THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Post Conviction Relief

Jennifer B. McCoy, Circuit Court Judge

Lower Court Case No.: 2016-CP-10-05736

DeANGELO BROWN #317618,..... Petitioner

vs.

State of South Carolina, ...Respondent.

NOTICE OF APPEAL

The Applicant, DeAngelo Brown #317618, appeals the Order of Dismissal signed by the Honorable Jennifer B. McCoy on May 9, 2022 and filed on May 10, 2022. Applicant filed a timely Motion to Alter or Amend and Reconsideration. An Order Denying Applicants Motion to Alter or Amend and Reconsideration was signed on September 20, 2022 by the Honorable Jennifer B. McCoy and was filed on September 21, 2022. Applicant received written notice of entry of this order on September 26, 2022.

Respectfully submitted.

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October 4, 2022

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
DeAngelo Brown, SCDC #317618, Applicant, v. State of South Carolina, Respondent.	Case No.: 2016-CP-10-5736 **ORDER OF DISMISSAL**

FILED
2022 MAY 10 AM 7:4[illegible]
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____ DSC

This matter comes before the Court by way of post-conviction relief (PCR) action commenced by Applicant DeAngelo Brown on October 25, 2016. The State requested an evidentiary hearing through its return filed on June 20, 2017. An evidentiary hearing into the matter convened before the undersigned on December 9, 2021, at the Charleston County Courthouse. Applicant was present and represented by Tommy A. Thomas, Esquire. Assistant Attorney General Lauren T. Mims represented the State. Applicant testified on his own behalf at the hearing. Plea counsel, Melisa W. Gay, was called to testify. However, plea counsel informed the court she had no longer had access to her file. Therefore, this Court held the record open to allow plea counsel the ability to review her file. A second evidentiary hearing convened on February 23, 2022 via Webex Virtual Platform. Plea counsel testified.

In addition to the pleadings in this action, this Court has before it a copy of the Charleston County Clerk of Court records regarding the subject convictions, Applicant's records from the South Department of Corrections, and the plea transcript.

After hearing the testimony at the evidentiary hearing and a full review of the record, this Court find's Applicant's allegations regarding ineffective assistance of counsel and involuntary

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guilty plea are without merit. Therefore, for the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was indicted at the November 2012 term of the Charleston County Grand Jury for possession with intent to distribute (PWID) heroin (2015-GS-1-6552). Applicant was subsequently indicted during the December 2012 term of the Charleston County Grand Jury for resisting arrest (2015-GS-10-6352), obstruction of justice (2015-GS-10-6766), and PWID cocaine (2015-GS-10-6767). Melissa Gay, Esquire, represented Applicant. Solicitors Charles Condon, Jr., Esquire and Scott Maynor, Esquire, prosecuted the case. On April 13, 2016, Applicant pleaded guilty to all charges before the Honorable R. Markley Dennis, Jr. Judge Dennis sentenced Applicant to imprisonment for concurrent terms of fifteen years for PWID heroin, third offense, one year for resisting arrest, three years of obstruction of justice, and fifteen years for PWID cocaine, third offense. Applicant did not appeal his conviction or sentence.

II. FACTS GIVING RISE TO THE PLEA

At the plea hearing, the State presented the following factual basis for the plea, to which Applicant agreed:

> Just briefly, traffic stop in Mount Pleasant, Charleston County. The defendant was in possession, which he put in his mouth 21 baggies of drugs. Eighteen were cocaine. Three were heroin. He resisted arrest from Deputy Funsch and Rissanen. He was placed in the back of the police cruiser, at which point he put the drugs in his mouth; wouldn't give them up.
>
> We had to take him to the hospital. He had them in his mouth for a couple of hours. Chewed a lot of them up. Spit a lot of product out, a lot of weight. And they located a scale, which is another indicator of attempt to distribute in the vehicle. He had $174 on his person at the jail.

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> And in addition, we had some jail calls we planned to introduce where he talked about how he faked the seizure in back of the car and how he had in excess of ten grams of cocaine in his mouth at the time. These are all different factors we could use to prove his guilt.

Plea Tr. pp. 15-16.

III. Issues Before This Court

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

1. "Ineffective Assistance of Counsel"
   a. "Defense counsel misadvised him when she informed him that he could he be found guilty of PWID cocaine when in fact he could not whereas the prosecution could not have proved the fact of the substance to have found him guilty of the offense."
   b. "Defense counsel failed to investigate the documenting of the control substance and discover that the prosecution had failed to comply with the statutory record keeping requirement dealing with the handling and the analyzation of the heroin in this case."
2. "Involuntary Guilty Plea"
   a. "The Applicant was not aware that as an element to possession with intent to distribute cocaine, that it was required that it was required that the substance be proven as cocaine and that by pleading that he would be relieving the state of having to prove it."

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, the 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.

IV. Testimony Presented at the Evidentiary Hearing

Applicant DeAngelo Brown's Testimony

At the evidentiary hearing, Applicant testified he retained plea counsel, Melissa Gay (Counsel). Applicant testified he only spoke with counsel three or four times. When Applicant

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spoke to counsel, he testified he spoke with her about defenses, specifically about his defense regarding the traffic stop from which his charges arose. Applicant testified that the traffic stop matter was still pending in Magistrate Court at the time of his plea. Applicant testified he had not retained Counsel to represent him on that charge, but wished to use it as a defense to his general session charges. Applicant further testified Ms. Gay advised him he could bring this issue up as a defense during pre-trial motions, and that they spoke about this defense a number of times. Applicant testified he spoke with counsel about an alleged "inadequate amount" of cocaine shown on a forensic report. Applicant testified he received the forensic report well before his plea, during a bond modification hearing. Applicant testified he read the report and felt he could not be convicted of possession with intent to distribute cocaine at the time of his plea and told Counsel this theory as well.

Regarding the trial proceedings, Applicant testified he and Counsel were prepared for trial. Applicant testified there was a pre-trial motion hearing regarding a video of the aforementioned traffic stop; the Court allowed the video of the traffic stop to come in as evidence. After the jury had been selected, Applicant testified he decided to take a plea after the result of the pre-trial motion.

Regarding the guilty plea, Applicant testified he was aware that the report reflected that there was allegedly no cocaine found before the guilty plea. He testified he asked Counsel to negotiate dropping his gun charge and the charge for possession with intent to distribute cocaine, and that he was willing to plea. Applicant testified he did not understand he must serve eighty-five percent of those charges, but conceded through cross-examination that Judge Dennis had asked him at his plea hearing whether he understood he would have to serve at least eighty-five percent of both possession charges. Applicant confirmed he had testified at the plea hearing that

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he understood. During cross-examination by the State, Applicant testified he ultimately pled guilty to possession with intent to distribute heroin, possession with intent to distribute cocaine, obstruction of justice and resisting arrest. He testified he agreed to the facts that were presented at the plea hearing. He additionally testified he told Judge Dennis that he wanted to get this matter over with and behind him.

Plea Counsel Melisa Gay's Testimony

At the evidentiary hearing, Counsel testified this case had a lot to do drugs and Applicant's possession of said drugs. Counsel credibly testified she met with Applicant a number of times before his plea. She further testified she received discovery that she shared with Applicant on a number of occasions. She testified she discussed the potential sentences Applicant could receive, his potential exposure, as well as spoke with witnesses regarding Applicant's case. Counsel testified she was prepared to go to trial on behalf of Applicant. Counsel additionally testified that she counseled Applicant on a "global approach" to effectively limit his exposure to a longer sentence, as well as limit Applicant's potential federal exposure. She opined, in hindsight, that she could have negotiated further with the Solicitor regarding the plea due to the amount of weight in the forensic report. Counsel testified it was her opinion that the cocaine charge was not a prosecutable offense. However, counsel further testified Applicant benefitted from pleading guilty due to the gun charge being dismissed. She further testified it was Applicant's decision to plead guilty.

V. 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

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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

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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

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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).

VI. Findings of Fact & Conclusions of Law

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 his 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.

Involuntary Guilty Plea

Applicant contends his plea was involuntary because he relied on erroneous advice from

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Counsel. This Court disagrees, and finds Applicant knew the nature of the charges against him, the terms of the plea agreement, 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.

"[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

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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.

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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

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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.

At the plea hearing, Counsel advised the plea court she had an adequate opportunity to fully discuss the charges with Applicant. Counsel advised the plea court she had adequate opportunity to fully discuss the charges with Applicant, Counsel was satisfied Applicant had understood their discussions, Applicant had been able to fully assist in his defense, and it was Applicant's decision to accept the plea. (Plea Tr. 11-12). Judge Dennis explained to Applicant the constitutional rights he waived by pleading guilty, including the rights to: remain silent, challenge the State's evidence, and present a defense. (Plea Tr. 14-15). Applicant informed the court he understood both the charges and affirmed for the court Counsel had explained the charges to him

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(Plea Tr. 4). Applicant further indicated he was satisfied with the services provided to him by Counsel. (Plea Tr. 8-9).

Judge Dennis further informed Applicant that the possession with intent to distribute heroin and cocaine are classified as most serious crimes, meaning, Applicant would have to serve a minimum of eighty-five percent of the sentences imposed (Plea Tr. 5-6). Applicant affirmed he understood and wished to proceed forward. *Id.* Applicant advised the court he had not been threatened, pressured, intimidated, or promised anything in exchange for his guilty plea. (Plea Tr. 10, 15). When questioned whether he had been truthful with the court in his answering of the Court's questions, Applicant affirmed he had. (Plea Tr. 16).

Furthermore, Applicant agreed with the facts of the case that were presented at the plea hearing. Notably, he agreed there was additional evidence of Applicant's guilt, including a jail call admitting guilt where he indicated he faked a seizure in the back of the patrol car and admitting he had a large amount of cocaine in his mouth at that time, admitting a scale was found in his vehicle, and 174 dollars were found on his person. Applicant testified at the evidentiary hearing he received discovery in the form of forensic reports which showed there was an insufficient amount of cocaine for testing Therefore, Applicant contends his cocaine charge should not have been dismissed. This Court disagrees. Applicant had knowledge of this potential evidence prior to his plea, and still represented to the plea court that he was in fact guilty. Additionally, Applicant stated to the plea court he agreed with the State's recitation of the facts of this case and stated his answers to the Court were truthful.

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

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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).

Additionally, Counsel credibly testified at the evidentiary hearing she met often with Applicant in preparation for his trial, discussed discovery with Applicant, and discussed Applicant's constitutional rights with him. Counsel further testified it was Applicant's decision to plead guilty – notably, after she had begun proceedings for trial and argued a pre-trial motion. Counsel testified Applicant benefitted from this plea by reducing his exposure federally.

Counsel for Applicant retroactively opines that she may have been ineffective for failing to further negotiate the plea offer due to the alleged insufficient amount of cocaine available for testing. However, Counsel's opinion regarding her own ineffectiveness is not probative of whether she was constitutionally ineffective under *Strickland*. *See Foye v. State*, 335 S.C. 586, 590, 518 S.E.2d 265, 267 (1999) (the court may properly disregard opinions of trial counsel going to the ultimate issues in a PCR case). This Court finds counsel for Applicant was not deficient under *Strickland* standard, because she acted reasonably by counseling Applicant, discussing potential defenses, appearing on his behalf, arguing pretrial motions and creating a defense that would have reduced Applicant's potential federal exposure. Furthermore, Applicant was not prejudiced by Counsel's representation. In exchange for a plea of guilty, the State dropped a gun charge that would have caused severe implications under Applicant's federal supervision. Because the possession with intent to distribute charges at issue were third or subsequent offenses, Applicant could have faced up to forty-one years for the charges of possession with intent to distribute heroin, obstruction of justice and resisting arrest if sentenced consecutively. Additionally, the State

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presented evidence at the plea hearing to support a conviction of possession with intent to distribute cocaine, which Applicant pled guilty to.

Based on the foregoing, the record reflects Applicant's assertion that his plea was involuntary as a result of ineffective assistance of counsel is without merit. 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.**

VIII. 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 his application for post-conviction relief. This Court finds Counsel was not deficient in her representation as she acted reasonbly in represented Applicant, nor was Applicant prejudiced by Counsel's representation, as he got a significant benefit in pleading guilty by his gun charge being dropped, thus limiting potential severe federal implications. Accordingly, this Court finds Applicant freely, knowingly, and voluntarily pleaded guilty and further failed to present any justification as to why the statements he 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

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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 9 day of May, 2022.

JENNIFER B. McCOY
Presiding Circuit Court Judge
Ninth Judicial Circuit

Charleston, South Carolina

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2016-CP-10-05736
Deangelo Brown #317618, Applicant, v. State of South Carolina, Respondent.	ORDER DENYING APPLICANTS MOTION TO ALTER OR AMEND AND RECONSIDERATION

Applicant Deangelo Brown filed a Motion to Alter or Amend and Reconsideration on May 23, 2022. Upon careful consideration, this Court hereby DENIES Applicant's Motion.

IT IS SO ORDERED!

The Honorable Jennifer B. McCo

FILED
2022 SEP 21 PM 1:44
JULIE J. ARMSTRONG
CLERK OF COURT

September 20, 2022
Charleston, South Carolina

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

Deangelo Brown, #317618, Applicant,

v.

State of South Carolina, Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Order Denying Applicant's Motion to Alter or Amend and Reconsideration has been served upon the applicant by mailing one copy in the United States mail, postage prepaid, addressed to:

Tommy A. Thomas, Esquire
Post Office Box 88
Irmo, SC 29063

This 22nd day of September, 2022.

Vickie Hall
Legal Assistant for Respondent

SWORN to before me this 22nd day of September, 2022.

Leighann Stone
Notary Public for South Carolina.
My Commission Expires: May 16, 2029