

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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On Petition for Writ of Certiorari to Aiken County
Clifton Newman, Plea Judge
Robert J. Bonds, Post-Conviction Relief Judge

S.C. SUPREME COURT

Appellate Case No. 2022-000578

RAYQUAN McCORKLE, SCDC # 378805,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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PETITIONER’S STATEMENT OF ISSUES ON CERTIORARI

- I. Did the PCR court err in finding that Petitioner Rayquan McCorkle failed to meet his burden to establish ineffective assistance of counsel prior to and leading up to his guilty plea?
- II. Did the PCR court err in finding that Petitioner Rayquan McCorkle’s guilty plea was entered into knowingly and voluntarily?

RESPONDENT’S COUNTERSTATEMENT OF ISSUES ON CERTIORARI

- I. Did the post-conviction relief court properly find that Petitioner failed to meet his burden of establishing that plea counsel provided constitutionally ineffective representation as to various claims asserted, including that counsel failed to interview witnesses, failed to obtain experts to aid in the defense, failed to advise Petitioner on discovery matters, and failed to have Petitioner evaluated, where the record firmly establishes Petitioner entered a knowing, voluntary, and intelligent negotiated guilty plea with the advice of competent counsel who diligently represented him, Petitioner repeatedly testified he pled guilty to avoid a harsher sentence following a likely conviction at trial and Petitioner failed to introduce necessary evidence to establish any of his claims?
- II. Did the post-conviction relief court properly find that Petitioner failed to establish any constitutional deprivations entitling him to post-conviction relief based on a claim that his guilty plea was involuntary due to improper advice, where the record firmly establishes Petitioner entered a knowing, voluntary, and intelligent negotiated guilty plea with the advice of competent counsel who diligently represented him and Petitioner repeatedly testified he pled guilty to avoid a harsher sentence following a likely conviction at trial?

STATEMENT OF THE CASE

Petitioner Rayquan McCorkle is currently incarcerated within the South Carolina Department of Corrections following his guilty plea and sentence after his tragic and senseless murder of a fifteen-year-old victim during an Aiken County home invasion, shooting, and robbery. On the evening of November 18, 2016, Petitioner, his older brother, and four other young men were involved in a drive-by shooting in the city of Aiken. Thereafter, the group, split between two vehicles, decided to travel to a Beech Island apartment to locate Connor Clemmons, an alleged marijuana dealer, to rob him. Once they arrived at the apartment, one of young men went to the apartment to see if Clemmons was present. Upon learning that Clemmons was not there and discovering that a fifteen-year-old and a sixteen-year-old were instead inside the apartment playing video games, the group decided to “rush” the apartment anyway to commit a robbery. Petitioner and two of the young men, dressed all in black, armed themselves with handguns and concealed themselves with a combination of gloves, bandannas, and masks (including a distinct Halloween mask), and entered the apartment, wherein they spent approximately five minutes ransacking the apartment while assaulting and pistol-whipping the two minors inside. Petitioner then shot the fifteen-year-old in the head, fatally wounding him. Petitioner fired his firearm at least three times in the apartment. One of Petitioner’s confederates also fired shots at a woman who emerged from an upstairs bedroom in response to the commotion downstairs. Petitioner and the two other assailants fled the apartment, with Petitioner stealing the video gaming system that the slain fifteen-year-old victim had been playing minutes before. Petitioner and the group then left the scene in the same two cars at a high rate of speed with their lights off. A nearby Aiken County Sheriff’s Deputy heard the shots fired and gave pursuit to the fleeing vehicles. The deputy was ultimately able to stop one of the vehicles, with the two front passengers bailing out of the vehicle

and a third assailant being apprehended from the car. One assailant was taken into custody at the scene, the other was arrested within the hour, and the third turned himself in on November 21, 2016. Law enforcement gathered evidence from the vehicle, including a black hoodie, gloves, a red bandanna, the distinctive Halloween mask worn during the crime, and one of the weapons used. All three occupants of this vehicle gave statements to law enforcement implicating themselves and the three others, including Petitioner, in the crime. (App. 79-84).

The car containing Petitioner was able to evade law enforcement that evening, but the three occupants, including Petitioner and his brother, were arrested at their high school on November 21, 2016. Law enforcement seized their cell phones and searched the car that was driven that evening, which led to the discovery of the handgun Petitioner used to murder the fifteen-year-old victim. Subsequent forensic testing revealed Petitioner's DNA was on the handgun used to kill the fifteen-year-old victim and the victim's blood was on one of the shell casings fired. Fingerprint analysis of the vehicle revealed Petitioner's fingerprints were on the inside door handle consistent with information as to where Petitioner was seated during the evening of the shooting. Additionally, cell phone extraction revealed that within one hour of the murder, Petitioner conducted numerous Google searches related to tracking of the same gaming system he stole from the apartment and for local news outlets that would have possibly had information related to the shooting. (App. 79-84).

Petitioner, who was fifteen years old at the time of the shooting, was taken into custody of the Department of Juvenile Justice and initially charged as a juvenile based on his age. Following a transfer hearing in family court, the case was transferred to the court of general sessions. The Aiken County Grand Jury indicted Petitioner for murder, two counts of attempted murder, first-degree burglary, armed robbery, and possession of a weapon during the commission of a violent

crime. Petitioner then retained the services of Keith B. Johnson, Esquire. Second Circuit Solicitor J. Strom Thurmond, Jr. prosecuted the case. Following plea negotiations with the State, Petitioner entered into a plea agreement wherein he agreed to plead guilty to murder as indicted for a thirty-five year negotiated sentence, a concurrent thirty-year sentence for the related indictments, the dismissal of the weapon indictment and an assurance that the State would be lenient regarding sentencing recommendations for his brother, a co-defendant in the case with a less-culpable role in the crimes. (App. 72-91).

On January 10, 2019, Petitioner, alongside counsel, appeared before the Honorable Clifton Newman, circuit court judge, and pled guilty pursuant to the plea agreement entered into with the State. Following a thorough plea colloquy, during which Petitioner affirmed he understood all of the rights he was waiving by entering a guilty plea, understood the potential sentences he faced and the terms of the negotiated plea agreement, stated he had no physical or mental problems that impaired his abilities to understand what was occurring, and affirmed he was satisfied with his counsel, Judge Newman accepted Petitioner's guilty plea and sentenced him according to the plea negotiations to thirty-five years of imprisonment for murder and concurrent sentences of thirty years of imprisonment for all related indictments. The weapon indictment was dismissed pursuant to the plea agreement. Petitioner did not seek direct appellate review of his plea or sentences. (App. 72-91).

Petitioner then initiated this underlying post-conviction relief action with the filing of his application though retained counsel James R. Snell, Jr., Esquire, on January 9, 2020, asserting the following claims:

1. Ineffective Assistance of Counsel
 - a. Plea Counsel failed to interview witnesses disclosed by the Petitioner.
 - b. Plea Counsel did not seek or retain a ballistics expert.
 - c. Plea Counsel failed to review complete discovery with Petitioner.

In response to the application, Respondent filed a return and requested an evidentiary hearing to resolve the claims as set forth in the application. On January 24, 2022, Petitioner, through counsel, filed an amended application, adding an additional claim that “Plea counsel failed to retain an expert forensic psychologist or obtain a comprehensive psychological evaluation prior to [Petitioner]’s plea.”

An evidentiary hearing on this action was convened January 31, 2022, before the Honorable Robert J. Bonds, circuit court judge, utilizing the virtual courtroom in accordance with the Chief Justice’s administrative memorandum, Court Operations, dated September 14, 2020, and supplemented January 8, 2021.¹ Petitioner appeared virtually along with his counsel, Vickie Koutsogiannis of the Law Office of James R. Snell, Jr. Respondent was represented by Assistant Attorney General Michael Neubauer of the South Carolina Attorney General’s Office. Petitioner proceeded forward on the claims raised in his amended application. The post-conviction relief court heard testimony from Petitioner and his plea counsel, as well as Petitioner’s mother. At the conclusion of the hearing, the court denied the application on the record, finding Petitioner had failed to meet his burden of proof as to the claims raised.

The court subsequently issued a written order filed on April 18, 2022, finding Petitioner failed to establish any constitutional violations or deprivations entitling him to relief and denying the application with prejudice pursuant to S.C. Code Ann. § 17-27-80. Petitioner then initiated this instant appeal.

¹ See S.C. Sup. Ct. Memorandum dated September 14, 2020 (“Judges . . . have discretion to determine whether it is appropriate to conduct a hearing using remote communication technology. . . Please use WebEx, the conferencing platform supported by the Judicial Branch.”).

STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, the appellate courts defer to the post-conviction relief court's factual findings and will uphold them if there is probative evidence in the record to support them. Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40 (citing Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). However, pure questions of law will be reviewed *de novo* without deference to the lower court. Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40. Appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

- I. **The post-conviction relief court properly found that Petitioner failed to meet his burden of establishing that plea counsel provided constitutionally ineffective representation as to various claims asserted, including that counsel failed to interview witnesses, failed to obtain experts to aid in the defense, failed to advise Petitioner on discovery matters, and failed to have Petitioner evaluated, because the record firmly establishes Petitioner entered a knowing, voluntary, and intelligent negotiated guilty plea with the advice of competent counsel who diligently represented him, Petitioner repeatedly testified he pled guilty to avoid a harsher sentence following a likely conviction at trial and Petitioner failed to introduce necessary evidence to establish any of his claims.**

On appeal, Petitioner asserts the post-conviction relief court erred in rejecting his claims that plea counsel was ineffective for failing to interview witnesses, failing to obtain experts to aid in the defense, failing to advise Petitioner on discovery matters, and failing to have Petitioner evaluated. In support of these claims, Petitioner asserts “conflicting testimony” was presented as to whether counsel was ineffective as to these claims, and, accordingly, avers that he was entitled to post-conviction relief. However, the post-conviction relief court properly determined counsel was not constitutionally ineffective in his representation of Petitioner and that Petitioner failed to meet his burden of proof in establishing these claims. These findings are not controlled by an error of law and are supported by the record. This Court should deny certiorari.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Petitioner, 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). 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), SCRPC; 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.

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.

When reviewing a guilty plea, 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.

Based on this standard, the post-conviction relief court properly determined Petitioner failed to meet his high burden of establishing constitutional ineffectiveness as to all of the claims raised. The post-conviction relief court’s findings that counsel was not deficient in his

representation are supported by probative evidence in the record that firmly establishes counsel's representation was within the bounds of professional standards for representation of a criminal defendant based on these circumstances. Additionally, the post-conviction relief court's findings that Petitioner failed to establish prejudice—that he would not have pled guilty but for counsel's performance—is also supported by probative evidence in the record. Both the deficiency and prejudice findings are also supported by well-established case law. Buckson, 423 S.C. at 320, 815 S.E.2d at 440; Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40 The post-conviction relief court properly denied relief and certiorari is not warranted in this case.

As an initial matter, Petitioner's claims of ineffective assistance of counsel fail as a matter of law because was unable to show that his decision to accept an advantageous, negotiated plea for a determinate sentence was motivated by any ineffective assistance of counsel. Rather, Petitioner repeatedly testified his guilty plea was induced by his desire to avoid likely conviction and life sentence following a jury trial, a difficult but nonetheless constitutional choice that Petitioner knowingly, intelligently, and freely made with the advice of competent counsel. (App. 129, 138-40, 142, 151). Because Petitioner pled guilty to avoid a harsher sentence at trial, as he repeatedly testified to at his evidentiary hearing, and not due to any action or inaction of counsel, he cannot establish prejudice. See Hill v. Lockhart, 474 U.S. 52, 56 (1985) ("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.' (quoting North Carolina v. Alford, 400 U.S. 25, 31 (1970)); Brady v. United States, 397 U.S. 742, 748 (1970) (rejecting the claim that a guilty plea is involuntary or compelled whenever motivated by the defendant's desire to accept the certainty or probability of a lesser penalty rather than face a wider range of possibilities extending from acquittal to conviction and a higher penalty authorized by

law for the crime charged); see also United States v. Cox, 464 F.2d 937, 942 (6th Cir. 1972) (“It is also 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.”). The record is clear that Petitioner decided to plead guilty to avoid a harsher sentence if convicted at trial after numerous conversations with his counsel, as he testified to repeatedly at the evidentiary hearing. Accordingly, Petitioner failed to establish prejudice as a matter of law and the post-conviction relief court properly denied his claims.

As to Petitioner’s claim that counsel was ineffective for failing to interview witnesses, this claim also fails as matter of law, as Petitioner wholly failed to present any such witnesses at his evidentiary hearing or otherwise offer their testimony in accordance with the rules of evidence. Dempsey v. State, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005) (“A PCR applicant cannot show that he was prejudiced by counsel's failure to call a favorable witness to testify at trial if that witness does not later testify at the PCR hearing or otherwise offer testimony within the rules of evidence.”) (abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018)); Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) (same); Putnam v. State, 417 S.C. 252, 261–62, 789 S.E.2d 594, 599 (Ct. App. 2016) (same). Here, not only did Petitioner not present these witnesses, but he also utterly failed to even identify what witnesses counsel should have investigated. Without more, this claim is patently speculative and insufficient to meet Petitioner’s burden of proof. Moreover, counsel testified he did indeed interview witnesses based on his investigation and conversations with Petitioner and his family. He testified that following these interviews, he could not present these witnesses because it was his professional opinion that the proposed testimony would be perjured, and he would not be able to present it at a trial. (App. 178, 201). The post-conviction relief court properly rejected this claim.

Next, as to Petitioner’s claim that counsel was ineffective for failing to obtain expert witnesses, this claim also fails as a matter of law because he failed to present any such experts at his evidentiary hearing or otherwise offer their testimony or opinions in accordance with the rules of evidence. See Lorenzen v. State, 376 S.C. 521, 530, 657 S.E.2d 771, 776–77 (2008) (“First, Lorenzen failed to present evidence that would show a reasonable probability that, but for counsel’s failure to call expert witnesses, the result of his trial would have been different. Aside from his testimony and his trial counsel’s testimony, Lorenzen did not offer any other witnesses to testify on his behalf at the PCR hearing. Therefore, it is merely speculative that these allegedly favorable expert witnesses would have aided in his defense.”) (abrogated on other grounds by Smalls, 422 S.C. 174, 810 S.E.2d 836)); Putnam, 417 S.C. at 262–63, 789 S.E.2d at 600 (“Putnam did not present any expert testimony at the PCR hearing; therefore, her assertion that additional expert testimony might have changed the result of her case is merely speculative and insufficient to demonstrate prejudice. Accordingly, we find probative evidence in the appendix supports the PCR court’s finding that Putnam failed to meet her burden of demonstrating trial counsel was ineffective and failed to show prejudice.”). Again, Petitioner failed to present any expert witnesses at the hearing, and accordingly, cannot establish prejudice as a matter of law. Moreover, counsel repeatedly testified he discussed the possibility of utilizing expert witnesses with Petitioner and his mother, but as the evidence came in and made the likelihood of success at trial highly unlikely, he determined such experts would not be a good utilization of resources or effort based on his opinion and shifted his focus to negotiating the best possible plea offer on behalf of his client to hopefully salvage some of his life after incarceration. Specifically, counsel cited the DNA evidence establishing Petitioner’s DNA was on the firearm used to kill the minor victim as crushing to the chances of success at trial and as altering as to his approach to the case. This DNA evidence was

in addition to the other, very strong evidence of Petitioner's guilt, including numerous cooperating co-defendants who planned to testify against him at trial, fingerprint evidence linking him to the car where the murder weapon was found, and the incredibly inculpatory Google searches on Petitioner's phone in the immediate aftermath of the shooting. Counsel's decision to not seek expert opinions was a reasonable strategic approach based on the circumstances of this case and the very strong evidence of Petitioner's guilt. Accordingly, the post-conviction relief court properly rejected this claim.

Third, as to Petitioner's claim that counsel was ineffective for failing to review discovery with him, the post-conviction relief court also properly rejected this claim based on probative evidence in the record. The uncontroverted testimony in the record establishes that counsel provided Petitioner with a complete copy of his discovery materials prior to the plea. (App. 146-47, 175-76). Furthermore, counsel testified credibly at length regarding his review of the discovery with Petitioner and that Petitioner appeared to understand their conversations and what the State's case entailed. (App. 175-76, 198). Counsel elaborated that as new discovery or information became available during the progression of the case, he explained this new evidence and its impact on the case with Petitioner. Petitioner has failed to present any evidence of what discovery he did not review with counsel or understand, or how that impacted his decision to plead guilty and forgo trial other than incredible, vague statements that he did not understand the case, which the post-conviction relief, in its discretion, rejected. The post-conviction relief court properly rejected this claim.

Finally, the post-conviction relief court also properly rejected Petitioner's claim that counsel was ineffective for failing to have him evaluated for competency or other psychological concerns. Again, this claim failed as a matter of law because Petitioner failed to present any

evidence to establish his incompetency. “[W]hen establishing Strickland prejudice in the context of plea counsel’s failure to request a mental competency evaluation, the applicant need only show a reasonable probability that he was incompetent at the time of the plea.” Ramirez v. State, 419 S.C. 14, 21, 795 S.E.2d 841, 845 (2017) (internal marks omitted) (quoting Jeter v. State, 308 S.C. 230, 233, 417 S.E.2d 594, 596 (1992)). Petitioner failed to show that there was a reasonable probability that he was incompetent at the time of his plea. At best, Petitioner provided incredibly vague information from his mother and himself that he was seen by some mental health entity years before based on a condition that neither could articulate and resulted in a very brief in-patient stay and short-term counseling. Petitioner failed to establish a lack of competency or other mental health concerns that would have invalidated his guilty plea or had an impact on his decision to plead guilty. Moreover, counsel testified regarding his interactions with Petitioner, whom he described as “highly intelligent,” and determined that there was no need to request such an evaluation based on his interactions with Petitioner. Additionally, he testified he was not advised on any mental health or competency concerns, but rather, had been advised by Petitioner’s mother of behavioral issues when Petitioner was younger. Counsel reasonably relied on his own impressions of Petitioner’s competency and mental health, and, accordingly, he was not deficient based on the facts of this case. See Garren v. State, 423 S.C. 1, 13, 813 S.E.2d 704, 710–11 (2018) (reversing the grant of post-conviction relief where the petitioner failed to introduce evidence of incompetency and plea counsel testified that he felt petitioner was competent based on his interactions with his client); Jeter, 308 S.C. at 232–33, 417 S.E.2d at 596 (finding counsel acted reasonably in relying on his own perceptions of a defendant’s competency); Ramirez, 419 S.C. at 22–23, 795 S.E.2d at 845–46 (finding plea counsel was deficient in failing to seek an independent competency evaluation where plea counsel was “clearly on notice” the defendant had mental health

issues based on his own personal interactions with the defendant, as well as a previous psychological evaluation identifying several mental health issues). There is no evidence in the record that plea counsel's failure to seek a competency or other psychological evaluation fell below an objective standard of reasonableness. The post-conviction relief court properly rejected this claim.

The post-conviction relief court properly found counsel was sufficiently prepared and rendered effective assistance of counsel. Ample evidence supports these findings. The post-conviction relief court properly denied relief and this Court should deny certiorari.

II. The post-conviction relief court properly found that Petitioner failed to establish any constitutional deprivations entitling him to post-conviction relief based on a claim that his guilty plea was involuntary due to improper advice because the record firmly establishes Petitioner entered a knowing, voluntary, and intelligent negotiated guilty plea with the advice of competent counsel who diligently represented him and Petitioner repeatedly testified he pled guilty to avoid a harsher sentence following a likely conviction at trial.

Similar to his claims of ineffective assistance of counsel, Petitioner also argues his guilty plea was involuntary based on purported misadvice of counsel. Specifically, Petitioner contends he was "pressured in his decision to plead guilty" based on "not being able to meet with counsel to discuss all the discovery." (PWC 11). As discussed above, the post-conviction relief court properly rejected this claim and properly found that counsel thoroughly and properly reviewed discovery with Petitioner and advised him as to the options available in his case. The record firmly establishes the knowing, intelligent, and voluntary nature of Petitioner's guilty plea. This Court should deny certiorari.

"[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 or her and the consequences of his or her 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. 1971) (Stevens, J., dissenting) (explaining 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, in order to knowingly and voluntarily plead guilty, the defendant must have a full understanding of the consequences of the plea, including the nature and crucial elements of the offense(s); the maximum and any mandatory minimum penalty; and the nature of the constitutional rights being waived. Pittman, 337 S.C. at 599, 524 S.E.2d at 624.

However, 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 standard 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.” Id. at 31.

A 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 or her guilty or the trial 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 trial 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 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, 282 S.C. at 133, 318 S.E.2d at 361. 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).

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).

Here, the records from the general sessions proceeding and the post-conviction relief proceeding establish Petitioner entered a knowing, voluntary, and intelligent plea with the advice of competent counsel, who thoroughly investigated Petitioner's case. As discussed above, Petitioner repeatedly testified his plea was induced by his strong desire to avoid a sentence of life without parole, which again, is a difficult but nonetheless constitutional choice that Petitioner knowingly, intelligently, and freely made with the advice of competent counsel. (App. 129, 138-40, 142, 151). The record from both the plea and the evidentiary hearing establish Petitioner was represented by competent counsel who was sufficiently prepared, properly investigated Petitioner's case, and provided reasonable and prudent advice to Petitioner. The record clearly establishes Petitioner's plea was knowing, voluntary, and intelligent. Ample evidence supports these findings. The post-conviction relief court properly denied relief and this Court should deny certiorari.

CONCLUSION

Because the post-conviction relief court properly determined Petitioner failed to establish any constitutional deprivations, this Court should deny certiorari. Should this Court grant certiorari, Respondent requests the opportunity to fully brief the issues raised.

Respectfully submitted,

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