

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM SUMTER COUNTY

Court of Common Pleas

Honorable Clifton Newman, Circuit Judge

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Case No.: 2021-CP-43-0929

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Travis McFadden 357880.....PETITIONER

V.

State of South Carolina.....RESPONDENT

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NOTICE OF APPEAL

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The Petitioner Travis McFadden appeals the Honorable Clifton Newman's August 1, 2022 Order of Dismissal. Undersigned counsel received notice of entry of the order on August 15, 2022. A copy of the order on appeal is attached hereto.



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James K Falk  
Falk Law Firm  
PO Box 1058  
Charleston, SC 29402

August 24, 2022

Zachary William Jones Esq.  
Office of S.C. Attorney General  
PO Box 11549  
Columbia, SC 29211-1549

Sumter County Circuit Court Clerk  
215 N. Harvin St  
Sumter, SC 29150

**RECEIVED**

**AUG 26 2022**

**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA )  
COUNTY OF SUMTER )  
Travis J. McFadden, SCDC #357880, )  
Applicant, )  
v. )  
State of South Carolina, )  
Respondent. )

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IN THE COURT OF COMMON PLEAS  
FOR THE THIRD JUDICIAL CIRCUIT

Case No.: 2021-CP-43-0929

**ORDER OF DISMISSAL**

This matter comes before this Court by way of Applicant Travis D. McFadden's application for post-conviction relief challenging his guilty plea and sentence for voluntary manslaughter, strong-arm robbery, and criminal conspiracy based on allegations of ineffective assistance of counsel, prosecutorial misconduct, and involuntary guilty plea. James K. Falk, Esquire, was thereafter appointed to represent Applicant.

In response, Respondent the State of South Carolina filed a return and partial motion for summary dismissal, requesting an evidentiary hearing to resolve the claims of ineffective assistance of counsel and involuntary guilty plea as set forth in the application and moving for summary dismissal of prosecutorial misconduct claim.

An evidentiary hearing on this action was convened June 28, 2022, before this Court at the Sumter County Courthouse. Applicant appeared alongside counsel Falk. Respondent was represented by Senior Assistant Deputy Attorney General Megan Harrigan Jameson of the South Carolina Attorney General's Office. Applicant proceeded forward on the claims raised in application. This Court heard testimony from Applicant, his former plea counsel, and the prosecutor.

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

### **FACTUAL AND PROCEDURAL HISTORY**

The records before this Court establish Applicant is presently confined within the South Carolina Department of Corrections. On December 26, 2011, Applicant and six co-defendants entered a convenience store in Sumter County where they shot several people, including one victim who died from his injuries and one victim who was left paralyzed from his injuries. Thereafter, the Sumter County Grand Jury indicted Applicant in a multi-count indictment for one count of murder, two counts of attempted murder, one count of armed robbery, one count of carjacking, one count of criminal conspiracy, and three counts of possession of a weapon during the commission of a violent crime in a multi-count, multi-defendant indictment (2012-GS-43-0781). Sharon B. Clark, Esquire, was appointed to represent Applicant. Assistant Solicitor Edgar Donald of the Third Circuit Solicitor's Office prosecuted the case.

Following plea negotiations with the State, Applicant accepted a plea offer requiring him to enter guilty pleas to the lesser-included offenses of voluntary manslaughter and strong-arm robbery, and criminal conspiracy as indicted in exchange for the dismissal of all remaining counts and a recommendation from the State for a sentence of twenty years of imprisonment.

On November 18, 2013, Applicant appeared before the Honorable W. Jeffrey Young, circuit court judge, and pled guilty to voluntary manslaughter, strong-arm robbery, and criminal

conspiracy pursuant to the plea agreement. Following a thorough plea colloquy with Applicant, Judge Young found Applicant's pleas were knowingly, intelligently, and voluntarily entered and accepted Applicant's pleas. Judge Young then sentenced Applicant to thirty years' imprisonment for voluntary manslaughter, fifteen years' imprisonment for strong-arm robbery to be served consecutively to the sentence for voluntary manslaughter, and five years' imprisonment for criminal conspiracy to be served concurrently to the other sentences, for an aggregate forty-five-year term of imprisonment.

On November 21, 2013, Applicant filed a motion to reconsider his sentence. While this motion was pending, Applicant prematurely filed a direct appeal, which the South Carolina Court of Appeals dismissed without prejudice. On December 16, 2016, Judge Young convened a hearing on the motion to reconsider the sentence. On February 8, 2017, Judge Young issued a written order denying the motion and reaffirming his sentence.

Thereafter, Applicant initiated a timely direct appeal and was represented by Appellate Defender Robert M. Pachak of the South Carolina Commission on Indigent Defense-Office of Appellate Defense who originally filed a brief of appellant pursuant to Anders v. California, 386 U.S.738 (1967), along with a petition to be relieved as counsel. After a review pursuant to Anders, the Court of Appeals denied appellate counsel's petition to be relieved and ordered full briefing on the issue of whether a guilty plea can still be voluntary if the State does not disclose a sentencing recommendation to the plea court. Following briefing, the Court of Appeals affirmed his plea and sentences. State v Travis Jacquese McFadden, Unpub. Op. No. 2020-UP-192 (Ct. Ap filed June 24, 2020). The remittitur was returned to the circuit court on July 20, 2020.

## ALLEGATIONS BEFORE THE COURT

In his *pro se* application for post-conviction relief, filed on June 1, 2021, Applicant alleges he is being held in custody unlawfully based on the following grounds:

1. Ineffective Assistance of Counsel
  - a. "Counsel failed to withdraw from plea"
2. Prosecutorial Misconduct
  - a. "Solicitor stated that I didn't committed (sic) voluntary manslaughter"
3. Involuntary Guilty Plea
  - a. "I had a recommendation plea for 20 years which I accept but I got 45 years instead."

As requested relief, Applicant states he is seeking "for voluntary manslaughter to be drop and a better sentence."

In response to the application, Respondent served a return and partial motion to dismiss, asking for a hearing to resolve Applicant's claims of ineffective assistance of counsel and involuntary guilty plea, and moving for summary dismissal of Applicant's claim of prosecutorial misconduct. Attached to this return and before this Court are the records from Applicant's general sessions proceedings, his appellate records (including the record on appeal with a complete copy of the transcripts from his general sessions proceedings), his SCDC records, and the records from this current PCR proceeding.

James K. Falk, Esquire, was appointed to represent Applicant in this proceeding pursuant to Re: Appointment of Counsel in Post-Conviction Relief Cases before the Circuit Court (S.C. Sup. Ct. Order filed Oct. 6, 2008) and Rule 71.1(d), SCRCP (providing for appointment of counsel only where there is a question of law or fact which necessitates a hearing). Counsel did not amend the application.

At the evidentiary hearing Applicant proceeded forward on the grounds as set forth in his

*pro se* application.

### **SUMMARY OF THE EVIDENTIARY HEARING**

An evidentiary hearing was convened before this Court at the Sumter County Courthouse on June 28, 2022. Applicant was present alongside counsel Falk. Respondent was represented by Senior Assistant Deputy Attorney General Megan Harrigan Jameson. Testimony was taken from Applicant, plea counsel Sharon B. Clark, and the prosecutor Edgar Donald.

At the start of the hearing, Respondent renewed its motion to dismiss the prosecutorial misconduct allegation. In support of this motion, Respondent argued that Applicant entered a plea to voluntary manslaughter as a lesser-included offense of murder. During the plea hearing, when reciting the factual basis to support the plea, the assistant solicitor conceded Applicant was not the shooter of the deceased victim, but the solicitor explained the State would have pursued a conviction based on the “hand of one, hand of all” theory of liability at trial. (R. p. 9-10). Applicant also pleaded guilty to criminal conspiracy, and the shooter of the deceased victim was one of Applicant’s co-conspirators. (R. p. 10). Moreover, Applicant informed the plea judge he agreed with the facts as recited by the solicitor and wanted to plead guilty to the charge of voluntary manslaughter. (R. p. 10). Applicant received a significant benefit in doing so, as it reduced the potential range of punishment and removed life without parole (LWOP) as a sentencing option. (R. p. 33). At the hearing on the motion to reconsider, Judge Young made clear he would have sentenced Applicant to LWOP had the State not agreed to reduce the charge. (R. p. 39-40). Respondent then cited State v. Langley, 334 S.C. 643, 515 S.E.2d 98 (1999), wherein the South Carolina Supreme Court stated that under “the hand of one, hand of all” theory, “one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his

confederate incidental to the execution of the common design and purpose.” Respondent argued that based on the foregoing, the assistant solicitor’s summary of the basis of the plea was legally correct, and he did not assert Applicant did not commit the crime to which he was pleading guilty.

Respondent noted that S.C. Code Ann. § 17-27-70(c) authorizes the court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law” and, therefore, because the record conclusively refutes this allegation of prosecutorial misconduct, and this allegation to should be denied and dismissed with prejudice. The Court denied the motion to summarily dismiss the claim of prosecutorial misconduct and allowed Applicant to proceed with this issue.<sup>1</sup>

Applicant testified first on his own behalf. He stated that counsel Clark was appointed to represent him in 2012. He testified that counsel advised him the State made a plea offer for a recommended sentence of twenty years of imprisonment, but he was not completely comfortable with this plea offer. He said he ultimately did accept the plea offer but was hesitant because he did not personally commit the murder. He testified that counsel did explain accomplice liability or the “hand-of-one, hand-of-all” theory to him but that he is now under the impression it is a legal theory rather than settled law. He elaborated that counsel failed to sufficiently explain accomplice liability to him so that he fully understood it. He stated he was aware of his plea proceeding in advance and understood the plea offer to be for a recommended sentence of twenty years of imprisonment. He

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<sup>1</sup> At the start of the hearing, Applicant attempted to raise a new issue regarding the propriety of his arrest warrant for the first time. Respondent objected citing a complete lack of notice. After questioning by this Court, this Court finds this new allegation patently lacks merit and declined to allow Applicant to proceed forward on this issue.

testified that counsel never explained he could receive a sentence of greater than twenty years and did not prepare him for the possibility of a greater sentence, and he thought the plea offer was a "done deal" for twenty years of imprisonment. He testified he would not have pled guilty if he knew he could receive a sentence in excess of twenty years. He testified that he wanted to proceed to trial and present a defense that he was unarmed and did not fire a weapon. He testified that counsel did not really discuss a trial with him, but rather, she mainly discussed his charges and potential sentences. He testified his prosecutorial misconduct claims are because the prosecutor acknowledged during his plea proceeding that he was not the shooter, and therefore, he should not have been charged with murder.

On cross-examination, Applicant testified that he reviewed all discovery with counsel, including statements from co-defendants and witnesses. He testified he did not have a gun but lied and told law enforcement that he did have a gun. He testified that Judge Young went over the specific sentencing range for each offense with him on the record and that he told Judge Young he understood each potential sentence, understood they could be served consecutively, and understood he was facing a fifty-year sentence as a result of his plea. Despite this unambiguous colloquy with the plea court, Applicant testified he still was under the impression he could not receive a sentence of greater than twenty years as a result of his plea. However, he acknowledged that counsel told him the plea offer was just a recommendation. He testified that he was willing to accept the plea to voluntary manslaughter because he did not commit murder and understood that he was pleading based on his involvement in the crime under and accomplice liability theory. He testified that counsel explained to him "hand-of-one, hand-of-all" was the law and that this was the theory the State was proceeding under for the murder charge. He testified he knew his co-

defendants gave statements implicating him in the crimes and he was aware they would likely testify against him if he elected to proceed to trial. He said despite this, he still wanted to proceed to trial rather than enter a guilty plea. He testified he asked counsel to file a motion to withdraw his plea but she filed a motion to reconsider instead.

Next, Applicant presented testimony from plea counsel Clark. Clark testified that plea negotiations were on-going in this case and the State was motivated to offer plea agreements based on cooperation. She elaborated that Applicant never gave a statement to law enforcement and never expressed any interest in cooperating, and she explained that this would impact his plea negotiations with the State. She testified that Applicant was implicated in the crime by co-defendants. She testified that Applicant initially did not want the plea offer for a recommended twenty-year sentence because he stated he did not shoot the victim who died. She testified that she explained to Applicant that the plea offer was for a recommended sentence of twenty years but that this meant the court could give him a sentence that was below or above twenty years. She testified that she did advise Applicant that a plea court will generally go along with a recommendation. Counsel testified that she also explained the plea offer to Applicant's family and advised them the offer was a recommendation, what that meant, and that plea courts will generally go along with a sentence recommendation. Counsel testified that she had appeared before Judge Young "very little" as a circuit court judge but was familiar with him based on Judge Young's time on the family court bench. She elaborated that she was a former solicitor and public defender, and that she had a lot of prior criminal experience. She stated she was appointed because the public defender's office was conflicted out of this case based on the number of co-defendants charged in this crime. Counsel testified she explained accomplice liability and "the hand-of-one, hand-of-all"

theory to Applicant and how it impacted his case. She elaborated that they discussed that Applicant could still be convicted based on the statements and potential testimony of his co-defendants based on his involvement in the crime.

On cross-examination, counsel testified that she was appointed approximately one year prior to the plea and she had sufficient time to prepare the case. She testified she met with Applicant more than half-a-dozen times and Applicant was readily accessible because he was detained at the county detention center prior to his plea. She testified she reviewed the evidence in this case, which included statements from several co-defendants that implicated Applicant. She elaborated that these co-defendants were willing to testify against Applicant had the case proceeded to trial, which she confirmed in her personal discussions with counsel for these co-defendants. She testified that Applicant readily admitted he was at the scene. She testified that Applicant would have likely been convicted at trial and she conveyed this to Applicant. She elaborated there was very little she could use in terms of a viable defense but would have been prepared for trial had Applicant elected to proceed to trial. She testified she explained the elements of the offenses to Applicant as well as the potential sentences he faced if convicted. She testified she explained that even with the plea offer, he could still receive consecutive sentences. However, she testified she expected the plea court to go along with the recommendation and she conveyed this to Applicant.

Counsel testified that the plea court was advised on the recommendation of twenty years prior to the plea proceeding. She testified she was surprised with Applicant's sentence. She testified that she visited Applicant at the detention center following the plea and discussed the various options available to Applicant, including an appeal and a motion to reconsider the

sentence. She testified they ultimately elected to file a motion to reconsider the sentence and argued the plea court should reconsider the sentence and follow the recommendation based on Applicant's young age and his lesser role in the crime. She testified this motion was ultimately denied and she then innated an appeal on Applicant's behalf.

Respondent then called the prosecutor, then-Assistant Solicitor Edgar Donnald, as a witness. He described the crime as an armed robbery of a convenience store resulting in the shooting of numerous people. He stated the State's case was based on an accomplice liability theory because this was a conspiracy to commit and armed robbery that resulted in the murder of someone in the course of the robbery. He testified that he explained this to the plea court during the plea when he reviewed the factual basis for the plea. He testified that this plea offer was for a recommendation, not a negotiation, and that Judge Young was usually aware of these type of plea offers.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Applicant has alleged he is entitled to post-conviction relief based on ineffective assistance of plea counsel, prosecutorial misconduct, and involuntary guilty plea. This Court finds these claims to be without merit and that Applicant has failed to meet his burden of proof.

#### ***Standard of Review***

Under the Uniform Post-Conviction Procedures Act, an applicant may seek post-conviction relief upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;

3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); Rule 71.1(e), SCRCP.

*Ineffective Assistance of Counsel and Involuntary Guilty Plea Standard*

Applicant asserts that he is entitled to a new trial based on constitutionally ineffective assistance of counsel and an involuntary guilty plea.

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

hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel’s performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

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

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

miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” Harrington, 562 U.S. at 110.

Accordingly, “[j]udicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690).

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

Reviewing courts “must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed at the time of counsel’s conduct.” Strickland, 466 U.S. at 690.

An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment.” Id. The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” Id.

The Strickland standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel’s representation is a most deferential one. Harrington, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” **not** whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

The second, or “prejudice” prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel’s deficient performance prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” Strickland, 466

U.S. at 694. Thus, it is not enough “to show the errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to deprive the defendant of a fair trial.”

Id. at 687 (emphasis added).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel.” Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel’s performance was deficient; and second, evidence that counsel’s deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. Hill, 474 U.S. 52.

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

The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” Id. at 58–59. Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” Id. at 59. This inquiry

“focuses on a defendant’s decisionmaking” and does not turn on the outcome of a defendant’s actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. \_\_\_, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

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

The performance and prejudice standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result

is being challenged.” Id. at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” Id. at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

### ***Findings as to Specific Claims Raised***

Applicant has alleged ineffective assistance of plea counsel and involuntary guilty plea and asserts that as a result of these purported errors, he is entitled to have his guilty plea undone. This Court finds has failed to meet his requisite burden of proof as to each allegation. Each allegation is addressed below:

#### ***Allegation #1: Trial Counsel was ineffective for failing to move to withdraw his plea***

Applicant first asserts trial counsel was constitutionally ineffective for failing to move to withdraw his guilty plea when he received a sentence in excess of the recommendation of twenty years. This Court finds Applicant cannot establish any deficiency of counsel. Counsel testified that she fully explained the plea offer to Applicant, what a recommendation meant, and that Applicant could receive a sentence in excess of twenty years as a result of his plea. She explicitly explained that Applicant could receive consecutive sentences as a result of his plea. She testified that immediately after the plea, she consulted with Applicant, and they ultimately elected to pursue a motion to reconsider the sentence in the hope that the plea court would follow the recommendation after additional consideration. This Court finds counsel’s performance was reasonable. This case is readily

distinguishable from Rolen v State, 384 S.C. 409, 683 S.E.2d 471 (2009), where our Supreme Court found that plea counsel was deficient for failing to move to withdrawal Rolen's plea where Rolen repeatedly maintained his innocence throughout the plea. Here, Applicant repeatedly affirmed his guilt throughout the plea and never indicated he did not want to plead guilty, but rather, only expressed displeasure when he was sentenced above the recommended sentence. This Court finds counsel's performance was reasonable, including her decision to pursue a motion to reconsider his sentence rather than a motion to withdrawal his plea, which, even with the sentence of fifty-years, was still a favorable resolution of Applicant's case in light of the substantial evidence and the dismissal of numerous serious charges. Accordingly, this Court denies and dismisses this allegation with prejudice.

***Allegation #2: Involuntary Guilty Plea for Exceeding the Recommended Sentence***

Next, Applicant asserts that his guilty plea was involuntarily entered because he received a sentence in excess of the recommendation of twenty years. This Court finds this claim patently lacks merit and is clearly refuted by the record from the plea proceeding. See Rolen, 384 S.C. at 413, 683 S.E.2d at 474 (citing Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 650 (2000)) ("When determining issues relating to guilty pleas, the [c]ourt will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the PCR hearing."). Here, the record firmly establishes Applicant was aware that he could receive consecutive sentences in excess of the recommendation for a total of fifty years imprisonment. (R. p. 11). Counsel similarly testified she advised Applicant he could receive consecutive sentences as a result of his guilty plea. Moreover, Applicant himself testified he was aware that the plea offer was for a recommended sentence. The

Court finds the record establishes the knowing, voluntary, and intelligent nature of Applicant's plea. Accordingly, this Court denies and dismisses this allegation with prejudice.

***Allegation #3: Prosecutorial Misconduct***

Finally, Applicant asserts that he is entitled to relief based on a claim of prosecutorial misconduct because he was wrongly indicted for murder when he was not the shooter. This Court finds this allegation to be patently without merit. The record is abundantly clear that Applicant was prosecuted for the death of the victim based on an accomplice liability theory, not as the shooter himself. Applicant has failed to provide any evidence that he was not properly prosecuted under an accomplice liability theory and, in fact, he readily admitted that he was present at the scene and participated in the armed robbery. Accordingly, this Court denies and dismisses this allegation with prejudice.

**CONCLUSION**

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

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

directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

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

**AND IT IS SO ORDERED** this 1st day of August, 2022.

Clifton Newman  
CLIFTON NEWMAN  
Presiding Judge  
Third Judicial Circuit

Columbia, South Carolina

**RECEIVED**

**AUG 26 2022**

**S.C. SUPREME COURT**