THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL BEAUFORT COUNTY

Court of Common Pleas

Honorable Eugene C. Griffith, Circuit Judge

Case No.: 2018-CP-07-1675

Justin E. Watts 375425.....PETITIONER

V.

State of South Carolina.....RESPONDENT

NOTICE OF APPEAL

The Petitioner Justin Watts appeals the Honorable Eugene C. Griffith's February 15, 2023 Order of Dismissal. Undersigned counsel received notice of entry of the order on March 3 2023. A copy of the order on appeal is attached hereto.

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)	IN THE COURT OF COMMON PLEAS FOR THE FOURTEENTH JUDICIAL CIRCUIT
Justin E. Watts, SCDC #375425, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2018-CP-07-01675 **ORDER OF DISMISSAL**

This matter comes before this Court by way of post-conviction relief (PCR) action commenced by Applicant Justin E. Watts on August 21, 2018. The State requested an evidentiary hearing on Applicant's claims of ineffective assistance of counsel through its amended return and motion for merger filed July 10, 2020[1]. An evidentiary hearing into the matter convened before the undersigned on August 12, 2021, at the Beaufort County Courthouse. Applicant was present and represented by James K. Falk, Esquire. Assistant Attorney General Samantha J. Weidauer represented the State. Applicant testified on his own behalf at the hearing. Plea counsel, Trasi Campbell, Esquire, also testified.

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

[1] In its return, the State moved to merge the two pending actions Applicant had in Beaufort County at that time. Specifically, Applicant filed a second PCR application on June 10, 2019, (2019-CP-07-01367). That action stemmed from the same charges and plea as the 2018 application. In its return, filed July 10, 2020, Respondent moved to merge the two applications. On July 14, 2020, then-Chief Administrative Judge Deadra Jefferson issued an Order merging the two applications, with docket number 2018-CP-07-01657 being the surviving case and dismissing the 2019 case.

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

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was originally charged with criminal sexual conduct with a minor – second degree (2017-GS-07-00075) and criminal solicitation of a minor (2017-GS-07-00076). On February 12, 2018, Applicant waived presentment of the charges and pleaded guilty before the Honorable Carmen T. Mullen as charged, without recommendation[2] or negotiation. Trasi Campbell, Esquire, represented Applicant. Bethany Bedenbaugh Miles of the Office of the Attorney General prosecuted the case. Judge Mullen sentenced Applicant to concurrent terms of twenty years for criminal sexual conduct with a minor – second degree and ten years for criminal solicitation of a minor.

Applicant filed a timely notice of appeal and was represented on appeal by Chief Appellate Defender Robert M. Dudek of the South Carolina Commission on Indigent Defense – Division of Appellate Defense. On May 1, 2019, Applicant, through counsel, sent a letter to the South Carolina Court of Appeal stating his intention to withdraw his appeal. The withdrawal letter was accompanied by an affidavit signed by Applicant. On May 6, 2019, the South Carolina Court of Appeals issued an order dismissing the matter. The matter was remitted back to the circuit court on May 23, 2019.

[2] While the State did not make a specific recommendation regarding Applicant's sentence, the State requested Applicant receive a substantial active sentence. (Plea Tr. 3; 13)

II. Facts Giving Rise to the Plea

The facts for the two charges Applicant pleaded to were articulated by the State at Applicant's plea hearing as follows:

> In August of 2016, law enforcement was contacted by the father of a 14-year old victim who located sexually explicit conversations between his daughter and then-37-year-old defendant. The victim admitted to the conversations and disclosed that earlier in August the defendant had traveled from his home in Savannah, Georgia to meet her on a road where they engaged in sexual activity in his car. The victim disclosed that on August 2nd, the defendant had contacted her after she posted on the Whisper app. The post included the fact that she was 14 years of age.
>
> Shortly after contacting the minor, the defendant began asking her for full body pictures. The victim sent a face picture so he was aware of the fact that he was indeed speaking with a minor. The defendant refers to himself as master and speaks of entering into a dominant/submissive sexual relationship with the minor. The next day he begins speaking to her about coming to her house to meet up with her to engage in that relationship.
>
> In addition to the conversations, the defendant requested numerous images of child pornography from the victim. He requested photos of her breasts and vagina, very graphically directing her as to what angle to take the photos, what body parts to accentuate, and what to wear or not wear for the photos.
>
> Less than a week after they began chatting, the defendant traveled from his home in Georgia and met the victim on a nearby street where they engaged in sex. Messages between the two afterward confirmed that sexual encounter did occur.
>
> The defendant was interviewed and admitted to talking to the minor female on line after knowing she was 14 years of age. He admitted to receiving photos of the minor. He states that he has a very dominant personality and was seeking submissive females to be sex slaves. He stated that – or he identified the minor female as a troubled young female who was in need of a positive person in her life. But admitted that that didn't happen and that he very quickly got, quote, nasty when speaking with her. He also admitted to traveling to South Carolina to meet with her.

(Plea Tr. 8-10).

III. Issues Before This Court

In his original application for post-conviction relief, Applicant alleges he is being held in custody unlawfully because his plea counsel was ineffective and as a result his plea was entered involuntarily. Additionally, though not formally alleged, Applicant, through counsel, also alleged at the evidentiary hearing his plea was involuntary because he was not advised of his right to a

jury trial pursuant to *Boykin*[3].

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

IV. Testimony Presented at Evidentiary Hearing

Applicant Justin Watt's Testimony

Applicant testified he had four or five conversations with plea counsel, Trasi Campbell (Counsel), prior to pleading guilty. Applicant testified prior to the date of his plea he was under the impression he would be sentenced to "ten years suspended to five years plus 5 years' probation - non-violent" as he had met with Counsel on the Thursday before his plea and that was the plea offer Counsel told him had been offered. Applicant testified that the above-referenced meeting was the first conversation he had with Counsel regarding his plea.

Applicant testified that on the date of his plea, Counsel showed him the negotiated plea. Applicant stated Counsel told him she needed to confirm the negotiated plea was still being offered. Applicant stated at that time he believed he was only pleading guilty to the solicitation charge. Applicant testified twenty minutes elapsed between the time Counsel left to confirm the offer and when she came back. Applicant stated that when Counsel returned, she said the offer of ten years suspended to five years plus five years' probation was no longer the offer and if Applicant were to plead that day, he would have to plead to 0 – 10 years for the solicitation charge and 0 – 20 years for the criminal sexual conduct charge. Applicant testified Counsel told him he could

[3] *Boykin v. Alabama*, 395 U.S. 238 (1969). At the evidentiary hearing, Applicant, through Counsel, amended his allegations to include this claim. At the conclusion of all testimony, however, Applicant withdrew the allegations that he was not advised of his right to remain silent.

receive the max sentence of thirty years; however, if he didn't take the plea, he would have to proceed to trial. Applicant stated that based on his conversations with Counsel, he believed that if he didn't take this offer, the next time he would be in court would be for a jury trial. Applicant testified Counsel did not give him time to decide whether he wished to take the State's offer. Rather, Applicant stated Counsel told him he had to decide whether he wished to plead guilty up to up to thirty years or possibly be sentenced up to fifty-five years before a jury.

When asked whether he believed going before Judge Mullen was a good or bad plan, Applicant testified Counsel made it seem as if Judge Mullen would not give him the maximum sentence on either charge and that Judge Mullen was a lenient sentencer. Applicant testified that at the time of his plea, he did not have any concerns about whether Judge Mullen knew there was a prior plea deal; however, Counsel never mentioned the prior plea offer during his plea. When asked why he did not stop and ask to speak with his lawyer when the State detailed during his plea they were not making any recommendations except for a substantial active sentence, Applicant testified Counsel did not make him aware he could stop the plea hearing and tell the court he did not wish to plead.

When asked about the rights Counsel reviewed with him, Applicant testified Counsel told him by pleading he would be waiving his right to proceed to trial, but he did not remember anything else. When questioned as to whether he reviewed discovery with Counsel and/or discussed trial strategy, Applicant stated he had admitted guilt to law enforcement, so he knew he needed to plead. Applicant testified Counsel told him receiving only probation was a "long shot," but that he could possibly receive a sentence of ten years suspended to 5 years with five years' probation.

When asked why he testified during his plea that he was satisfied with Counsel, Applicant testified that when questioned during the plea hearing his mind was "far afield," that he was going

through 5 stages of grief, and that Counsel had coached him regarding which answers to give when to the plea court. Applicant further stated he was having an "out of body experience" and Counsel took advantage of his ignorance because he had never been in trouble before. Applicant testified if he had known he could turn down the plea, he would have. Applicant testified that since he has been incarcerated, he has been told it is normal to be given at least three plea offers and only once you turn down all three, would he have had to go to trial. Applicant stated his testimony at the evidentiary hearing is different from his testimony at his plea hearing because his mind is now clear, and he is not under the verbal abuse Counsel put him through. When asked about the alleged verbal abuse, Applicant contended Counsel told him if he did not take the plea offer of 0 – 10 for the solicitation charge and 0 – 20 for the criminal sexual conduct charge, he could possibly receive fifty-five years total at trial. Applicant additionally testified Counsel gave him only the bleakest outlook regarding his plea. Applicant testified he had already admitted his guilt more than once and he did not wish to proceed to trial. Applicant testified he believes Counsel helped him as little as possible. Applicant testified that when he pleaded guilty, he understood he was being recorded and he was making an admission of guilt. Applicant testified that his testimony at the evidentiary is made with a clear mind and he is no longer being pressured by Counsel.

Regarding his mental health, Applicant testified that he had not been treated prior to his plea; however, since his incarceration he has been diagnosed with Asperger's and A.D.D. Applicant testified Counsel was aware of his Asperger's diagnosis but stated the diagnosis seemed to matter very little to her. When asked whether it would have been acceptable for Counsel to apprise the Judge of his Asperger's diagnosis, Applicant stated he wanted Counsel to pull out "all the stops." Applicant testified he told Counsel his diagnosis had affected him his whole life.

On cross-examination, when asked why he had previously testified he only met with Counsel four or five times but stated in his application he met with her five or six times, Applicant replied he has A.D.D. and selective memory. Applicant testified he did not recall reviewing discovery with Counsel during any of their meetings. When asked whether Counsel reviewed his constitutional right with him, Applicant testified she had.

During cross-examination, Applicant again testified he had already confessed to law enforcement and stated it was his decision to plead guilty. Applicant reiterated Counsel told him probation alone was not an option and stated he understood that if he did not plead, he was going to be charged with all indicted offenses carrying up to fifty-five years imprisonment. Applicant testified he understood he was pleading guilty to two separate charges carrying up to thirty years but again reiterated he wanted the alleged prior plea offer.

When asked whether Counsel threatened him in any way prior to the guilty plea hearing, Applicant testified he felt coerced and was made to believe that by turning down the plea offer of 0 – 10 years for the solicitation charge and 0 – 20 years for the criminal sexual conduct charge, his only other option was to proceed to trial. Applicant testified he understood he was in court to plead guilty on the date of his plea and that he did not ever indicate to Counsel that he wished to proceed to trial. Applicant further testified that at the time of his plea he believed he would have been convicted at trial.

Plea Counsel Trasi Campbell's Testimony

Applicant's counsel next called Counsel Trasi Campbell to testify. During cross-examination, Counsel testified she has been a member of the Bar since 1990. Counsel testified she had been a public defender for most of her career. Counsel also testified that she held the office of Circuit Public Defender and Chief Public Defender for Violent Crimes in the 14th Circuit.

Counsel testified she was appointed to represent Applicant in this case a little over a year before he pleaded guilty. Counsel testified that according to her notes she met with Applicant four times at the detention center, a fifth time at court prior to his plea, and again in preparation of a motion to reconsider. Counsel testified that she has defended over 25 cases like the instant case where the Attorney General's Office was the prosecuting agency and that she has never known the Attorney General's Office to negotiate.

Counsel testified she met with Applicant multiple times at the Beaufort County Detention Center. Counsel testified her notes from 2018 indicate she reviewed, in detail, the charges Applicant was facing with him and the possible penalties. Counsel testified she sent Applicant's discovery materials to him in January 2018. Counsel further testified she did not ever have a conversation with Applicant regarding the plea offer he testified to at the evidentiary hearing (ten years, suspended to five years, suspended to five years – non-violent).

When asked whether Applicant's demeanor had changed since her representation of Applicant, Counsel testified she recalled Applicant displaying a flat affect frequently. Counsel elaborated that during many of their conversations she believed there was an aspect of narcissism. Counsel testified Applicant's family provided her with a psych report that aligned with some of the behaviors she observed. Counsel further testified she sought a private exam for Applicant for fear that an examination through the State would reveal underlying personality disorders that could have been problematic for Applicant. Counsel further testified she did not have any questions regarding Applicant's competency. When questioned whether Counsel believed Applicant could have received a better sentence should Counsel have shared some of Applicant's personality disorders with the plea court during mitigation, Counsel testified she believed that sharing Applicant's diagnoses would have made it worse for Applicant. Counsel elaborated that from what

she read in the report provided to her by the family, she felt the references included in the report - substance abuse, Applicant's need for attending narcotics anonymous meetings, and Applicant's narcissistic personality traits – were not things Counsel believed the State would look kindly upon.

Counsel stated she worked very hard to make sure Applicant understood the evidence the State had against him which included photographs that were violent and graphic in nature and evidence that Applicant and the victim had met in real life. Counsel noted that even during their discussions regarding some of the most horrific aspects of the incident, Applicant's demeanor and affect did not change. Counsel added that she observed the same demeanor at the evidentiary hearing. Should Applicant proceed to trial, Counsel testified she was fearful that he would potentially being sentenced to life in prison.

When questioned about the meeting Applicant stated occurred on the Thursday prior to his plea, Counsel testified that that conversation did not occur. Counsel testified she had spoken with the State via letter and email and believed she had done everything she could do to get the best possible outcome for Applicant. Counsel testified she had asked the State if Applicant could plead guilty to ten years and requested they meet her somewhere in the middle with their offer. Counsel testified the best the State was willing to offer Applicant was to not to ask for the maximum sentence available; rather, at Applicant's plea hearing the State requested a "substantial sentence". Counsel stated she believed that was as good of an offer as Applicant was going to receive.

Regarding Applicant's plea, when asked whether Counsel coached Applicant regarding how to respond to the plea court, Counsel adamantly testified that there was no coaching. Counsel stated she always reviews Applicant's constitutional rights with them and what to expect during a plea so that Applicant is not overwhelmed during the plea. When asked whether she told Applicant specifically how to answer questions during his plea, Counsel stated – "absolutely not."

When asked whether Counsel told Applicant he could deny the plea, Counsel testified that she did not know if she specifically informed Applicant he could back out of the plea; however, Counsel stated she made it very clear to Applicant that his options were to plead guilty or to proceed to trial. Counsel testified she did not make any representations regarding her expectation of what sentence Judge Mullen, or any other impose on him. Counsel further testified she did not advise Applicant that Judge Mullen would "go easy." Counsel testified the sentence offer (ten years suspended to five years plus five years' probation) was never offered and stated that the offer was nonsensical. Counsel testified that there was never a plea offer that was given to Applicant to sign and then later taken away from him.

During cross-examination when asked whether she discussed Applicant's version of the facts with him, Counsel testified she had, and they had matched the facts the State presented. Counsel testified the State's position was that Applicant had engaged in an online relationship with a fourteen-year-old through a social application on his phone called "Whisper". Counsel stated that it was clear based on her communications that Applicant knew the victim's age. Counsel testified there was a graphic sexual nature (BDSM) in what transpired through the social application and that Applicant made plans to meet the victim. Counsel testified the State's case showed there was an agreement between Applicant and victim to meet up in real life and they ultimately did. Counsel stated that after Applicant was arrested by law enforcement and confronted with the evidence they had collected, Applicant admitted to having an online relationship with victim and admitted to having a sexual relationship with the fourteen-year-old victim. Counsel testified Applicant understood the strength of the State's case and never indicated he did not understand anything about his case. Counsel again stated she did not have any concerns regarding Applicant's competency. Counsel testified Applicant never expressed he wanted a trial; Counsel

further testified that she and Applicant had determined early on in her representation of him that there was not a defense to the charges. Counsel testified Applicant always planned to plead guilty. Counsel testified that should the State have offered any plea to Applicant she would have conveyed the plea offer to him as that is her standard practice. Counsel testified that it was solely Applicant's decision to plead guilty.

V. Standard of Review

An applicant may seek PCR upon the following types of allegations:

> 1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
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> 2. That the court was without jurisdiction to impose sentence;
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> 3. That the sentence exceeds the maximum authorized by law;
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> 4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
>
> 5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
>
> 6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C.

288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. *Strickland v. Washington*, 466 U.S. 668 at 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, *Hill v. Lockhart*, 474 U.S. 52 (1985), extended the two-part *Strickland* test to challenge guilty pleas based on ineffective assistance of counsel. *See Padilla v. Kentucky*, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). The analysis of counsel's performance under the first prong of *Strickland* remains unchanged—the applicant must show that counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. *Hill*, 474 U.S. at 58–59; *accord Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d

294, 296 (2000).

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

This inquiry "focuses on a defendant's decisionmaking" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. *Lee v. United States*, 582 U.S. ___, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. *Padilla*, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—*not* whether counsel would have still advised him or her to plead guilty. *Turner v. State*, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

VI. Findings of Fact & Conclusions of Law

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsels, as well as the record in this action incorporated by way of the State's return, this Court proceeds to the claims raised at the evidentiary and finds each to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court

makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

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

Ineffective Assistance of Counsel for Failure to Convey Acceptance of a Plea Offer

Applicant alleges, through his testimony, Counsel was ineffective for failing to timely convey Applicant's acceptance of a plea offer from the State. Applicant asserts he told Counsel he wished to accept the negotiated plea offer from the State of "ten years suspended to five years plus 5 years probation - non-violent" and that prior to the date of his plea he believed that is what he would be sentenced to. This Court disagrees.

"[A]s a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused." *Missouri v. Frye*, 566 U.S. 134, 145 (2012); *see Strickland*, 466 U.S. at 688 (explaining that counsel has a duty "to consult with the defendant on important decisions and to keep the defendant informed of important developments in the course of the prosecution."). Further, "allow[ing] an offer to expire without advising the defendant or allowing him to consider it" constitutes deficient performance". *Frye*, 566 U.S. at 145. As an initial matter, this Court finds Applicant's testimony regarding his acceptance of a prior plea offer not credible and Counsel's testimony that no plea offer of "ten years suspended to five years plus 5 years' probation - non-violent" existed, credible.

To satisfy the *Strickland* prejudice prong where a plea offer has lapsed or been rejected because of counsel's deficient performance, an applicant must demonstrate a reasonable

probability that:

> (1) he "would have accepted the earlier plea offer had [he] been afforded effective assistance of counsel;" (2) "the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it;" and (3) "the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time."

Collins v. State, 422 S.C. 250, 262, 810 S.E.2d 871, 877 (2018) (quoting *Frye*, 566 U.S. at 147); *see Hill v. Lockhart*, 474 U.S. 52, 59 (1985) ("In the context of plea negotiations, the prejudice element turns on whether counsel's performance affected the defendant's final decision to accept or reject a plea offer.").

Though Applicant testified when he pleaded guilty, he believed he was pleading to a negotiated sentence, he further acknowledged he understood prior to pleading that the State was not making a recommendation in his case and that sentencing would be 0 – 10 years for the solicitation charge and 0 – 20 years for the criminal sexual conduct charge. Additionally, Counsel credibly testified that the plea offer Applicant claims to have been offered originally, was never offered, and testified that she did not have any conversations with Applicant regarding the "nonsensical" plea offer he claims was offered to him.

Moreover, this Court finds Applicant failed to present evidence there was a reasonable probability the plea would have been entered without the trial court refusing to accept it and failed to present evidence the plea would have been entered without the prosecution canceling it. Particularly in light of Counsel's testimony that the Attorney General's Office, the prosecuting agency in this matter, rarely negotiates and only conceded to asking the plea court for a "substantial sentence" rather than the maximum sentence available. The remaining showing required under

Collins does not apply. Accordingly, Applicant's allegation pertaining to ineffective assistance by Counsel for failure to convey acceptance of a plea offer is **DENIED.**

Involuntary Guilty Plea

Applicant further contends his plea was involuntary because he felt coerced into taking the plea. 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).

Surmounting *Strickland's* high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." *Lee*, 582 U.S. ___, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); *cf. Hill*, 474 U.S. at 58 ("[R]equiring a 'prejudice' showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.'"). Reviewing "[c]ourts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies." *Lee*, 582 U.S. ___, 137 S. Ct. at 1967. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences." *Id.* Thus, in determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the guilty plea and the evidence presented at the PCR hearing. *Harres*, 282 S.C. at 134, 318 S.E.2d at 361.

At the plea hearing, Counsel advised the plea court she had fully discussed the charges and possible sentences with Applicant. Judge Murphy explained to Applicant the constitutional rights he waived by pleading guilty, including his rights to: a jury trial, remain silent, and challenge the State's evidence. Applicant further indicated he was satisfied with the services provided to him by

Counsel. Applicant testified that he did not suffer from any mental or physical problems that would prevent him from understanding the plea proceeding. Applicant testified he understood that he was pleading guilty Applicant further testified that "[he was wrong for what [he] did" and that he was sorry. (Plea Tr. 20).

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).

Moreover, at the evidentiary hearing, Applicant testified he understood that if he did not plead, he would have to proceed to a jury trial and was told prior to his plea he could receive a thirty-year sentence. Applicant also testified that because he had previously admitted his guilt to law enforcement, he knew he needed to plead guilty. Applicant contended that Counsel told him if he did not take the plea offer of 0 – 10 years for the solicitation charge and 0 – 20 years for the criminal sexual conduct charge, he could possibly receive fifty-five years total should he proceed to trial. Though Applicant claims this gave him the bleakest outlook possible regarding pleading, this Court finds the information given by Counsel accurate. Additionally, because Applicant testified he did not wish to proceed to trial, this Court finds Applicant's allegation of involuntary guilty plea baseless.

Based on the foregoing, the record and Applicant's testimony at the evidentiary hearing, which this Court finds wholly self-serving, contradicts Applicant's assertion he was coerced by

Counsel to plead guilty 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.**

[*conclusion and signature on following page*]

VII. Conclusion

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

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

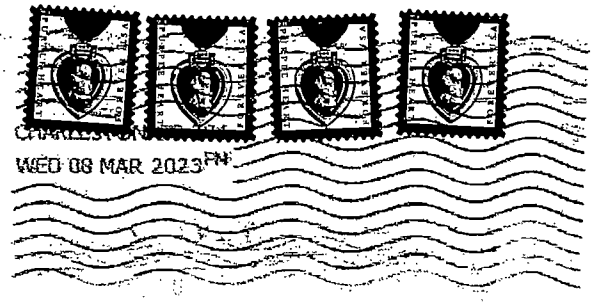
IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 15th day of February, 2023.

EUGENE C. GRIFFITH, JR.
Presiding Circuit Court Judge
Fourteenth Judicial Circuit

York, South Carolina



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