

I. PROCEDURAL HISTORY

Darius Hamilton (Applicant) is presently confined pursuant to orders of the Berkeley County Clerk of Court. In April 2017, the Berkeley County Grand Jury indicted Applicant for Armed Robbery (2017-GS-08-00807; 2017-GS-08-00807), Kidnapping (2017-GS-08-00808; 2017-GS-08-00808) and Burglary First Degree (2017-GS-08-00812).

Steve Davis, Esquire, represented Applicant. Assistant Solicitor Wilton McNeely, Esquire, prosecuted the case. On November 1, 2018, Applicant pleaded guilty as indicted to all charges before the Honorable Deadra Jefferson. Judge Jefferson sentenced Applicant to fifteen years concurrent on all indictments. Applicant filed a timely notice of appeal on November 15, 2018. Applicant withdrew his appeal on December 17, 2018, and the Remittitur was issued on January 3, 2019.

Applicant filed this initial application for post-conviction relief on April 12, 2019, alleging ineffective assistance of counsel and involuntary guilty plea. A subsequent amendment was filed through Counsel Mr. Tommy Thomas. That amendment alleges the "applicant is informed and believes his attorney was in fact creating an involuntary plea. The applicant claims that he did not understand the plea nor the plea offers. The applicant contends that counsel's advice caused him to lose the proffer agreement." This Order follows.

II. FACTS GIVING RISE TO CHARGES

On November 1, 2018, Applicant pleaded guilty as indicted to all charges. The facts leading to this plea were restated at the plea hearing as follows:

It arises out of an incident on July 21st, 2016 at approximately 3 a.m. Berkeley County deputies responded to 135 Martha Lane in the Huger area of Berkeley County in reference to a shooting. Upon arrival deputies found one victim, Kadeem [phonetic] Johnson in the bedroom who had his hands bound with tape before being killed by a single gunshot wound to the head. The other victim Crystal Snipe

had also had her hands bound with tape before being shot multiple times. After the incident she was able to call 911. She told police that when she and Johnson arrived home five suspects who were masked and armed were waiting outside in the woods at their home. As they got out of their car, all five approached them with guns and all five demanded items from them. While being held at gunpoint in the driveway the Hello Kitty bag containing drugs was taken from Kadeem [phonetic] Johnson and they were ordered into the house at gunpoint. They were escorted into the bedroom where Kadeem [phonetic] Johnson was made to get on his knees and Ms. Snipe was made to sit on the bed. While being watched by co-defendant Jacob Mouzon [phonetic] at gunpoint this defendant Darius Hamilton bound their hands with clear tape. While binding Kadeem [phonetic] Johnson's hands he removed a gold bracelet from his wrist. The male that was standing guard over them, co-defendant Jacob Johnson was not wearing a mask at one point inside the house and was able to be identified by Crystal Snipe who survived the incident. She stated several items were taken from the residence including a T.V. and other property. After this defendant and the other co-defendants exited the trailer co-defendant Jacob Mouzon [phonetic] shot Kadeem [phonetic] Johnson in the head killing him and then opened fire on Ms. Snipe causing injuries to her. All of the co-defendants then collectively took off in two separate Crown Victorias that belonged to the victims at the residence. One, a white one, was observed by deputies responding to the incident on Highway 402 and co-defendants Jacob Mouzon [phonetic], Drake Campbell, and Kenneth Campbell fled into the woods at that point and they were soon apprehended. In the day following at that time this defendant was identified and came to Eccles Church to speak with deputies who were investigating the incident at the command post. During that initial interview Mr. Hamilton told police that he drove the other co-defendants to the victim's residence but did not go into the house. He subsequently entered into a proffer agreement with the State at which time he admitted being at the scene and taping their hands but claims to have never gone into the house. During a pretrial meeting with the State Mr. Hamilton added the additional detail that he was there when the crimes occurred, that he had gone into the trailer to tape their hands and took the bracelet off the victim Kadeem Johnson. He still claimed at a pretrial meeting that he ran after the shooting, left in his truck alone and never saw them after that. In a subsequent meeting he added that he left in one of the victim's Crown Victorias with co-defendant Sharod [phonetic] Palmer but that Palmer dropped him off at his car and had no further contact with him. Then when he testified at trial he changed his version of events again to add that after he left the scene in the Crown Victoria with Sharod [phonetic] Palmer while

travelling up Cain Hoy Road observed Mr. Palmer out of the Crown Victoria, picked him up in his truck and he drove Sharod [phonetic] Palmer to Saint Stephen away from the scene dropping him off at his home. This version of the events had never been told to the State in any pretrial meeting.”
Plea Trans. p. 21-24.

III. ALLEGATIONS

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

1. Ineffective Assistance of Counsel
2. Involuntary Guilty Plea

On March 18, 2021, Counsel further amended Applicant allegations to include:

1. The Applicant is informed and believes his attorney was ineffective in creating an involuntary plea. The Applicant did not understand the plea, nor the plea offer. The Applicant is informed and believes that counsel’s advice caused him to lose the proffer agreement.

IV. SUMMARY OF FACTS ADDUCED AT THE EVIDENTIARY HEARING

Summary of Testimony from Applicant Darius Hamilton

At the start of the hearing, Applicant testified on his behalf. He testified that he retained plea counsel, Steve Davis. PCR Tran. p. 9. Applicant further testified he was out on bond for two years and that he met with plea counsel three to five times. Applicant stated that he went over the State’s evidence against him “a couple of times” but he did not understand it. He further testified that he wasn’t sure of what the outcome of his case would be, but plea counsel told him that if he took his case to trial, he would likely get thirty years or more. PCR Tran. p. 10. Applicant stated that he had four co-defendants, and three of those defendants who were convicted got more time than he did. PCR Tran. p. 12. Applicant further testified he was not offered a plea agreement before he

agreed to proffer information regarding the incident. Further, Applicant testified to his involvement in the incident, stating that in 2016 that a couple of his friends and himself committed a robbery that "went bad" on an individual that his co-defendants knew. PCR Tran. p. 13. Regarding the proffer agreement, Applicant stated that "somehow Mr. Davis got in an agreement with them that if I told them everything I know, like I said, it wouldn't be held against me." PCR Tran. p. 15. Applicant further explained that while he hoped for a better deal for cooperating with the State, that he was not promised a better deal. *Id.*

Applicant began the proffer process and admitted there were some issues that came up after the proffer agreement was signed. PCR. Tran. p. 16. Applicant alleged plea counsel asked him to withhold information at the first proffer meeting, but he was not sure why he told him to do so. Specifically, Applicant testified he withheld that he was the person who restrained the victims with duct tape. However, this information came out at a later date, when the State had evidence of Applicant's DNA on the tape. PCR. Tran. p. 16-17. Applicant alleged further that plea counsel told Applicant to tell the Solicitors about the incident because there was evidence. PCR. Tran. p. 17. Additionally, Applicant testified that before the trial began, he told counsel that he had taken one of his co-defendants home following the incident and he was unsure if he informed the State of that information. He testified that counsel told him, "Well, they don't know, I want to make sure they know." *Id.* at In. 20-25. Applicant admitted that this information was different than what he told the police before the trial of his co-defendants. PCR. Tran. p. 18. Applicant alleged that he told plea counsel about the inconsistency in his story before the trial once he realized, but plea counsel did "not take care of it." PCR. Tran. p. 18-19. Applicant testified that the proffer agreement was later withdrawn.

Applicant further testified that he was initially expecting to get probation out of his plea, to which, counsel told him that was not going to happen. PCR Tran. p. 21. He alleges that counsel told him he may get thirty-six months. He further testified that after the proffer was withdrawn, plea counsel mentioned ten years and that the day before the plea, he told him he was going to argue for fifteen years on his behalf. *Id.* Applicant, albeit surprised, did not ask his attorney about the ten-year offer. PCR Tran. p. 22. Applicant opined that his plea was not involuntarily, knowingly, intelligently entered into and that his attorney was not prepared. PCR Tran. p. 21-23.

On cross-examination, Applicant was asked to look over the proffer agreement. Applicant admitted that he saw a paragraph within the agreement "about being fully truthful and no misstatements or material admissions" in the agreement and saw that at the time of signing. PCR Tran. p. 25. The State asked did Applicant remember going over each charge and their consequences, including his exposure to a life sentence with Judge Jefferson, to which he replied yes. *Id.* He further testified that he told Judge Jefferson that he was completely satisfied with plea counsel's representation and admitted that his issues with the proffer agreement was before his guilty plea. PCR Tran. p. 26. When asked whether he remembered the solicitor reading the facts including the changed testimony and issues with the proffer agreement, Applicant testified that he agreed to those facts. PCR. Tran. p. 28.

This court then elicited testimony from Applicant. Applicant testified that he admitted to being guilty of the crime. PCR. Tran. p. 30. He agreed that himself and four others went to someone's house with intent to rob them, bound them with duct tape, and one person died. PCR. Tran. p. 30-31. This court asked what was stolen, Applicant replied that money was stolen, and he did not receive any the money. PCR Tran. p. 31. He further admitted that he was the driver. PCR Tran. p. 31-32. This court further asked Applicant did he feel lucky that he was not charged with

murder, to which he replied yes. PCR Tran. 32. The court further explained to Applicant that based on the aggravating factors of the underlying crime, he may have been exposed to the death penalty. *Id.* Applicant testified that he understood he was pleading to fifteen years for burglary, kidnapping and two counts of armed robbery.

After the testimony of plea counsel, Applicant was recalled as a witness. He testified that he told counsel a few days before he was called to testify about driving his co-defendant in his office. PCR Tran. p. 56.

Summary of Testimony from Melissa Hamilton, Applicant's Mother

Melissa Hamilton testified that she is the mother of Applicant. PCR Tran. p. 34. She further testified that she was involved in Applicant's arrest and prosecution, and plea counsel, Steve Davis was retained on his behalf. PCR Tran. p. 35. She further testified that she had knowledge of the proffer agreement. *Id.* When asked whether or not the inconsistencies in Applicant's testimony had been brought to the attention of plea counsel, she testified that she was not there "when all of that happened," so she had no knowledge of that. *Id.* She testified that her son only told her "some things" regarding his plea offers, but not everything. PCR Tran. p. 36. When asked did plea counsel inform her of how much time Applicant would get, she testified that with the proffer agreement it was thirty-six months, but after he could be sentenced to fifteen to thirty, but counsel would try to get a ten-year offer. PCR Tran. p. 37. She testified that she was informed that Applicant would be pleading guilty to fifteen years instead of ten about a month before the plea. *Id.*

This court further examined Melissa Hamilton. The Court asked Ms. Hamilton whether or not she wanted Applicant to go to trial, she replied no. PCR Tran. p. 38.

Summary of Testimony from Steve Davis, Esquire, Plea Counsel

Applicant called trial counsel, Steve Davis. Counsel testified that he was retained by Applicant. Mr. Davis further testified that Applicant was likely not charged with murder due to his initial cooperation with law enforcement before Mr. Davis was retained as counsel. PCR. Tran. pp. 40-41. Counsel testified that he never told Applicant to withhold information from the Solicitor. PCR Tran. p. 41. He testified further that there were never any promises from himself or the State, with or without the proffer agreement about the amount of time Applicant would receive or plead to. PCR Tran. p. 42. He further testified that it is very rare in his general practice to promise clients a sentence he cannot control. *Id.* He further testified that he did not promise Applicant thirty-six months on the charges if he proffered testimony. PCR Tran. p. 43. Mr. Davis further testified that the Applicant did not tell him about driving one of his co-defendant's home following the robbery until the middle of trial where he was called to testify. *Id.* He said Applicant asked him for advice, he told them he wouldn't perpetuate fraud on the court, and that he had to inform the Solicitor of the information. PCR Tran. pp. 43-44. Mr. Davis further testified that the change in testimony caused a tremendous problem in the State's case, and he opined that it caused the acquittal of his co-defendant. PCR Tran. p. 44. He further testified that Applicant got a deal and that he would be thankful for that deal if one of his sons participated in crime of that magnitude. PCR Tran. p. 45. Additionally, he testified that trial was never an issue once he was retained. *Id.*

On cross-examination, counsel asked Mr. Davis to explain the circumstances around the proffer agreement. Mr. Davis testified that generally, a prosecutor may be interested in a proffer agreement to have an inside actor that may be less culpable, to make sure there is a conviction, but it needs to be a truthful person. *See* PCR Tran. pp 45-46. He further testified that during the "debriefing" portion of the proffer, he went to the Solicitor's Office with Applicant and encouraged

him to tell the truth but did not go into the debriefing with him so he wouldn't feel pressured or coerced. See PCR Tran. 48. Mr. Davis further testified that the proffer agreements were extremely important, because Applicant was able to get out of jail because of them. PCR Tran. p. 49. Regarding Applicant withholding information regarding the duct tape, he testified that he initially did not want Applicant to volunteer unnecessary information, but once the Solicitor had DNA evidence, he counseled Applicant to tell the complete truth during the second debriefing, allowing him to "smooth things over" with the Solicitor regarding the proffer agreement. PCR Tran. p. 50. However, he testified that Applicant did not discuss that he brought his co-defendant home until the night before he was going to testify. PCR Tran. p. 51.

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 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), SCRPC; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. *Strickland v. Washington*, 466 U.S. 668 at 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, *Hill v. Lockhart*, 474 U.S. 52 (1985), extended the two-part *Strickland* test to challenge guilty pleas based on ineffective assistance of counsel. *See Padilla v. Kentucky*, 559 U.S. 356, 373 (2010)

(recognizing that the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). The analysis of counsel’s performance under the first prong of *Strickland* remains unchanged—the applicant must show that counsel’s representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. *Hill*, 474 U.S. at 58–59; accord *Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000).

An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel’s advice to plead guilty was not “within the competence demanded of attorneys in criminal cases.” *Hill*, 474 U.S. at 56. The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” *Id.* at 58–59. Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” *Id.* at 59.

This inquiry “focuses on a defendant’s 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).

VI. FINDING OF FACT AND CONCLUSIONS OF LAW

This Court has heard the testimony and evidence presented at the evidentiary hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After 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 claim raised the evidentiary hearing and find that it is 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.

Ineffective Asssitance of Counsel

Applicant contends that counsel was ineffective for allegedly causing Applicant to lose his proffer agreement. This court finds that Applicant has failed to meet his burden of proof and dismisses this allegation with prejudice.

In order to prove counsel was ineffective, Applicant has to display that 1) counsel's performance fell below an objective standard of reasonableness, and 2) Applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668 at 687 (1984); *Cherry v. State*, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). Applicant has failed to prove counsel's performance fell below an objective standard of reasonableness. At the evidentiary hearing, Applicant testified that he was not completely truthful to the Solicitor during any of the proffer meetings. Furthermore, in the plea transcript, the Solicitor explained to Judge Jefferson that Applicant had changed his story three times, including at trial, where his testimony was so inconsistent with his initial statements that it did irreparable harm to the case against the individual that was acquitted and threatened the cases of his three co-defendants. Plea Tr. p. 22. Because of his changing story, the Solicitor expressed that Applicant violated his proffer

agreement several times. *Id.* This Court finds plea counsel's testimony that Applicant's inability to be completely truthful with the Solicitor caused an issue with the State's case and his opinion, caused the acquittal of one of his alleged co-defendants to be credible. The Court further finds credible plea counsel's testimony that he encouraged Applicant to tell the complete truth and that any initial issues where Applicant withheld details, he was able to "smooth over" things with the State to keep the proffer agreement open.

Here, counsel was not deficient for "causing" Applicant to lose his proffer agreement. He acted reasonably as required by *Strickland* in encouraging Applicant to tell the truth to the Solicitor, as well negotiating with the State to ensure the proffer agreement stayed in tact through trial. Furthermore, Applicant was not prejudiced by the actions of plea counsel because it was Applicant's own actions of changing his story multiple times including right before and during trial, causing great prejudice to the State that caused Applicant to lose the proffer agreement, not plea counsel's.

Accordingly, Applicant's allegation is without merit and is **DENIED**.

Involuntary Guilty Plea

Applicant contends his plea was involuntary because he relied on erroneous advice from 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 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). The defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993); *See also Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997) (guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge). To ensure the defendant understands the

consequences of his guilty plea, the plea judge “usually questions the defendant about the facts surrounding the crime and punishment that could be imposed.” *Dover v. State*, 304 S.C. 433, 434–35, 405 S.E.2d 391, 392 (1991). However, the plea judge “does not have to direct the defendant’s attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea.” *Carter v. State*, 329 S.C. 355, 362, 495 S.E.2d 773, 776 (1998).

The test for determining the validity of a guilty plea is “whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). It is “well established that a guilty plea is not rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment.” *United States v. Cox*, 464 F.2d 937, 942 (6th Cir. 1972) (citing *Brady*, 397 U.S. 742). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, *Brady*, 397 U.S. at 750-753, or by increasing the risks of punishment on those who do not. *North Carolina v. Alford*, 400 U.S. 25, 37 (1970).

Nonetheless, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual . . . , a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed.” *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977); see also *Jamison v. State*, 410 S.C. 456, 469–71, 765 S.E.2d 123, 129–30 (2014) (observing that “guilty plea[s] must be treated as final in the vast majority of cases” and instructing that caution must be exercised so as not to “undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea”). Indeed, admissions made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements.” *Dalton*, 376 S.C. at 137–38, 654 S.E.2d at 874 (internal citations and quotation marks

omitted); *cf. Blackledge*, 431 U.S. at 73–74 (pointing out that representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a “formidable barrier in any subsequent collateral proceedings”).

The voluntariness of a guilty plea, however, “is not determined by an examination of the specific inquiry made by the sentencing judge alone but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.” *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). An applicant who enters a plea on the advice of counsel may “only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel’s errors, the [applicant] would not have pled guilty, but would have insisted on going to trial.” *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

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

Overcoming *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.

After a review of the record and testimony at the evidentiary hearing, this Court finds Applicant entered into a knowing, voluntary and intelligent plea. At the plea hearing, Judge Jefferson explained to Applicant the constitutional rights he waived by pleading guilty, including rights to: remain silent, right to confront and cross-examine State's witnesses, and present any defenses. Plea Tr. p. 28. Applicant informed the court that he understood the charges he was pleading to and the implications with sentencing that came with violent classifications for crimes. Plea Tr. pp. 13-15. Specifically, Applicant indicated that he understood that armed robberies are a no parole offense, and that he would have to serve at least a minimum of seven years before the Department of Corrections will make any consideration of parole eligibility. Plea Tr. p. 15. Applicant advised the court he had not been threatened, pressured, intimidated, or promised anything in exchange for his guilty plea. Plea Tr. pp. 32-33. When questioned whether he had been truthful with the court in his answering of the Court's question, Applicant affirmed he had. Plea Tr. 34.

The plea transcript reflects Applicant understood the proceedings, interacted intelligently with the plea court, and entered his guilty plea knowingly and voluntarily. Applicant has failed to

present any valid reason why he should be able to depart from the above statements made during his guilty plea. See *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975), *overruled on other grounds* by *United States v. Whitley*, 759 F.2d 327 (4th Cir. 1985) (finding that the accuracy and truth of an accused's statements at a guilty plea proceeding are "conclusively" established unless he makes some reasonable allegation why this should not be so).

Furthermore, there was no indication from the record or testimony at the evidentiary hearing that Applicant would have insisted going to trial but for the alleged error of counsel as required by *Roscoe v. State*. This Court finds the testimony of plea counsel, Mr. Davis credible that there was never any discussion of going to trial because trial would be futile based on the two statements given to the police before he was retained, as they would have been enough to convict Applicant. Likewise, Applicant's mother, who testified that she did not want Applicant to have trial and wanted him to plead guilty because he was guilty.

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

VII. CONCLUSION

Based on the foregoing, this Court finds and concludes 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 any manner, nor was

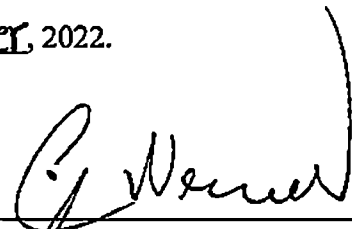
Applicant prejudiced by Counsel's representation. Therefore, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

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), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice

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



CLIFTON NEWMAN
Presiding Judge
Ninth Judicial Circuit

Columbia, South Carolina

RECEIVED

JAN 19 2023

SC SUPREME COURT



State of South Carolina
The Circuit Court of the Third Judicial Circuit

Clifton Newman
Judge

December 19, 2022

Clerk of Court
300-B California Avenue
Moncks Corner, SC 29461

RE: Order of Dismissal (Case No. 2019-CP-08-00954)

Enclosed is a signed Order of Dismissal for post-conviction relief for Darius Hamilton (#378157) v. State of South Carolina.

Please serve a copy on all parties.

Kindest Regards,

Gabrielle Williams
Law Clerk to Judge Clifton Newman
cnewmanlc@sccourts.org

Post Office Box 516
Kingstree, SC 29556-0516

LEAH GREENE JUDGE
CLERK OF COURT
BERKELEY COUNTY, SC

2022 DEC 22 PM 12:44

FILED