THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

George M. McFadden, Jr., Circuit Court Judge

Case No: 2020-CP-40-4856

Arthur Q. Jones, Jr. #358555.....Applicant/Appellant

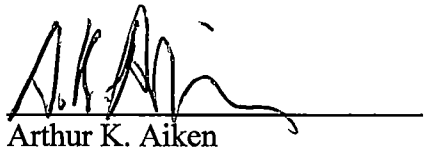
v.

State of South Carolina.....Respondent/Respondent

NOTICE OF APPEAL

This is a post-conviction relief case. Appellant appeals from the Order of Dismissal entered in this case on October 20, 2022. Appellant received written notice of the Order of Dismissal entered on October 20, 2022, by mail on October 22, 2022. A copy of the Order of Dismissal appealed from is attached.

November 21, 2022



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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Arthur Q. Jones, Jr., #358555, Applicant, v. State of South Carolina, Respondent.	)	CASE NO. 2020–CP–40–4856 **ORDER OF DISMISSAL**

The matter before the Court is an action for post-conviction relief (PCR) commenced by Arthur Q. Jones, Jr. (Applicant) on October 14, 2020, asserting various allegations of ineffective assistance of counsel. The State submitted its Return and Motion for a More Definite Statement on March 12, 2021, requesting an evidentiary hearing. Applicant, through counsel, amended his application on May 25, 2022.

Before this Court, an evidentiary hearing was convened on May 25, 2022, at the Richland County Courthouse. Applicant was present and represented by Arthur K. Aiken, Esquire, and Assistant Attorney General D. Russell Barlow, II, represented Respondent. Applicant and J. Rhodes Bailey, Esquire (Plea Counsel), testified at the hearing. After hearing the testimony at the PCR hearing and a full review of the record, the Court finds that Applicant's allegations are without merit, denies relief, and dismisses the action with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections (SCDC). In October 2018, the Richland County Grand Jury indicted Applicant for three counts of attempted murder (2018-GS-40-4151; 2018-GS-40-4154; 2018-GS-40-4155), possession of a weapon during the commission of a violent crime (2018-GS-

40-4156), and unlawful possession of a weapon by a person convicted of a crime of violence (2018-GS-40-4150). Applicant was represented by J. Rhodes Bailey, Esquire. Assistant Solicitor R. Vance Eaton of the Fifth Circuit Solicitor's Office prosecuted the case.

Applicant pleaded guilty as indicted on December 11, 2019, before the Honorable L. Casey Manning. Judge Manning, without recommendation or negotiation, sentenced Applicant to thirty years imprisonment for two counts of attempted murder, five years imprisonment for unlawful possession of a weapon by a person convicted of a violent crime, five years for possession of a weapon during the commission of a violent crime, to run concurrently, and thirty years imprisonment for the remaining charge of attempted murder to be served consecutively with the balance suspended upon the service of ten years. Applicant did not appeal.

Applicant timely commenced this PCR action on June 7, 2018.

SUMMARY OF RELEVANT FACTS

The incident giving rise to the charges occurred on March 17, 2018. (Plea Tr. p. 3). At the guilty plea proceeding Assistant Solicitor Eaton gave the following factual recitation in support of the pleas:

> This incident was on St. Patrick's Day of 2018, Your Honor. We have one of the victims and his family in the courtroom today. Two of the victims could not be here. But on that day, as Your Honor is well aware, Saint -- Five Points turns into a huge event. There is a 5K run in the morning, followed by a full day of activities, festivities that goes on well into the night. That day, Your Honor, Mr. Jones was there, as was Howard Bow -- Howard Boone, who is seated in the courtroom, Your Honor. Mr. Jones was affiliated with gang members, and that night we know from footage -- I'm going to show Your Honor a brief part of the footage. We know that -- it appears that Mr. Jones saw some opposing gang members that walked past them in the crowd. Now, this is a very crowded area; thousands of people come to this event, Your Honor. As you will see, Mr. Jones in this video is obviously engaged visually with somebody, and Mr. Jones makes the decision as he, as he sort of faces off with that person to pull out a .380 pistol and start firing shots at his opponents

there in the crowd. Three people are hit, Howard Boone being the worst injured of the three. So, Howard Boone is shot in the neck, and as Your Honor can well see, Mr., Mr. Boone is quadriplegic. Kidron Deal is hit around the face; he has reconstructive face surgery, to include bone grafts. Anfernee Kirkland is hit to the lower left hip.

(Plea Tr. pp. 3-4).

CURRENT ACTION BEFORE THIS COURT

In his application for post-conviction relief, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
   a. Violation of his Fifth Amendment;
   b. Violation of his Sixth Amendment; and
   c. Violation of his Fourteenth Amendment.

On May 25, 2022, Applicant, through PCR counsel, amended his application as follows:

1. Ineffective Assistance of Counsel:
   a. Jones' guilty plea was not made with or based on advice of competent counsel.
   b. Jones' guilty plea was not intelligently made.
   c. Trial counsel did not prepare Jones' case for trial, and Jones was left with no choice but to plead guilty.
   d. Trial counsel did not discuss the elements of the offense or potential defenses with Jones.
   e. Trial counsel never discussed the advantages and disadvantages of a trial versus the advantages and disadvantages of a plea with Jones so that Jones could make an informed choice of whether to enter a plea or try his case.
   f. Trial counsel did not investigate Jones' case.
   g. Trial counsel did not tell Jones the possible penalties for his offenses.
   h. Trial counsel had Jones sign the Sentencing Sheet without explaining it to him.
   i. Trial counsel told Jones that if he pled, he would get between eighteen and twenty-five years, and Jones received forty years.
   j. Trial counsel did not explain the difference between a recommendation and a negotiation.

SUMMARY OF RELEVANT TESTIMONY

APPLICANT'S TESTIMONY

Initially, Applicant was asked whether or not he understood that he was potentially facing one hundred years if he was granted a PCR relief, and Applicant responded with "no, sir." Later, Applicant testified that he understood how PCR relief works and that he could go back and potentially receive one hundred years imprisonment instead of forty years. Applicant testified that when they went to the plea hearing, that was the first time he knew about it. Applicant testified that he did not know that they were going to the plea hearing until he was in court.

Applicant testified that he and Plea Counsel had a small session. Applicant testified that Plea Counsel never explained the elements of his crimes. Applicant testified that Plea Counsel may have told him he could receive one hundred years, but he was not sure. Applicant testified that Plea Counsel did not discuss the advantages or the disadvantages of pleading. Applicant testified that the discussion regarding the plea was about five to ten minutes long. Applicant was asked if the sentencing sheet was explained to him, and he replied that he was really confused about the entire situation, including the time he was receiving. Applicant further testified that he wasn't aware of the time he could get, and Plea Counsel never made him aware of that. Applicant testified that he was told he was looking at twenty to twenty-five years.

Applicant testified at the plea hearing Plea Counsel told him he would seek eighteen to twenty-five years. Applicant testified that Plea Counsel never explained the difference between a straight-up plea and a negotiated plea. Applicant testified that Plea Counsel never provided full disclosure of his discovery. Applicant testified that he asked Plea Counsel about some material evidence showing someone else was the shooter. Applicant testified that the state had no physical

evidence and he did not know about the witnesses. Applicant testified that he now knows that the Columbia Police Department was looking at other people.

Applicant testified that he was not aware of any investigation by Plea Counsel. Applicant testified that Plea Counsel came to him once and showed him sheets of his Facebook photos.

On cross-examination, Applicant testified that prior to his plea, he met with Plea Counsel five to seven times. Applicant testified that Plea Counsel reviewed discovery once with him, and he saw only sheets with Facebook pictures, but there was no full disclosure, and he asked for it. Applicant testified that he did not recall discussing the elements of his charges or potential defenses. Applicant testified that he did not know about witnesses or police reports. Applicant was asked if he gave his attorney any leads to investigate, and he replied that he believed he was supposed to investigate.

Applicant testified that he thought he remembered the state reading the facts into the record. However, Applicant testified that he only agreed because of Plea Counsel's advice. Applicant testified that he recalled the colloquy, recalled agreeing with the court, but it was only because of Plea Counsel's advice. Applicant then testified that Plea Counsel told him to say yes to everything. Applicant was asked if he remembered his response to being satisfied with his Plea Counsel and that he had talked to Plea Counsel enough, and he replied "I believe so." Applicant then testified that his answers to questions from the plea court were based on counsel's advice. Applicant testified that entering his guilty plea was based on counsel's advice. Applicant was asked about his response to the court about anyone threatening or coercing him, and he replied that it was a product of fear and coercion.

Applicant testified that when he and Plea Counsel talked, he made a statement, but Plea Counsel shut it down and never mentioned any type of defenses. Applicant was asked about his

responses to the judge regarding a jury trial in his decision to plead guilty, to which he replied that it was off of counsel's advice.

PLEA COUNSEL'S TESTIMONY

On direct examination, Plea Counsel testified that he met with Applicant about seven to eight times, which was pretty frequently because he had other clients in the same dorm. Plea Counsel testified that he was sure they discussed the elements of his charges. Plea Counsel testified that the prosecutor later filed a direct indictment for possession of a weapon during the commission of a violent crime. In Plea Counsel's summary of the State's evidence, he replied that a shooting occurred between 1:00 and 2:00 AM at Five Points on St. Patrick's Day. Plea Counsel testified that there were pictures of Applicant and the news. Plea Counsel testified that videos and surveillance cameras were clear, and it definitely looked like Applicant.

Plea Counsel testified that some people bumped into Applicant, and he pulled out a gun and fired three times towards Group Therapy. Plea Counsel testified that three fraternity guys were shot and were not involved in the altercation. Plea Counsel testified that the videos were the primary evidence. Plea Counsel testified that there was speculation regarding gang affiliation, but mostly media and Plea Counsel never saw hard evidence of gang affiliation. Plea Counsel testified that there was speculation that someone else flashed a weapon, but Plea Counsel did not see any evidence of that either.

Plea Counsel testified that Applicant did not talk much regarding his version of the facts. Plea Counsel testified that Applicant was very polite and not in a rush. Plea Counsel testified that he never really got much of a story that was a tangible narrative, and the only real defense was maybe self-defense, but he never really said much to me. Plea Counsel testified that he was sure he reviewed discovery; however, the jail was funny about computers and videos. Plea Counsel

said that he would have definitely shown discovery at the courthouse. Plea Counsel testified that he would have included the video and would have at least told him about it if he did not show him the video. Plea Counsel testified that the parents of Applicant met with him twice and saw the video.

Plea Counsel testified that he discussed the potential sentencing. Plea Counsel testified regarding defense that the video was clear and self-defense was best, but Applicant never pushed one way or the other. Plea Counsel testified that he told Applicant about his right to a jury trial. Plea Counsel testified that he believed Applicant understood and that he would have been cautious to explain everything to Applicant. Plea Counsel testified that Applicant did not provide any information regarding investigations or leads. Plea Counsel testified that he investigated where the camera footage was, but there was nothing really to investigate. Plea Counsel testified that Five Points was in the news a lot regarding shootings and his strategy was to lay low and not attract attention hoping that things were calm down.

Plea Counsel testified that the State wanted to try the case to attract attention, and the State would not offer anything. Plea Counsel told Applicant he would request eighteen to twenty-five years but did not promise eighteen to twenty-five years. Plea Counsel testified that he hoped he would get eighteen to twenty-five years and that eighteen was very optimistic, but he was looking for something under thirty years. Plea Counsel testified that he informed Applicant of the consequences of the plea and that Applicant understood the facts against him. Plea Counsel testified that Applicant never wanted to go to trial, but he would have done it if he did want a trial. Plea Counsel testified that he agreed with the decision to plead guilty. Plea Counsel testified that the trial would have been very visual, and there would have been cameras in the courtroom. Plea

Counsel testified he would have liked Applicant to have gotten more credit for accepting responsibility.

On cross-examination, Plea Counsel testified that he spent a fair amount discussing the plea with Applicant, and he discussed it with the parents. Plea Counsel testified that Applicant never showed interest in a trial. Plea Counsel testified that Applicant never gave a narrative that would support self-defense. Plea Counsel testified that he was pretty sure he discussed the elements of the crimes with Applicant. Plea Counsel testified that another potential defense could have been that it wasn't him, but Applicant never indicated he was not there. Plea Counsel testified that he informed Applicant of the penalties and that it was a practice to add the sentences and to inform defendants wholly.

Plea Counsel testified that it was a straight-up plea with no recommendations. Plea Counsel testified that the state asked for the max plus consecutive sentencing. Plea Counsel testified that the best case here was to keep them concurrent. Plea Counsel testified that this was very public, and political pressure was going on at the time. Plea Counsel testified that he did not remember there being any other suspects. Plea Counsel testified he may have asked if there was any indication someone else had a gun; however, no one reported seeing anyone else pull a gun. Plea Counsel testified that the transcript shows that he requested fifteen to eighteen years, but in his head, he was hoping to keep it under thirty.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court further had the opportunity to observe the witnesses at the evidentiary hearing and evaluate their credibility, and the Court has weighed their testimony accordingly in its discussion below. This Court finds the combined record of the plea transcript

and the testimony and evidence presented at the evidentiary hearing establish Applicant received effective assistance of counsel. Accordingly, this Court denies relief and dismisses this application with prejudice. Set forth below are the relevant findings of facts and conclusions of law as required by § 17-27-80 of the South Carolina Code.

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL

Applicant alleges that he received ineffective assistance from his Plea Counsel. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, 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 an evidentiary hearing can only determine. 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 insufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel's performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

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

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

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential[, as] [i]t is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 8 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge.

Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690).

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

Reviewing courts "must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed [at] the time of counsel's conduct." Strickland, 466 U.S. at 690. An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment." Id. The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." Id.

The Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. Harrington, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and

interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," **not** whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. Thus, it is not enough "to show that the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to deprive the defendant of a fair trial." Id. at 693 (emphasis added).

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

The analysis of counsel's performance under the first prong of Strickland remains unchanged—the applicant must show counsel's representation fell below the objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the range of 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 decision making" 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 showing of prejudice 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 v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

The performance and prejudice standards, however, "do not establish mechanical rules[; . . .] [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." Id. at 696. Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Id. at 697. The court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

This Court finds Applicant cannot meet his burden as to his claims of ineffective assistance of Plea Counsel. The specific claims are addressed below:

Allegation 1(a): Jones' guilty plea was not made with or based on advice of competent counsel;
Allegation 1(b): Jones' guilty plea was not intelligently made;
Allegation 1(d): [Plea] counsel did not discuss the elements of the offense or potential defenses with Jones;
Allegation 1(e): [Plea] counsel never discussed the advantages and

disadvantages of a trial versus the advantages and disadvantages of a plea with Jones so that Jones could make an informed choice of whether to enter a plea or try his case;

Allegation 1(g): [Plea] counsel did not tell Jones the possible penalties for his offenses; and

Allegation 1(j): [Plea] counsel did not explain the difference between a recommendation and a negotiation.

In Applicant's allegations 1(a)(b)(d)(e)(g) and (j), Applicant alleges his guilty plea was not made voluntarily or intelligently. This Court finds these allegations are without merit.

"[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). An applicant who pleads guilty with the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994); Lockhart, 474 U.S. at 52). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Lockhart, 474 U.S. at 56.

To find a guilty plea voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). 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 the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d

418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "'[T]he voluntariness of a guilty plea 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.'" Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (quoting Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)).

In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. Harres, 282 S.C. at 133, 318 S.E.2d at 361. However, statements 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. Crawford v. United States, 519 F.2d 347 (4th Cir. 1975), overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir. 1985).

On direct-examination, Applicant testified that Plea Counsel may have told him he could receive one hundred years, but he was not sure. Applicant testified that Plea Counsel did not discuss the advantages or the disadvantages of pleading. Applicant testified that the discussion regarding the plea was about five to ten minutes long. Applicant was asked if the sentencing sheet was explained to him, and he replied that he was really confused about the entire situation, including the time he was receiving. Applicant further testified that he wasn't aware of the time he could get, and Plea Counsel never made him aware of that. Applicant testified that he was told he was looking at twenty to twenty-five years. Applicant testified that Plea Counsel never explained the difference between a straight-up plea and a negotiated plea.

On cross-examination, Applicant testified that prior to his plea, he met with Plea Counsel five to seven times. Applicant testified that Plea Counsel reviewed discovery once with him, and

he saw only sheets with Facebook pictures, but there was no full disclosure, and he asked for it. Applicant testified that he did not recall discussing the elements of his charges or potential defenses. Applicant testified that he did not know about witnesses or police reports. Applicant testified that he thought he remembered the state reading the facts into the record. However, Applicant testified that he only agreed because of Plea Counsel's advice.

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On direct-examination, Plea Counsel testified that he met with Applicant about seven to eight times, which was pretty frequently because he had other clients in the same dorm. Plea Counsel testified that he was sure they discussed the elements of his charges. Plea Counsel testified that videos and surveillance cameras were clear, and it definitely looked like Applicant. Plea Counsel testified that the videos were the main evidence. Plea Counsel testified that Applicant did not talk much regarding his version of the facts. Plea Counsel testified that he never really got much of a story that was a tangible narrative, and the only real defense was maybe self-defense, but he never really said much to him. Plea Counsel testified that he was sure he reviewed discovery; however, the jail was funny about computers and videos. Plea Counsel said that he

would have definitely shown discovery at the courthouse. Plea Counsel testified that he would have included the video and would have at least told him about it if he did not show him the video.

Plea Counsel testified that he discussed the potential sentencing. Plea Counsel testified regarding defense that the video was clear, and self-defense was best, but Applicant never pushed one way or the other. Plea Counsel testified that he told Applicant about his right to a jury trial. Plea Counsel testified that he believed Applicant understood and that he would have been cautious to explain everything to Applicant.

Plea Counsel testified that he informed Applicant of the consequences of the plea and that Applicant understood the facts against him. Plea Counsel testified that Applicant never wanted to trial, but he would have done it if he did want a trial. Plea Counsel testified that he agreed with the decision to plead guilty. Plea Counsel testified that the trial would have been very difficult because of the media attention and there would have been cameras in the courtroom.

On cross-examination, Plea Counsel testified that he spent a fair amount discussing the plea with Applicant, and he discussed it with Applicant's parents. Plea Counsel testified that Applicant never showed interest in a trial. Plea Counsel testified that Applicant never gave a narrative that would support self-defense. Plea Counsel testified that he was pretty sure he discussed the elements of the crimes with Applicant. Plea Counsel testified that another potential defense could have been that it wasn't him, but Applicant never indicated he was not there. Plea Counsel testified that he informed Applicant of the penalties and that it was a practice to add the sentences and to inform defendants wholly.

Plea Counsel testified that he did not remember there being any other suspects. Plea Counsel testified he may have asked if there was any indication someone else had a gun; however,

no one reported seeing anyone else pull a gun. Plea Counsel testified that the transcript shows that he requested fifteen to eighteen years, but in his head, he was hoping to keep it under thirty.

At the plea hearing, the following colloquy occurred between Applicant and the plea court:

Q. Now, Mr. Jones, you've heard your lawyer, Mr. Bailey, tell me that he has explained to you the charges contained in these five indictments, the possible punishments, and your rights, including your constitutional right to a jury trial, and that you understand these things. Is that correct?
A. Yes, sir.
Q. All right. Mr. Jones, before I can accept your plea 6 of guilty, it is necessary for me to make sure that you're 7 making this plea freely and voluntarily. To do that, sir, I need to ask you a series of questions. At any point during my questioning of you, if you do not understand 10 anything I say or any words that I use, please stop me; I'll be more than happy to repeat or explain anything I say, Mr. Jones. Additionally, I'll be more than happy to stop this plea and allow you as much time as you feel you may need to consult with your lawyer, Mr. Bailey. Do you understand, sir?
A. Yes, sir.
Q. How old are you, Mr. Jones?
A. Twenty-four.
Q. Twenty-four. How far did you go in school?
A. Got my GED.
Q. What kind of work have you done?
A. Work, I was a cook.
Q. And where were you a cook?
A. Where?
Q. Yeah. Where?
A. TakoSushi. TakoSushi.
Q. Okay.
A. Yes, sir.
Q. Now, Mr. Jones, have you ever been treated for the abuse of alcohol or drugs or for mental illness?
A. No, sir.
Q. Have you taken any medications, drugs, or alcohol in the past twenty-four or forty-eight hours?
A. No, sir.
Q. Are you today aware of any physical, nervous, or emotional problem that might keep you from understanding what you're doing?
A. No, sir.

Q. Now, you know what you're doing, Mr. Jones. Is that fair enough?
A. Yes, sir.
THE COURT: Do you agree, Mr. Bailey, that Mr. Jones knows, understands, appreciates what he's doing here today?
MR. BAILEY: Yes, Your Honor.
BY THE COURT:
Q. Now, I'll repeat this a little bit, Mr. Jones. You heard your lawyer tell me that he's explained to you once again the charges contained in these five indictments, the possible punishments, and your rights, including your right to a jury trial, and that you understand these things. Is that fair enough again?
A. Yes, sir.
Q. All right, Mr. Jones, you are first before me on indictment number 2018-4156, The State vs. Arthur Jones. This is possession of a weapon during the commission of a violent crime, it appears. Possession of a weapon during the commission of a violent crime, do you understand this charge, sir?
A. Yes, sir.
Q. This indictment, Mr. Jones, alleges that you did here in Richland County on or about March the 18th of 2018 possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife during the commission or attempted commission of a violent crime. You understand this allegation?
A. Yes, sir.
Q. You want to plead guilty to having this gun. Is that correct?
A. Yes, sir.
Q. You realize that by pleading guilty to possession of a weapon during the commission of a violent crime, Mr. Jones, that you could go to jail for five years?
A. Yes, sir.
Q. Knowing then, sir, that you can go to prison for five years by pleading guilty to this charge, do you still wish to plead guilty to it?
A. Yes, sir.
Q. All right. Next, Mr. Jones, I have before me indictment number 2018-4150, The State vs. Arthur Jones, Jr. Once again, this is indictment for possession of a pistol by a person unlawful or a stolen pistol. And the specific allegation says unlawful possession of a weapon by a person convicted of a crime of violence. Do you understand this charge, sir?
A. Yes, sir.
Q. This indictment, Mr. Jones, alleges that you did here in Richland County on or about March the 18th of 2018 knowingly possess or acquire a pistol after having been convicted of a crime of

violence as defined in section 16-23-10 as amended, violation of section 16-23-0030(b) as amended.

THE COURT: What was the crime?

MR. EATON: Strong-arm robbery, Your Honor.

THE COURT: Is that correct, Mr. Bailey?

MR. BAILEY: Yes, Your Honor, that's correct.

BY THE COURT:

Q. You understand all this?

A. Yes, sir.

Q. You had a conviction for strong-arm robbery. You shouldn't have had a gun. You understand that. So, you want to plead guilty to unlawful possession by a person convicted of a crime of violence, which would be strong-arm robbery. Do you understand that?

A. Yes, sir.

Q. You realize that by pleading guilty to this particular indictment charged, Mr. Jones, that you could go to jail for five years?

A. Yes, sir.

Q. Knowing then, sir, that you can go to prison for five years by pleading guilty to this charge, possession of a weapon by a person convicted of a violent crime, you still wish to plead guilty to it?

A. Yes, sir.

Q. All right. Next, Mr. Jones, I have before me indictment number 2018-4154, The State vs. Arthur Jones, Jr., once again, and this is an indictment for attempted murder. Do you understand this charge, sir?

A. Yes, sir.

Q. This particular indictment, Mr. Jones, alleges that you did here in Richland County on about March the 18th of 2018 did with the intent to kill attempt to kill Kidron, K-i-d-r-o-n, Deal with malice aforethought, either expressed or implied. Do you understand this allegation?

A. Yes, sir.

Q. You want to plead guilty to attempted murder. Is that correct?

A. Yes, sir.

Q. You realize that by pleading guilty to attempted murder, Mr. Jones, that you could go to jail for thirty years?

A. Yes, sir.

Q. Knowing then, sir, that you can go to prison for thirty years by pleading guilty to attempted murder, do you still wish to plead guilty to it?

A. Yes, sir.

Q. Now, of course you understand, do you not, Mr. Jones, as I'm sure your lawyer, Mr. Bailey, has explained to you, that this attempted murder is an 85 percent sentence?
A. Yes, sir.
Q. You understand that? That whatever sentence I impose, you've got to do at least 85 percent of that imposed sentence before you become eligible for parole. Do you understand that, sir?
A. Yes, sir.
Q. Knowing then, sir, that you can receive up to thirty years for pleading guilty to attempted murder, knowing fully and fully realizing that you've got to do 85 percent of whatever sentence I impose, you still wish to plead guilty to attempted murder?
A. Yes, sir.
Q. All right. Next, Mr. Jones, I have before me indictment number 2018-4155, The State vs. Arthur Jones, Jr., once again. Once again this is an indictment for attempted murder, and once again, Mr. Jones, it's fair to say that you understand this charge. Is that correct, sir?
A. Yes, sir.
Q. Mr. Jones, this particular indictment alleges that you did here in Richland County on about March the 18th of 2018 did with the intent to kill attempt to kill Anfernee Kirkland, A-n-f-e-r-n-e-e Kirkland, with malice aforethought, either expressed or implied. You understand this allegation, Mr. Jones?
A. Yes, sir.
Q. Want to plead guilty to another count of attempted murder, this time trying to kill Anfernee Kirkland. Is that correct?
A. Yes, sir.
Q. Realize once again that by pleading guilty to attempted murder, Mr. Jones, that you could go to jail for thirty years. Knowing that, you still wish to plead guilty, and the thirty years on all three of these attempted murders carry 85 percent. You understand that, don't you?
A. Yes, sir.
Q. All right. Next, Mr. Jones, I have before me indictment number 2018-4151, The State vs. Arthur Jones, Jr., once again. Once again this is an indictment for attempted murder. Once again I need to ask you for the record. You understand charge. Is that fair enough?
A. Yes, sir.
Q. This particular attempted murder charge or indictment alleges that you did here in Richland County on or about March the 18th of 2018 did with the intent to kill attempt to kill Howard Boone

with malice aforethought, either expressed or implied. You understand this allegation once again, Mr. Jones?

A. Yes, sir.

Q. Once again, you are pleading guilty to attempted murder. Is that correct?

A. Yes, sir.

Q. You realize once again do you not, sir, that by doing so, you can go to jail for thirty years, having to do 85 percent of whatever sentence you receive on attempted murder? You still wish to plead guilty. Is that correct?

A. Yes, sir.

Q. Now, Mr. Jones, are you currently on probation or parole for any prior offenses?

A. No, sir.

Q. Mr. Jones, I can run these sentences on these five indictments consecutively. That is, put one after the other, add one to the other. If I do so, sir, you're looking at, I think, exactly 100 years in jail. You understand that?

A. Yes, sir.

Q. Understanding then, sir, that you could go to prison for 100 years by pleading guilty to these five indictments, do you still wish to plead guilty to them?

A. Yes, sir.

Q. Now, Mr. Jones, when you plead guilty, you have to give up certain rights. First of all, you have to give up your right to remain silent. Now, this is your right against self-incrimination, Mr. Jones, your right to say nothing at all. No one can compel you to come into court to provide evidence or to testify against yourself. Do you understand this, sir?

A. Yes, sir.

Q. Secondly, Mr. Jones, when you plead guilty, you have to give up your right to a jury trial. That is your right for a jury here in Richland County to decide whether or not you're guilty of these five charges beyond a reasonable doubt. A jury would base its decision on whatever evidence the state would introduce at trial against you and also on whatever evidence you and your lawyer, Mr. Bailey, may wish to introduce. Now, Mr. Jones, I emphasize may wish to introduce, sir, because in a trial, you'd be presumed innocent. Would not have to prove anything, and you could not be convicted unless the state convinced all twelve jurors of your guilt beyond a reasonable doubt. The jury's decision would have to be unanimous; all twelve would have to agree that you're guilty of all five of these charges. Do you understand that, sir?

A. Yes, sir.
Q. Thirdly, Mr. Jones, when you plead guilty, you give up your right to confront and to be confronted by the witnesses against you. That is your right to see, hear, and cross-examine any witnesses the state may call to testify against you during a trial. In addition, Mr. Jones, by pleading guilty you give up your right to subpoena and call witnesses on your own behalf. That is someone who may testify for you. Do you understand this, sir?
A. Yes, sir.
Q. Now, do you understand these rights I just mentioned to you, Mr. Jones?
A. Yes, sir.
Q. Do you understand, sir, that when you plead guilty, you have to give up these constitutional rights? You understand that?
A. Yes, sir.
Q. Now, is that what you want to do? You want to give up your constitutional rights?
A. Yes, sir.
Q. Now, you realize you would not receive a jury trial on any of these five charges by pleading guilty to them?
A. Yes, sir.
Q. You understand that, sir? Now once again, Mr. Jones, you're pleading guilty to three counts of attempted murder. Each count carries up to 90 years in jail. You got to do 85 percent of whatever sentence you receive on the attempted murder charge. And in addition, I've explained to you that possession of a gun by a person convicted of a violent crime and unlawful possession of a gun during the commission of a violent crime both carry five years apiece. I've explained to you that you're looking at a total of 100 years if these sentences are run consecutively. Now, considering what I've said, Mr. Jones, I'll ask you once again. How do you wish to plead guilty to these charges, guilty or not guilty?
A. Guilty.
Q. You realize, Mr. Jones, that when you plead guilty, you admit the truth of the allegations contained in these five indictments against you. You understand that?
A. Yes, sir.
Q. I tell you that, sir, because, Mr. Jones, you might have some defenses to these charges. Of course I have no way of knowing that, but you need to realize that by pleading guilty here today, you give up any defenses you may have. Do you understand that, sir?

A. Yes, sir.
Q. You need to speak up, Mr. Jones. You need to say yes or no. Additionally, Mr. Jones, I tell you that because when you were arrested by the Columbia Police Department, you may have given some type of incriminating statement. That is, made some confession or admission about your guilt. You need to realize that by pleading guilty here today, you waive your right to later on challenge or contest, if you gave any statements, whether or not they were taken or obtained from you freely and voluntarily in accordance with your constitutional rights. Do you understand that?
A. Yes, sir.
Q. Now, once again you're pleading guilty to three counts of attempted murder because you are guilty. Is that fair enough, Mr. Jones?
A. Yes, sir.
Q. You're pleading guilty to one count of possession of possession of a weapon during the commission of a violent crime because you are guilty of that. Is that fair enough?
A. Yes, sir.
Q. Now once again, you're pleading guilty to possession of a gun by a person convicted, or possession of a weapon during the commission of a violent crime and the unlawful possession of a gun by a convicted felon, all right.
THE COURT: Now, Solicitor, have there been any plea negotiations?
MR. EATON: This is a straight-up plea, Your Honor.
THE COURT: Anything additional at all, Mr. Bailey, in any way, shape, or form that needs to be added to the record in connection with any plea negotiations or any recommendations?
MR. BAILEY: No, Your Honor.
BY THE COURT:
Q. You understand all this, Mr. Jones?
A. Yes, sir.
Q. Do you still wish to continue and plead guilty?
A. Yes, sir.

(Plea Tr. pp. 9, l. 23 – 22, l. 17).

The plea transcript reflects the plea court conducted a very thorough colloquy with Applicant. Applicant informed the plea court he understood what he was doing in entering the

guilty plea. The plea court clearly explained Applicant's right to a jury trial, the State's burden of proof, and Applicant's right to present evidence in his defense. Applicant further admitted his guilt. The plea court explained in detail Applicant's charges, potential sentences, and his parole eligibility. Applicant told the plea court he understood the waiver of his rights, had decided to do so of his own free will, and did not have any questions of his Plea Counsel or the court. Even if this Court were to accept Plea Counsel was deficient in any of Applicant's claims, the plea court's colloquy cured any deficiency. See Rayford v. State, 314 S.C. 46, 48, 443 S.E.2d 805, 806 (1994) (holding that the record of the plea proceeding, including applicant's answers to the trial judge's questions, clearly established that applicant understood the possible sentences and the terms of the plea agreement and therefore could not have had misconceptions regarding sentencing).

Accordingly, this Court finds Applicant pleaded guilty freely and voluntarily after discussing his options with Plea Counsel to avoid a trial and avail himself of a lower sentence than he might receive if convicted at trial. This Court further finds Plea Counsel's representation of Applicant was competent and not deficient, nor was Applicant prejudiced by Plea Counsel's representation. The plea transcript indicates Applicant understood the terms of the plea agreement and chose to waive his rights and plead guilty. See Rayford v. State, 314 S.C. 46, 48, 443 S.E.2d 805, 806 (1994) (holding that the record of the plea proceeding, including applicant's answers to the trial judge's questions, clearly established that applicant understood the possible sentences and the terms of the plea agreement and therefore could not have had misconceptions regarding sentencing).

Accordingly, this Court finds Applicant has failed to establish Plea Counsel's deficiency or prejudice. Thus, this allegation must be denied and dismissed with prejudice.

Allegation 1(c): [Plea] counsel did not prepare Jones' case for trial, and Jones was left with no choice but to plead guilty;

and

Allegation 1(f): [Plea] counsel did not investigate Jones' case.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to prepare and investigate Applicant's case. This Court finds this allegation is without merit.

Applicant testified that he was not aware of any investigation by Plea Counsel. Applicant testified that Plea Counsel came to him once and showed him sheets of his Facebook photos.

On cross-examination, Applicant was asked if he gave his attorney any leads to investigate, and he replied that he believed he was supposed to investigate.

On direct-examination, Plea Counsel testified that Applicant did not talk much regarding his version of the facts. Plea Counsel testified that he never really got much of a story that was a tangible narrative, and the only real defense was maybe self-defense, but he never really said much to me. Plea Counsel testified regarding defense that the video was clear and self-defense was best, but Applicant never pushed one way or the other. Plea Counsel testified that Applicant did not provide any information regarding investigations or leads. Plea Counsel testified that he investigated where the camera footage was, but there was nothing really to investigate. Plea Counsel testified that Applicant never wanted to go to trial, but he would have done it if he did want a trial.

On cross-examination, Plea Counsel testified that Applicant never showed interest in a trial. Plea Counsel testified that Applicant never gave a narrative that would support self-defense. Plea Counsel testified that another potential defense could have been that it wasn't him, but Applicant never indicated he was not there. Plea Counsel testified that he informed Applicant of the penalties and that it was a practice to add the sentences and to inform defendants wholly.

At the plea hearing, the following colloquy occurred between Applicant and the plea court:

Q. Now, sir, are you fully satisfied with the manner in which your lawyer here, Mr. Bailey, the way he has advised and represented you on these charges?
A. Yes, sir.
Q. Have you talked with him for as long and for as often as you feel it necessary for him to properly represent you?
A. Yes, sir.
Q. You need any more time to talk to him?
A. No, sir.
Q. Have you understood your talks with him?
A. Yes, sir.
Q. Mr. Jones, has Mr. Bailey done everything for you you feel he should do or could do on your behalf in advising and representing you on these charges?
A. Yes, sir.
Q. Has he done anything you feel he should not have done?
A. No, sir.
Q. Are you completely satisfied with his services?
A. Yes, sir.
Q. You have any complaints, Mr. Jones, against anyone at the Columbia Police Department?
A. No, sir.
Q. You have any complaints against anyone working here in the solicitor's office?
A. No, sir.
Q. Have you understood my questions, Mr. Jones?
A. Yes, sir.
Q. Is there anything you want to ask me about what I just discussed with you, anything at all?
A. No, sir.

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, 466 U.S. 668). "A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). "[W]hile the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to

interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." Ard, 372 S.C. at 331–32, 642 S.E.2d at 597 (internal quotation marks omitted) (emphasis omitted).

However, our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel's duty to investigate. See, e.g., id. at 331, 642 S.E.2d at 597 ("Without a doubt, [a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation."). "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 690–91; see id. ("In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary."). Thus, in applying the Strickland standard to a claim of failure to investigate, counsel's decision not to undertake a particular investigation must be evaluated with heavy deference to counsel's judgment. Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 63 (Ct. App. 2014).

To prevail on a claim of ineffective assistance based on failure to investigate or prepare for trial, a PCR applicant must ordinarily present some evidence "that would have affected counsel's advice to [him] to accept the plea bargain offered or that would have caused [him] to decline to accept it." Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009); see, e.g., Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998) (reversing the PCR court's grant of relief where the applicant failed to "present any evidence of what counsel could have discovered or what other defenses he would have requested counsel pursue had counsel more fully prepared for the trial").

Applicant has not presented any evidence suggesting Plea Counsel could have further prepared for or investigated Applicant's case. Plea Counsel credibly testified that he discussed the discovery with Applicant. Plea Counsel credibly testified he discussed Applicant's constitutional rights with Applicant and believed that Applicant understood the extent of their conversations. Plea Counsel credibly testified he discussed the nature of the offenses and Applicant has failed to present any evidence that Plea Counsel did not investigate, nor has Applicant presented any evidence of information or rights that Plea Counsel failed to discuss with Applicant. As Applicant has failed to present any additional information or evidence that Plea Counsel could have discovered if he were to have prepared or investigated further, this Court finds Applicant has failed to show how Plea Counsel's performance was deficient, or how Applicant was prejudiced by Plea Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish Plea Counsel's deficiency or prejudice. Thus, this allegation must be denied and dismissed with prejudice.

Allegation 1(h): [Plea] counsel had Jones sign the Sentencing Sheet without explaining it to him.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to explain the sentencing sheet to him. This Court finds this allegation is without merit.

On direct-examination, Applicant was asked if the sentencing sheet was explained to him, and he replied that he was really confused about the entire situation, including the time he was receiving.

Initially, this Court finds Applicant has failed to meet his burden proving Plea Counsel's alleged deficiency prejudiced him. Applicant presented a single self-serving answer regarding the sentencing sheets but no evidence at the PCR evidentiary hearing regarding this allegation. Therefore, whether an explanation of the sentencing sheet would have changed the Applicant's

decision to plead and instead go to trial is mere speculation. However, speculation cannot satisfy Applicant's burden of proving prejudice. See Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (concluding pure conjecture fails to establish prejudice).

Furthermore, even if this Court were to entertain Applicant's assertion regarding the sentencing sheets, the plea court colloquy was abundantly clear and thorough. Any alleged deficiency was cured by the plea court's colloquy. See Rayford v. State, 314 S.C. 46, 48, 443 S.E.2d 805, 806 (1994) (holding that the record of the plea proceeding, including applicant's answers to the trial judge's questions, clearly established that applicant understood the possible sentences and the terms of the plea agreement and therefore could not have had misconceptions regarding sentencing).

Accordingly, this Court finds Applicant has failed to establish Plea Counsel's deficiency or prejudice. Thus, this allegation must be denied and dismissed with prejudice.

Allegation 1(i): [Plea] counsel told Jones that if he pled, he would get between eighteen and twenty-five years, and Jones received forty years.

Applicant alleges Plea Counsel was constitutionally ineffective because he told Applicant he would only get eighteen to twenty-five years if he pleaded guilty, and instead, Applicant received forty years. This Court finds this allegation is without merit.

On direct-examination, Applicant testified that Plea Counsel may have told him he could receive 100 years, but he was not sure. Applicant further testified that he wasn't aware of the time he could get, and Plea Counsel never made him aware of that. Applicant testified that he was told he was looking at twenty to twenty-five years. Applicant testified at the plea hearing Plea Counsel told him he would seek eighteen to twenty-five years.

On direct-examination, Plea Counsel testified that he discussed the potential sentencing. Plea Counsel testified that he believed Applicant understood and that he would have been cautious to explain everything to Applicant. Plea Counsel told Applicant he would request eighteen to twenty-five years but did not promise eighteen to twenty-five years. Plea Counsel testified that he hoped he would get eighteen to twenty-five years and that eighteen was very optimistic, but he was looking for something under thirty years.

On cross-examination, Plea Counsel testified that he informed Applicant of the penalties and that it was a practice to add the sentences and to inform defendants wholly. Plea Counsel testified that it was a straight-up plea with no recommendations. Plea Counsel testified that the state asked for the max plus consecutive sentencing. Plea Counsel testified that the best case here was to keep them concurrent. Plea Counsel testified that the transcript shows that he requested fifteen to eighteen years, but in his head, he was hoping to keep it under thirty.

Again, this Court finds Applicant has failed to meet his burden proving Plea Counsel's alleged deficiency prejudiced him. Here, Applicant provided testimony that Plea Counsel "may have" informed him that if he went to trial, he could receive up to one hundred years imprisonment. Notably, Applicant contradicts himself in his testimony, because he testified that he was " looking at twenty to twenty-five years . . . and Plea Counsel told him he would seek eighteen to twenty-five years." Whether Applicant would have chosen to proceed to trial had he known he could get forty years and not eighteen to twenty-five years is mere speculation. However, speculation cannot satisfy Applicant's burden of proving prejudice. See Clark, 315 S.C. at 388, 434 S.E.2d at 267 (concluding pure conjecture fails to establish prejudice).

Furthermore, even if this Court accepted Applicant's assertion regarding the alleged time he would serve if he pleaded guilty, the plea court colloquy was abundantly clear and thorough. The plea court's colloquy cured any alleged deficiency.

Accordingly, this Court finds Applicant has failed to establish Plea Counsel's deficiency or prejudice. Thus, this allegation must be denied and dismissed with prejudice.

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CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. The Court finds Plea Counsel's representation was neither deficient nor prejudicial. Therefore, this application for post-conviction relief **must be DENIED and DISMISSED WITH PREJUDICE.**

The Court notes 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.

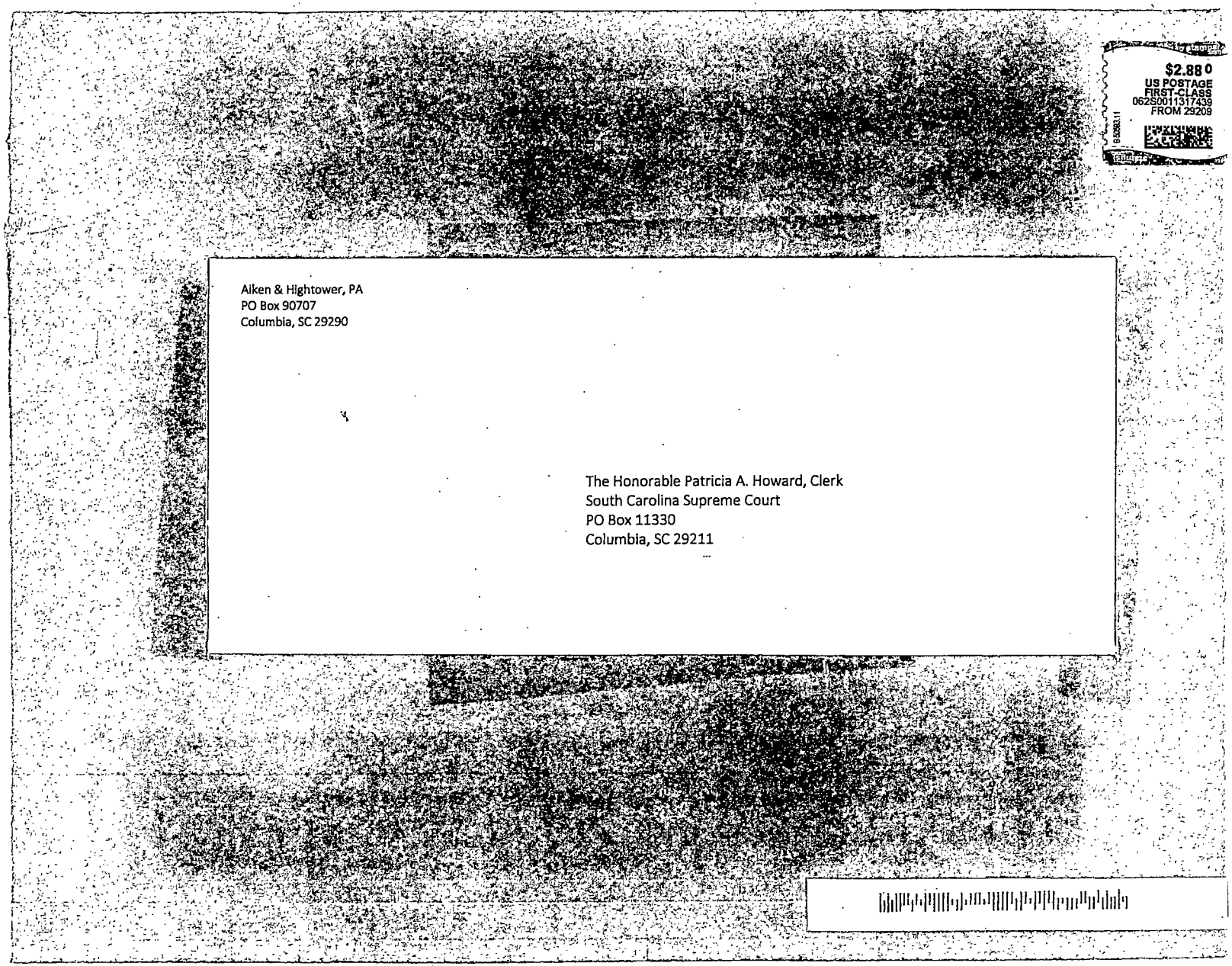
IT IS THEREFORE ORDERED:

1. Post-conviction relief is denied, and the application for post-conviction relief be dismissed with prejudice; and

2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 11th day of October, 2022.

GEORGE M. MCFADDIN, JR.
Presiding Judge
Twelfth Judicial Circuit



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