

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Robert Bonds, Circuit Court Judge

Case No. 2018-CP-18-990

Matthew Miguel Oliver Appellant,

v.

State of South Carolina Respondent.

NOTICE OF APPEAL

Matthew Miguel Oliver appeals the Order of the Honorable Robert Bonds, filed September 20, 2022 dismissing his Application for Post Conviction Relief. Appellant's counsel received notice of entry of this Judgment on October 3, 2022.

October 4, 2022



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S.C. SUPREME COURT

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2018CP1800990

Matthew Miguel Oliver		South Carolina State Of	
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> 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), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; 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.

CERTIFIED COPY
 2022 SEP 20 PM 1:26
 CLERK OF COURT
 DORCHESTER COUNTY

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.

Robert Bonds	2770	9/20/2022
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on **9/20/2022**, and a copy mailed first class or placed in the appropriate attorney's box on: **9/20/2022**, to attorneys of record or to parties (when appearing pro se) as follows:

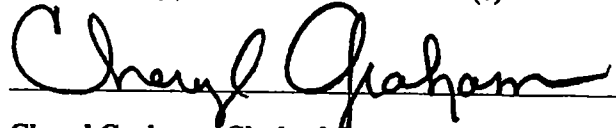
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ATTORNEY(S) FOR THE DEFENDANT(S)



Cheryl Graham - Clerk of Court

Court Reporter

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.

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

CERTIFIED COPY

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Matthew M. Oliver, SCDC #330266,

2022 SEP 20 PM 4:26

Case No.: 2018-CP-18-00990

Applicant,

Carol Madam
CLERK OF COURT

ORDER OF DISMISSAL
DORCHESTER COUNTY

v.

State of South Carolina,

Respondent.

This matter comes before this Court by way of post-conviction relief (PCR) action commenced by Matthew M. Oliver on June 14, 2018. On September 8, 2020, the State moved to merge two pending actions Applicant had pending in Dorchester County (2018-CP-18-00990 and 2018-CP-18-01089) and requested an evidentiary hearing through its return and partial motion to dismiss. An evidentiary hearing into the matter convened before the undersigned on May 16, 2022, at the Orangeburg County Courthouse. Applicant was present and represented by Leslie T. Sarji, Esquire. Assistant Attorney General Samantha J. Weidauer represented the State. Applicant testified on his own behalf at the hearing, as did Applicant's mother, Christine Oliver. Solicitor Ryan Templeton also testified.

In addition to the pleadings in this action, this Court had before it a copy of the Dorchester County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript, and the records regarding this post-conviction relief action.

After hearing the testimony at the PCR hearing and a full review of the record, this Court finds Applicant's allegations regarding ineffective assistance of counsel and involuntary guilty plea are without merit. Therefore, for the reasons discussed below, this Court denies relief and

dismisses this action with prejudice.

I. Procedural History and Facts Giving Rise to Plea

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. During its September 2014 term, the Dorchester County Grand Jury indicted Applicant for trafficking in methamphetamine – 400 grams or more (2014-GS-18-0861) and trafficking in cocaine base – 28 grams or more, but less than 100 grams (2014-GS-18-0862). During its May 2017 term, the Dorchester County Grand Jury indicted Applicant for trafficking in cocaine – 400 grams or more (2017-GS-18-0956).

The charges arose out of two separate incidents. The first occurred on November 11, 2013, in which Applicant was attacked and shot in his home. Law enforcement then obtained a search warrant as part of the attempted murder investigation and discovered a safe in the home. Investigators obtained a second search warrant specifically for the safe and found it to contain 2217.6 grams of cocaine, 47.5 grams of crack cocaine, and 531.7 grams of methamphetamine, all of which was determined to belong to Applicant.

The second incident occurred on July 1, 2016, where Applicant conspired with two codefendants to bring marijuana into the state. Investigators intercepted two packages at two different UPS stores in Summerville, and both packages were determined to belong to Applicant and the codefendants. Investigators seized 16.78 pounds of marijuana from the two packages.

On June 13, 2017, Applicant appeared before the Honorable Diane Schafer Goodstein and pleaded guilty pursuant to a negotiated plea agreement. As part of the agreement, the State dismissed indictments 2014-GS-18-0857 (possession of a weapon during violent crime), 2014-GS-18-0858 (possession of a weapon during violent crime), 2014-GS-18-0859 (possession of a stolen weapon/sale or delivery), and 2014-GS-18-0860 (trafficking in cocaine – 28 grams or more,

but less than 100 g (first offense)). In addition, Applicant pleaded guilty to the lesser-included offense of trafficking in ice, crank, or crack – 28 grams or more, but less than 100 grams (second offense) on indictment 2014-GS-18-0861; and to the lesser-included offense of trafficking in cocaine – 10 grams or more, but less than 28 grams (second offense) on indictment 2017-GS-18-0956. Applicant pleaded guilty as indicted on 2014-GS-18-0862. Judge Goodstein sentenced Applicant to terms of seventeen years' imprisonment on each charge, all to run concurrently.¹ Applicant did not appeal his pleas or sentences.

II. Issues Before This Court

In his original application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on:

1. "Insufficient counsel"
 - a. "I've instructed my counsel to file several motions in which his response is it is not my decision to make. With documentation to prove."
2. "Improper sentence/close nexus, charges raised out of one incident"
 - a. "Both charges transpired out of the same incident [illegible] I'm being charged 1st and 2nd offense for the same schedule narcotics"
3. "Illegal grand jury impanelment [sic] outside first circuit terms of court"
 - a. "Title § 14-5-620, S.C. Const.Art.I §8..."
4. Failure to file appeal
 - a. "I instructed my counsel to file an appeal and he did not do so."

Though not formally alleged, Applicant, through Counsel, alleged the following, at the evidentiary hearing:

1. Involuntary guilty plea
 - a. Counsel placed undue pressure on Applicant
 - b. Counsel provided erroneous information to Applicant.

Applicant proceeded on the allegations of involuntary guilty plea and ineffective assistance

¹ Applicant was also charged in indictment 2016-GS-18-1315 with trafficking in marijuana – 10 lbs or more, but less than 100 lbs (first offense), and he pleaded guilty to the lesser-included offense of possession with intent to distribute marijuana (first offense). Judge Goodstein sentenced Applicant to five years' imprisonment, to be served concurrently with the other sentences listed above. Applicant did not list this charge or sentence in his application for post-conviction relief.

of plea counsel for failure to file a direct appeal. To the extent the allegations set forth in Applicant's original application can be construed as separate grounds for relief from the grounds stated at the PCR hearing, this Court finds those claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice. S.C. Code Ann. § 17-27-90.

III. Relevant Testimony Presented at Evidentiary Hearing

Applicant Matthew Oliver's Testimony

Applicant testified he retained attorney Tommy Bolus (Counsel) to represent him and initially met with Counsel on August 16, 2014. Applicant testified that when he retained Counsel, he indicated to Counsel he would not entertain any pleas and did not do so for three years. Applicant testified that during Counsel's representation he met with Counsel seven or eight times. Applicant testified that many of his discussions with Counsel involved an unrelated case. Regarding communications with Counsel, Applicant testified he did not have issues communicating with Counsel while not incarcerated and on an ankle monitor; however, Applicant asserts that once he was incarcerated, there was no further communication with Counsel. Applicant additionally testified Counsel did not communicate effectively with him regarding motions Applicant inquired about and refused to file other motions Applicant requested he file.

Applicant testified he did not recall reviewing discovery with Counsel during any of their meetings.² When asked whether he recalled the plea court inquiring, "is there anything that you believe at this moment is left undone with regards to your preparation for trial," Applicant testified he wished he had more time to build his case with Counsel.³ Upon further inquiry, Applicant

² During Applicant's plea, Judge Goodstein inquired whether Counsel had reviewed the evidence the State had available to present at trial, to which Applicant replied, "As much as we could; yes ma'am." (Plea Tr. 34).

³ This Court notes Applicant actually responded, "No, ma'am" in response to the question asked by the plea court. (Plea Tr. 34).

indicated he recalled representing to the plea court he did not have any concerns regarding Counsel's representation and had confirmed to the plea court Counsel's representation had not had any effect on his plea. (Plea Tr. 34).

Applicant testified he believed when appearing before the court on June 13, 2017, the date of his guilty plea, he was there for his trial, not a plea. Applicant further testified it was his understanding all plea offers had expired at that time. Applicant testified that upon arrival at the courthouse on the date of his plea, while waiting in his holding cell, Counsel advised him an all-white jury had been picked outside of his presence⁴. Upon entering the courtroom to plead, Applicant alleged he asked Counsel where the jury was, and Counsel responded the jury had been picked in another courtroom. Applicant testified that if Counsel would have allowed him to be present during jury selection, he would not have taken a plea. On cross-examination, when questioned regarding his understanding of why he was in court the date of his plea, Applicant affirmed he understood he was present to plead guilty.

Applicant testified Counsel indicated to him he could not win at trial and told him his options were to proceed to trial and receive a 105-year sentence or plead – stating Counsel told him his “best bet was to take 17 years⁵.” Applicant testified that though he had indicated to Counsel he wished to proceed with the trial and had maintained his innocence, he ultimately decided to plead guilty due to the amount of evidence the State had against him. Applicant testified he told Counsel he knew he could not win and requested he be allowed to plead pursuant to *Alford*. Applicant stated that in response, Counsel advised him that if he pleaded guilty pursuant to *Alford*,

⁴ Applicant testified that following his discussion with Counsel, his mother came to his holding cell and advised him to listen to Counsel. Applicant further testified his mother told him the “only black face in the room was the bailiff” and confirmed a jury had already been chosen.

⁵ When questioned where the 17-year offer came from, Applicant indicated the plea court, during pretrial motions the previous day, had advised him of his exposure and allowed him to think on the matter until the next day.

the plea judge would give him more time. On cross-examination, Applicant further testified he understood he waived his right to a jury trial by pleading guilty.

Applicant also testified that he inquired about the charges he was pleading to, stating, Counsel told him he would plead guilty to a lesser-included offense. Applicant testified Counsel did not talk to him about the lesser-included offenses of his charges and posits he did not know anything because a plea was never a part of his and Counsel's discussions. Applicant further stated Counsel did not explain to him what a negotiated plea was prior to his plea and did not explain which charges would be dismissed should he plead. Applicant contends that should Counsel not have told him about the jury, not advised him he could not win, and not have stated Applicant would receive a 105-year sentence should he proceed to trial, he would not have pleaded guilty – adding, he was prepared to proceed to trial. Applicant further testified he now believes he would have only received a thirty-year sentence as opposed to the 105-year sentence Counsel advised him he would receive. During cross-examination, in response to the State's inquiry regarding Applicant's allegation he felt coerced, Applicant testified: "The judge asked me if someone was threatening me, and me knowing that I'm being coerced while this is being done, two different things. I was never threatened. *I was just told what my options were and what I can exercise.*" Later, Applicant again testified no promises were made to him and that he was only given his options.

Lastly, Applicant testified he requested Counsel file a direct appeal on his behalf. Specifically, Applicant testified the plea judge asked him "would you like to appeal this?", whereafter, he asserts he turned to Counsel and said yes. Applicant concedes the plea court explained to him his right to appeal; however, Applicant contends he made it clear to Counsel prior to leaving the courtroom on the date of his plea he wished for Counsel to file an appeal on his

behalf. Applicant posits Counsel told Applicant he would see him the day after his plea, but could not because Applicant was transferred to SCDC.

Applicant's Mother Christine Oliver's Testimony

Applicant's mother, Christine Oliver (Christine) also testified at the evidentiary hearing. Christine testified she arrived at the courthouse around 8:30 A.M. on the day of Applicant's plea and was present during Applicant's plea. Christine testified she believed the case was set for a jury trial that day, stating she had taken the whole week of work off as she was subpoenaed as a witness. Christine further testified Counsel indicated they were there to pick a jury; however, she further conceded she did not actually see a jury seated. On cross-examination when asked whether a jury had been picked, Christine responded: "I didn't see people come in the courtroom. I didn't hear them ask any questions, and so as far as I know there was not a jury picked."

Christine testified that over the course of the day, while speaking with Counsel, Counsel informed her he was going to go talk to the solicitor. Christine stated that after Counsel returned from his discussion with the solicitor, he told her Applicant needed to plead guilty. Christine testified Counsel indicated that should Applicant proceed to trial he would receive a 105-year sentence. Christine testified Counsel then left to speak with Applicant. Christine stated that upon Counsel's return, Counsel told her she needed to also speak with Applicant and tell him to plead guilty. Christine stated Counsel claimed he had spoken with the judge who indicated Applicant would receive a 17-year sentence should he plead. Christine testified she then went to Applicant's holding cell where Applicant stated: "Mom, I didn't do this; I don't want to take the plea bargain. We're here for court, for trial. But we never picked a jury." Additionally, despite never seeing a jury, Christine asserted both the bailiff and Counsel remarked to Applicant he did not have a chance with the jury and was going to receive a 105-year sentence.

Solicitor Ryan Templeton's Testimony

Lastly, Solicitor Ryan Templeton (Templeton) testified at the evidentiary hearing. Templeton testified he has been practicing law since November 2014, spending three-and-a-half years with the Solicitor's office. Templeton further testified his practice is currently comprised of roughly 50% criminal work. Templeton stated that though this case had been previously assigned to other solicitors, he was the solicitor at the time of trial. Templeton stated the solicitor's office had turned over all discovery to Counsel as required by Rule 5 and *Brady* – adding, Counsel sent additional letters throughout the case requesting discovery he was missing, and those discovery materials were provided to Counsel. Additionally, Templeton stated Counsel met with him at his office to discuss the case in depth.

By way of overview of the State's evidence, Templeton testified he believed the State had a strong case against Applicant. Templeton testified this case involved an incident where two people attempted to "jump" Applicant. Templeton stated the State's position was the altercation was a result of a drug deal gone bad or an attempt to steal drugs and stated Applicant was shot during the incident. Templeton further testified search warrants were executed where an amount of drugs were found outside and a very large quantity of cocaine, cocaine base, methamphetamine, and money was found inside the residence. Templeton testified the DEA seized the drugs and had them tested at a facility in Miami and stated the DEA analyst who conducted the drug analysis was prepared to travel from Miami to testify. Templeton testified he believed Applicant was going to assert at trial that the residence in which the drugs were found was not Applicant's residence. Templeton further stated the State was prepared to call Applicant's girlfriend who would testify Applicant lived at the subject residence.

Templeton testified prior to the plea, a lengthy suppression hearing was held regarding Counsel's concerns on the timing of law enforcement entrance into the home and regarding numerous photographs taken prior to the search warrant arriving at the house. Templeton indicated Applicant's motion to suppress was denied and that he and Counsel had further discussions regarding how Applicant intended to proceed. Templeton indicated the State was prepared for trial but a jury was never selected⁶.

Templeton further testified he had numerous conversations with Counsel throughout the case and that he and Counsel spent an hour in chambers with Judge Goodstein discussing the case. Regarding plea offers, Templeton testified that prior to the suppression hearing he intended to revoke all offers if Applicant moved forward with the suppression hearing; however, Templeton indicated he changed his mind and allowed the offer to stay open following the suppression hearing. Therefore, despite the motion to suppress being denied, the plea offer of a negotiated sentencing range of 15 to 20 years in exchange for a guilty plea was still available to Applicant following the suppression hearing. Templeton testified most of the plea negotiations in this case were discussed via phone call or when motions were heard prior to trial. Counsel testified he believed all of Applicant's charges were reduced from the originally indicted offense prior to his plea.

Templeton further testified Judge Goodstein entered into a lengthy colloquy with Applicant regarding the indictments in this matter, the elements of the offenses in this case, the strikes Applicant would receive as a result of the plea, and the possible sentence she could impose. On cross-examination by Applicant's counsel, when asked whether he recalled Judge Goodstein

⁶ Templeton added: "I think, if I remember correctly, the panel was there, there was however many people we had in the panel in Dorchester County. In that particular courthouse, downstairs is a large jury assembly room. That's also where the holding cells are for defense counsel to meet with their clients. And then upstairs we would just bring a panel up to ultimately pick a jury. But we never got to that point in this case."

telling Counsel Applicant would receive consecutive sentences should he proceed to trial, Templeton stated he did not believe Judge Goodstein relayed to Counsel what she would do. Templeton testified he was not involved in any conversations pre-plea with both Applicant and Counsel and was not aware Applicant's had been able to visit Applicant in his holding cell. Templeton testified that he believed Counsel was ready for trial.

IV. Standard of Review

An applicant may seek PCR 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).

Ordinarily, PCR 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 PCR 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. *Strickland v. Washington*, 466 U.S. 668 at 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel’s deficient performance. *Id.* at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that “[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable” (citation and internal quotation marks omitted)).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, *Hill v. Lockhart*, 474 U.S. 52 (1985), extended the two-part *Strickland* test to challenge guilty pleas based on ineffective assistance of counsel. *See Padilla v. Kentucky*, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). The analysis of counsel’s performance under the first prong of *Strickland* remains unchanged—the applicant must show that counsel’s representation fell below an 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 guilty 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).

V. Findings of Fact & Conclusions of Law

As an initial matter, this Court finds Applicant's two pending post-conviction relief applications should be merged and grants Respondent's motion to merge the matter with the surviving case being case number 2018-CP-18-00990. Additionally, this Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the

legal arguments by counsels, as well as the record in this action incorporated by way of the State's return, this Court proceeds to the claims raised at the evidentiary and finds each to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

The issue before this Court is whether Applicant received ineffective assistance of counsel, rendering her guilty plea involuntary and unintelligently entered. This Court disagrees, and finds the combined record from the plea hearing and the evidentiary hearing establishes Applicant freely, knowingly, and voluntarily pleaded guilty.

Allegation Counsel was Ineffective for Failure to File an Appeal

Applicant claims Counsel was ineffective for failing to file an appeal following his guilty plea. Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either: (1) that a rational defendant would want to appeal or (2) that this particular defendant reasonably demonstrated to counsel that she was interested in appealing. *Roe v. Flores-Ortega*, 528 U.S. 470, 120 S. Ct. 1029, 145, L. Ed. 2d 985 (2000). When counsel has consulted with the defendant regarding the right to appeal, "Counsel performs in a professionally unreasonable manner *only* by failing to follow the defendant's express instructions with respect to an appeal." *Id.* at 478 (emphasis added). In order to establish he was prejudiced by counsel's failure to file an appeal, Applicant must show he would have appealed absent counsel's deficient performance. *Id.* at 484. "Acts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver." *Bonnette v. State*, 277 S.C. 17, 18, 282, S.E.2d 597, 598 (1981).

In determining whether counsel has a duty to consult, "[o]ne highly relevant factor will be whether the conviction follows a trial or a guilty plea, because a plea both reduces the scope of

potentially appealable issues and may indicate that the defendant seeks an end to judicial proceedings.” *Flores-Ortega*, 528 U.S. at 480. As such, though counsel is required to make certain that a defendant is made fully aware of his or her right to appeal after a *trial*, a different standard applies to a guilty plea:

Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.

Turner v. State, 380 S.C. 223, 224-25, 670 S.E.2d 373, 374 (2008) (citations omitted); *see also Flores-Ortega*, 528 U.S. at 480 (imposing the duty to consult when there is reason to think either that a rational defendant would want to appeal or that the particular defendant reasonably demonstrated interest in doing so): *But see Frazer v. South Carolina*, 430 F.3d 696 (4th Cir. 2005) (reading *Flores-Ortega* to mean counsel generally has a duty to consult with his client regarding whether to pursue an appeal). Therefore, in a collateral action attacking a guilty plea, the “bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief.” *Jones v. State*, 382 S.C. 589, 598, 677, S.E.2d 20, 23-24 (2009) (citation omitted).

This Court finds Applicant’s testimony regarding his request for Counsel to file a direct appeal on his behalf was not credible. Applicant alleges he requested on the record that Counsel file an appeal for him. However, this Court finds there is no indication in the plea transcript Applicant did so. Additionally, even if Counsel did not inform Applicant of the right to appeal, Applicant has failed to show that there was an appealable basis in this case or that extraordinary circumstances warranting an appeal existed. Thus, this Court finds Applicant is not entitled to relief on this basis and this allegation is **DENIED**.

Involuntary Guilty Plea

1. Involuntary guilty plea
 - a. Counsel placed undue pressure on Applicant
 - b. Counsel provided erroneous information to Applicant.

Applicant alleges Counsel was ineffective for placing undue pressure on him to plead guilty and for providing erroneous information to Applicant that rendered his plea involuntary. At the evidentiary hearing, Applicant contended he felt coerced into taking pleading guilty, testifying he never wished to plead guilty and would not have pleaded guilty should Counsel not advised him he could not win, not told Applicant he would receive a 105-year sentence should he proceed to trial, and should Counsel not advised him a jury had already been seated. This Court disagrees, and finds Applicant knew the nature of the charges against him and the consequences of pleading guilty pursuant to the requirements of *Boykin* and *Pittman*. The plea transcript reflects Applicant entered his plea knowingly and voluntarily, engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the court's questions. Moreover, this Court finds Applicant's testimony at the evidentiary hearing not credible and wholly self-serving.

"[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced." *Reed v. Becka*, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). Accordingly, because a criminal defendant waives several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Pittman v. State*, 337 S.C. 597, 524 S.E.2d 623 (1999). To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. *Brady v. United States*, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant's choice. *Id.* at 755; *see also United States v. Smith*, 440 F.2d 521, 528–529 (7th Cir.) (Stevens, J.,

dissenting) (explaining that voluntariness relates to the trustworthiness of the admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. *Boykin*, 395 U.S. at 243. Additionally, the defendant "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). The defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993); *See also Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997) (guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge). To ensure the defendant understands the consequences of his guilty plea, the plea judge "usually questions the defendant about the facts surrounding the crime and punishment that could be imposed." *Dover v. State*, 304 S.C. 433, 434-35, 405 S.E.2d 391, 392 (1991). However, the plea judge "does not have to direct the defendant's attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea." *Carter v. State*, 329 S.C. 355, 362, 495 S.E.2d 773, 776 (1998).

The 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." *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). It is "well established that a guilty plea is not

rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment.” *United States v. Cox*, 464 F.2d 937, 942 (6th Cir. 1972) (citing *Brady*, 397 U.S. 742). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, *Brady*, 397 U.S. at 750-753, or by increasing the risks of punishment on those who do not. *North Carolina v. Alford*, 400 U.S. 25, 37 (1970).

Nonetheless, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual . . . , 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); see also *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”). Indeed, admissions made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements.” *Dalton*, 376 S.C. at 137–38, 654 S.E.2d at 874 (internal citations and quotation marks omitted); cf. *Blackledge*, 431 U.S. at 73–74 (pointing out that representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a “formidable barrier in any subsequent collateral proceedings”).

The voluntariness of a guilty plea, however, “is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.” *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). An applicant who enters a plea on the advice of counsel may “only attack voluntary, knowing and intelligent character of the plea by

showing that plea counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the [applicant] would not have pled guilty, but would have insisted on going to trial." *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. *Wolfe*, 326 S.C. at 165, 485 S.E.2d at 370; *cf. Rayford v. State*, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that, where the transcript of the guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant's claim his lawyer misadvised him).

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.* Thus, 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 guilty plea and the evidence presented at the PCR hearing. *Harres*, 282 S.C. at 134, 318 S.E.2d at 361.

The plea court entered into a thorough colloquy with Applicant. Specifically, Judge Goodstein explained to Applicant the constitutional rights he waived by pleading guilty, including the right to: remain silent, against self-incrimination, challenge the State's evidence, have counsel cross-examine witnesses, present a defense, challenge any searches or seizures Applicant did not believe appropriate, and the right to a jury trial. (Plea Tr. 26-28). Applicant informed the plea court he understood he waived those rights and others not enumerated when pleading guilty. (Plea Tr. 28). Applicant also informed the plea court he understood the charges he was pleading to and indicated he understood the minimum and maximum sentence associated with the charge (Plea Tr. 15-16, 21-23, 25). Judge Goodstein further informed Applicant two of the offenses he was pleading to were classified as violent and most serious. (Plea Tr. 13-18). Applicant advised the court he had not been threatened, intimidated, or promised anything in exchange for his guilty plea and confirmed that he had had enough time to make up his mind. (Plea Tr. 31-32). When questioned whether he had been truthful with the court in his answering of the Court's question. (Plea Tr. 35). Applicant further indicated all answers had been his own. (Plea Tr. 35). Though Applicant told the plea court he wished he could have spoken with Counsel longer, he further testified he believed Counsel had investigated his case, Counsel had done everything he should have and could have done to properly represent Applicant, and indicated he was fully satisfied with Counsel's representation. (Plea Tr. 32-33). Additionally, this Court finds that Applicant throughout the plea transcript confirmed he understood he was present to plead guilty and that that was his intention.

This Court finds the plea transcript reflects Applicant understood the proceedings, interacted intelligently with the plea court, and entered his guilty plea knowingly and voluntarily. Applicant has failed to present any valid reason why he should be able to depart from the above statements made during his guilty plea. *See Crawford v. United States*, 519 F.2d 347, 350 (4th Cir.

1975), *overruled on other grounds by United States v. Whitley*, 759 F.2d 327 (4th Cir. 1985) (finding that the accuracy and truth of an accused's statements at a guilty plea proceeding are "conclusively" established unless he makes some reasonable allegation why this should not be so).

Based on the foregoing, the record contradicts Applicant's assertion his plea was involuntary as a result of ineffective assistance of counsel. Thus, based on the evidence presented at the PCR hearing and the record of the plea proceeding, this Court finds Applicant's plea was freely, knowingly, and voluntarily entered into. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

VI. Conclusion

Based on the evidence presented at the PCR hearing and the record of the plea proceeding, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant her application for post-conviction relief. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. This Court finds Applicant freely, knowingly, and voluntarily pleaded guilty and further failed to present any justification as to why the statements she made during the guilty plea hearing should not be considered conclusive. Therefore, based on the foregoing, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

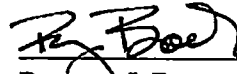
Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *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. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 19 day of Sept, 2022.



ROBERT J. BONDS
Presiding Circuit Court Judge
First Judicial Circuit

Walter H. Hester, South Carolina