-year plea offer to Applicant for first-degree criminal domestic violence. She testified that Applicant had picked up the assault and battery charge within a week of her extension of the first offer, so she rescinded her first offer, and the plea negotiations began again. She testified that she does not remember all of the details of her negotiations with plea counsel after that point, and that her file does not contain all of those details, but testified that she knows that she and plea counsel had multiple instances of back-and-forth negotiations and that Applicant was brought to the courthouse on two occasions. She testified that her impression was that Applicant would not plead guilty, and that she had felt that the only way to move Applicant's case was to put it on the trial docket. She testified that she does not remember hearing from plea counsel specifically about a two-year counter-offer from Applicant, but she testified that she knows that she would have rejected such an offer, if it had been made.

All defendants have a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. *Strickland v. Washington*, 466 U.S. 668 (1984); *Lomax v. State*, 379 S.C. 93, 665 S.E.2d 164 (2008). A post-conviction relief applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that his lawyer was constitutionally ineffective, he must prove that the conduct of his lawyer "so undermined the proper functioning of the adversarial process that [that conduct] cannot be relied upon as having produced a just result." *Strickland*, 466 U.S. at 686. In evaluating allegations of

ineffective assistance of counsel, the post-conviction relief court applies the two-pronged test outlined in *Strickland*. First, the applicant must prove that the performance of his lawyer was deficient. *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (quoting *Strickland*). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). In order for a post-conviction relief applicant to successfully prove that his defense attorney's performance was deficient, the applicant must prove "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed by the Sixth Amendment." *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quotation omitted). "The proper measure of counsel's performance remains whether he has provided representation within the range of competence required of attorneys in criminal cases." *Id.* (citations omitted). The "preeminent authority for all" courts when they are considering an applicant's claim of constitutional ineffectiveness requires that the courts be highly deferential to a defense lawyer's performance because:

> [I]t 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 . . . . A fair assessment of attorney performance requires that 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. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.

Id. at 444-45, 334 S.E.2d at 815-16 (quoting *Strickland*). An applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. "The burden of rebutting this presumption rests squarely on the defendant, and it should go without saying that the absence of evidence cannot overcome it. In fact, even if there is reason to think that counsel's conduct was far from exemplary, a court still may not grant relief if the record does not reveal that counsel took

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an approach that no competent lawyer would have chosen." *Dunn v. Reeves*, 141 S. Ct. 2405, 2410 (2021) (quotation omitted).

Second, the deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for [the lawyer'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. "Representation is an art, and an act or omission that is unprofessional in one case may be sound of even brilliant in another. Even if a defendant shows that particular errors of counsel were unreasonable, therefore, the defendant must show that they actually had an adverse effect on the defense." *Hill v. Lockhart*, 474 U.S. 52, 58 (1985) (quotation omitted). With respect to a guilty plea counsel, an applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. *Hill*, 474 U.S. at 59. A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing: (1) that counsel was deficient and (2) that there is a reasonable probability that but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial. *Roscoe v. State*, 345 S.C. 16, 546 S.E.2d 417 (2001). The "prejudice prong ordinarily requires more than simply a defendant's assertion that but for counsel's deficient performance he would not have pled but would have gone to trial." *Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether a lawyer's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Strickland*, 466

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U.S. at 697. Moreover, *Strickland* does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, *Strickland* requires the post-conviction relief applicant to prove that "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* at 697. Therefore, the function of the post-conviction relief court is to determine if "in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance" required of a criminal defense attorney. *Id.* at 690.

"A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977)). "Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea." *Garren v. State*, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); *see Jamison v. State*, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014) (observing that "guilty plea[s] must be treated as final in the vast majority of cases" and instructing that caution must be exercised so as not to "undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea"). The South Carolina Supreme Court has instructed that:

> The longstanding test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him.

State v. Inman, 395 S.C. 539, 556, 720 S.E.2d 31, 40 (2011) (internal quotations and citations omitted). "[A] guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." *Jamison*, at 468, 765 S.E.2d at 129 (citations omitted).

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This Court finds that Applicant has failed to prove that there was any deficiency in plea counsel's performance with respect to his communication of plea offers to Applicant. "[A] defendant has the right to effective assistance of counsel during the plea bargaining process." *Bell v. State*, 410 S.C. 436, 440-41, 765 S.E.2d 4, 6 (Ct. App. 2014) (quoting *Davie v. State*, 381 S.C. 601, 675 S.E.2d 416 (2009), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). A defense attorney "has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused." *Id.* (quoting *Missouri v. Frye*, 566 U.S. 134 (2012)). Applicant's own testimony before this Court that the only plea offer was the one that he accepted serves to defeat this claim. Plea counsel credibly testified that he communicated all of the solicitor's plea offers to Applicant and that he communicated to the solicitor all of Applicant's counter-offers. The solicitor's credible testimony corroborated plea counsel's testimony about the plea offers that were actually extended.

This Court finds that Applicant has failed to prove that plea counsel was constitutionally ineffective for not communicating all plea offers to Applicant because he has failed to prove that there was any deficiency in plea counsel's performance with respect to plea negotiations. Since Applicant's claim fails on the deficiency prong of *Strickland*, no prejudice analysis is required. This claim is denied and dismissed with prejudice.

Applicant's claim that he did not knowingly and voluntarily plead guilty because he had not been taking his psychiatric medication at the time of the guilty plea hearing.

Applicant testified before this Court that he was supposed to have been taking an assortment of medications before his guilty plea hearing, but that those medications had not been administered to him while he was in the detention center. He testified that he had been in the detention center for eight months before his guilty plea hearing, and that he had been off of his medications for that entire time. He testified that he had told plea counsel about his being on the

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medications. He testified that he had not understood what was happening at his guilty plea hearing. He testified that he never had conversations with plea counsel after their first meeting because, despite the fact that Applicant told plea counsel about his being on medications, plea counsel had told him that he was going to prison and threatened to withdraw from the representation. He testified that he did not remember affirming his satisfaction with plea counsel to the plea court, and testified that he had no idea what he was pleading guilty to. He testified that he remembers that the victim told the plea court that he was innocent, but denied that he remembered anything else about the plea hearing.

Plea counsel testified before this Court that he never refused to speak with Applicant. He testified that he did not tell Applicant during their first meeting that Applicant was going to prison. He testified that he was able to observe Applicant's behavior during their interactions, and had no concerns that Applicant lacked mental competency. He testified that he was concerned about some of Applicant's mental issues, but was never concerned that Applicant did not understand plea counsel's role, the court's role, and similar things. He testified that, in his meetings with Applicant, they discussed the solicitor's plea offer, Applicant's likelihood of success at a trial, counter-offers, discovery, and the anticipated details of the plea court's colloquy with Applicant. He testified that Applicant appeared to understand the substance of those discussions. He testified that Applicant was able to engage with him in those discussions and that Applicant's responses or questions were clear and on subject. He testified that he would have moved for a mental competency evaluation if he had seen anything that had made him questions Applicant's competency. He testified that he thinks that Applicant told him about being on psychiatric medications, but he could not remember what those medications were. He testified that he could not remember Applicant's telling him that his medications had not been administered to him at the detention center. He testified that, had he

known that Applicant's medications were not being administered at the detention center, he would have called someone at the center, but that he never had any reason to believe that Applicant did not understand what was happening.

He testified that Applicant's behavior was not remarkably different from his behavior on any other day; in fact, he felt that Applicant had been more composed on that day than on others. He testified that he had not noticed anything about Applicant's behavior at the guilty plea hearing that raised a competency question, and that he would have stopped the hearing if he had seen something like that.

The solicitor testified before this Court that she did not notice any behavior on Applicant's part at the guilty plea hearing that made her question his mental competency. She testified that she had spoken with Applicant on multiple occasions before he was charged with the underlying crimes because he had had prior charges, and that she had been familiar with Applicant. She testified that his behavior at the guilty plea hearing had been consistent with his previous behavior. She testified that, had she known that Applicant's medications were not being administered to him at the detention center, she would have contacted someone at the center about it.

This Court finds that Applicant has failed to prove that there was any deficiency in plea counsel's performance with respect to his conclusion that there was no reason to question Applicant's mental competency. In order for a defendant to be competent to stand trial, he must have "sufficient present ability to consult with his lawyer with a reasonable degree of relational understanding" and must have a "rational as well as factual understanding of the proceedings against him." *Ramirez v. State*, 413 S.C. 351, 366, 776 S.E.2d 101, 110 (Ct. App. 2015) (citing *Jeter v. State*, 308 S.C. 230, 417 S.E.2d 594 (1992)), *rev'd on other grounds*, *Ramirez v. State*, 419 S.C. 14, 22, 795 S.E.2d 841, 845 (2017); *Dusky v. United States*, 362 U.S. 402 (1960) (per curiam)

(internal quotations omitted). A defense attorney may reasonably rely upon his own perceptions in determining whether a mental competency evaluation is required. *Jeter*, at 233, 417 S.E.2d at 596. Plea counsel credibly testified that he thinks that Applicant told him during the course of the representation that Applicant had been prescribed psychiatric medications, but that he never had any reason to doubt Applicant's competency. He credibly testified about the details of his interactions with Applicant, and Applicant's behavior. Plea counsel's judgment that Applicant was mentally competent was reasonable and justified under the circumstances, which have been established by plea counsel's credible testimony. Plea counsel credibly testified that Applicant's behavior at the guilty plea hearing was not unusual, and the solicitor's testimony corroborated his testimony on this point, as she had developed a familiarity with Applicant's behavior due to prior interactions with him. There is no indication from the transcript from the guilty plea hearing that Applicant was behaving abnormally or in a way that would have caused someone, or should have caused plea counsel, to question Applicant's competency. Applicant's testimony that he did not understand what was happening at his guilty plea hearing is not credible.

This Court finds that Applicant has failed to prove that there was any resulting prejudice from the alleged deficiency in plea counsel's performance. If an applicant for post-conviction relief establishes that his counsel's performance was deficient due to counsel's failure to request a mental competency evaluation when one was warranted, the applicant must then demonstrate that there is a reasonable probability he was incompetent at the time of trial in order to be entitled to relief. *See Ramirez*, at 22, 795 S.E.2d at 845 (applying this prejudice standard in a case in which applicant pleaded guilty but mentally ill after one mental evaluator concluded he was competent to stand trial but another concluded applicant was severally mentally retarded) (citation omitted). Applicant has not proven that there is a reasonable likelihood that he was incompetent at the time of his guilty

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plea hearing. It may be true that Applicant had been prescribed some psychiatric medication previous to plea counsel's representation of him, as Applicant so testified, and plea counsel agreed that Applicant may have told him about taking medications, but Applicant has not proven that he was supposed to have been taking those medications at the time of his guilty plea hearing. Applicant produced no evidence to corroborate his testimony that employees at the detention center were withholding any medications from him or that, if they were doing so, that they were doing so wrongfully or against the orders of a medical provider. Further, Applicant has not proven that he lacked "sufficient . . . ability to consult with [plea counsel] with a reasonable degree of relational understanding" or lacked a "rational as well as factual understanding of the proceedings against him." *Ramirez*, at 366, 776 S.E.2d at 110. Applicant affirmed at the guilty plea hearing that he had discussed the charges with plea counsel, that he was happy with plea counsel's representation of him, that he was not under the influence of drugs or alcohol, that he had not been forced to plead guilty, that the entry of his pleas had not been elicited by promises from anyone, and that he understood his trial rights. Plea Tran. 4-6. As already noted, Applicant's testimony that he did not understand what was happening at his guilty plea hearing is not credible.

This Court finds that Applicant has failed to prove that his guilty pleas were not entered knowingly, voluntarily, and intelligently because he has failed to prove that there was any deficiency in trial counsel's performance with respect to his perception that Applicant was mentally competent and he has failed to prove that he was not mentally competent at the time of his guilty plea hearing. This claim is denied and dismissed with prejudice.

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Applicant's claim that he did not knowingly and voluntarily plead guilty because plea counsel told him that the solicitor would charge the victim with submitting a false police report unless Applicant pleaded guilty.

Applicant testified before this Court that the victim was his wife. He testified that she attended his guilty plea hearing, and that she told the plea court that she had lied when she gave her statement to the law enforcement officer. He testified that plea counsel did nothing to make use of the victim's recanting. He testified that the victim had called him while he had been in the detention center in order to ask him to engage in "phone sex" with her, and that he did so to appease her. He testified that he alerted plea counsel to that fact, but plea counsel told him that he did not have time to listen to the recordings of Applicant's jail phone calls. He testified that his wife has never alleged that he put his hands on her.

Plea counsel testified before this Court that Applicant's violence against the victim had been seen by an independent witness, who reported it to the police. He testified that the victim's interaction with the officer responding to the 911 call had been recorded. He agreed that the victim had said in that video that she wanted Applicant to go to jail. He testified that he played that video for Applicant on at least one occasion. He testified that Applicant became distraught when watching the video, refused to finish watching it, and said that he wanted to plead guilty. He testified that he did not talk with the victim at length, although he agreed that he was aware at the time that she wanted to recant, and that she was angry and upset. He testified that he remembers discussing with Applicant and the solicitor the recordings of Applicant's jail phone calls with the victim, but he did not remember ever receiving those recordings from the solicitor. He testified that he had previously represented a client at a trial during which the victim had recanted on the witness stand, that that client had been found guilty regardless, and that he told Applicant about that fact and the pitfalls of going to trial anticipating an acquittal based on the victim's recanting.

He testified that Applicant had thought that the solicitor would be required to dismiss the charge if the victim recanted, and that he had explained to Applicant that that was not true. He testified that the solicitor did not tell him that she would prosecute the victim for filing a false police report if Applicant did not plead guilty, but he believed that the solicitor takes false reports seriously. He testified that he told Applicant that he was not trying to put pressure on Applicant to plead guilty, but he told him about all of that to let Applicant know what could happen if the victim recanted because he knew that Applicant cared for the victim. He said that he did not tell Applicant that it was likely that the solicitor would prosecute the victim, only that it was possible that she would do so. He agreed that the solicitor could have impeached the victim's credibility at trial with her previous statement even if the victim had recanted on the stand. He testified that it had not been a surprise that the victim told the plea court during that plea hearing that her police report had been a lie, and that he had gone over that potential scenario with Applicant in advance.

The solicitor testified before this Court that she did not tell plea counsel that she would prosecute the victim for filing a false police report if Applicant did not plead guilty. She testified that she does not prosecute victims who recant in domestic violence cases. She testified that it is very common for domestic violence victims to recant, and estimated that that happens in 90% of the domestic violence cases. She testified that she did not remember plea counsel requesting recordings of Applicant's jail phone calls, and that she did not provide any to plea counsel. She testified that she would have tried Applicant even if the victim had recanted on the stand, and said that she would have impeached the victim with the victim's written statement, the victim's oral statement as captured on the officer's body camera footage, and the victim's multiple statements made at the Solicitor's Office. She testified that she had done the same in past cases. She testified that the officer's body camera recording showed that the victim told the officer that Applicant had

struck her in the face, that the victim told the officer that Applicant cut her arm and showed him the cut, that the victim cried at the scene, and showed that there was an independent witness who gave a statement to the officer. She testified that she would have called the independent witness to the stand at trial, too.

This Court finds that Applicant has failed to prove that he did not knowingly, voluntarily, and intelligent plead guilty. The Due Process Clause requires that a defendant enter a guilty plea voluntarily, knowingly, and intelligently. *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citing *Boykin v. Alabama*, 395 U.S. 238 (1969). The defendant must be aware of the right to confront his accusers, the privilege against his self-incrimination, the right to be tried by a jury, the nature and crucial elements of the offense for which he is being accused, the maximum and minimum possible penalties, and the nature of any constitutional rights being waived by the entry of a guilty plea. *Id.* (citations omitted). It is not required that a court direct a defendant's attention to "each and every constitutional right and obtain a separate waiver for each . . . . [A]n enumeration of specific rights waived is not required where the record otherwise reveals affirmative awareness of the consequences of a guilty plea." *State v. Lambert*, 266 S.C. 574, 578-79, 225 S.E.2d 340, 342 (1976) (internal citation omitted). It appears that Applicant, plea counsel, and the solicitor all knew or either had reason to suspect that the victim might have recanted her multiple statements if Applicant had gone to trial; however, it appears that Applicant pleaded guilty anyway. Applicant's allegation that the solicitor threatened to prosecute the victim for filing a false police report, and that plea counsel told him such, is not credible. Applicant's testimony that the victim had never said that he had abused her is not credible in light of the testimony of plea counsel and the solicitor. Applicant has not proven that the possibility that the victim would have recanted on the witness stand in any way rendered his guilty pleas unknowing, involuntary, or unintelligent. As already

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mentioned, Applicant's affirmations to the plea court are further evidence of the knowing and voluntary nature of the entry of his pleas. Instead of going to trial in order to see whether the victim would recant on the witness stand and to see what effect that may have had on the jury's verdict, Applicant decided to plead guilty, and he did so knowingly and voluntarily.

Applicant has failed to prove that there was any deficiency in plea counsel's performance with respect to the possibility that the victim could recant at trial. Plea counsel credibly testified that he knew that the victim was considering recanting, that he discussed that possibility with Applicant, and that he advised Applicant that such would not cause the solicitor to dismiss the charges and likely would not result in an acquittal at trial. That advice was reasonable under the circumstances. Applicant has not proven that trial counsel had any obligation to listen to alleged recordings of Applicant and the victim engaging in acts of sexual self-pleasure while on the phone, and has failed to prove that plea counsel would have gained any helpful information by listening to them that he had not already gained merely by knowing of their alleged existence and of Applicant's explanations of them.

This Court finds that Applicant has failed to prove that he did not knowingly, intelligently, and voluntarily plead guilty because the record is clear that Applicant knew of the possibility—before he pleaded guilty and waived his trial rights—that the victim might recant at trial, and because Applicant has failed to prove that trial counsel's advice about the low likelihood of success for Applicant should he have gone to trial was unreasonable under the circumstances. This claim is denied and dismissed with prejudice.

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CONCLUSION

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

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 5 day of July, 2022.

R. Scott Sprouse
Presiding Judge

Union, South Carolina