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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to York County
Honorable R. Scott Sprouse, Circuit Court Judge
Appellate Case No. 2022-000752

TRAVIS SEMAJ HUTCHINSON,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

STATEMENT OF ISSUE ON CERTIORARI

"Did the PCR court err finding defense counsel was not ineffective for failing to request a continuance when petitioner informed the court during the plea proceeding that he had used heroin the prior day and was still 'coming down,' rendering petitioner's guilty plea involuntary?"

COUNTER-STATEMENT OF ISSUE ON CERTIORARI

Did the PCR judge somehow err by determining Hutchinson failed to meet his burden of establishing he was entitled to relief when: (1) he did not credibly demonstrate he was incompetent or otherwise incapable of validly entering a guilty plea at the time he did so as a result of his supposed use of heroin on the preceding morning; and (2) he failed to show either defense counsel was deficient for failing to request a continuance under the circumstances involved or there was a reasonable probability of a different outcome but for defense counsel's supposed deficiency in that regard?

STATEMENT OF THE CASE

Procedural History

In September of 2017, Petitioner Travis Semaj Hutchinson was arrested for driving under suspension, and that arrest led to the discovery of fentanyl-laced heroin and cocaine in his possession. A few days later, Hutchinson escaped from a law enforcement transport van and fled, but he was eventually tracked down and taken back into custody. In January of 2018, the York County Grand Jury indicted Hutchinson for possession of heroin with intent to distribute, possession of cocaine, and escape in connection to those two incidents. On February 13, 2018, Hutchinson appeared in the York County Court of General Sessions and pled guilty to all three indicted offenses before the Honorable Roger E. Henderson, circuit court judge. After accepting Hutchinson's guilty plea, the plea judge sentenced him to an aggregate fifteen-year term of imprisonment for his convictions.[1] Hutchinson then timely initiated an appeal.

On appeal, Hutchinson's appellate counsel submitted a brief pursuant to Anders v. California, 386 U.S. 738 (1967), along with a petition to be relieved.[2] After reviewing the matter, the Court of Appeals issued an unpublished decision dismissing the appeal and granting appellate counsel's petition to be relieved. State v. Hutchinson, Op. No. 2019-UP-202 (S.C. Ct. App. filed June 5, 2019). Thereafter, on June 21, 2019, the remittitur was issued.

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[1] More specifically, the plea judge sentenced Petitioner to a fourteen-year term of imprisonment for possession of heroin with intent to distribute, a consecutive one-year term of imprisonment for escape, and a concurrent five-year term of imprisonment for possession of cocaine. (App'x pp. 29-30; pp. 157-159).

[2] The records associated with Petitioner's appeal following his guilty plea are currently available through the South Carolina Appellate Court Public Index. Appellate Records for State v. Travis Semaj Hutchinson, South Carolina Appellate Court Public Index, https://ctrack.sccourts.org/public/caseView.do?csIID=66810.

Subsequent to the issuance of the remittitur, Hutchinson timely filed an application for post-conviction relief ("PCR"), and, in response, the State filed a return requesting an evidentiary hearing. Hutchinson—through counsel—then filed an amendment to his PCR application raising additional grounds for relief. On April 13, 2022, an evidentiary hearing was conducted in the York County Court of Common Pleas with the Honorable R. Scott Sprouse, circuit court judge, presiding. At the conclusion of the hearing, the PCR judge took the matter under advisement. Thereafter, through an order dated May 24, 2022, the PCR judge denied and dismissed Hutchinson's PCR application with prejudice. Hutchinson then timely filed a notice of appeal.

Factual History

On September 15, 2017, Hutchinson—who did not have a valid driver's license at the time—was stopped while illegally driving a vehicle by an officer from the Rock Hill Police Department and arrested for driving under suspension. (App'x p. 20). Incident to that arrest and with Hutchinson's consent, the officer searched Hutchinson before transporting him from the scene. (App'x p. 20). During the course of that search, the officer found seventeen bindles of fentanyl-laced heroin, a bag of cocaine, and nearly $100 in cash in Hutchinson's pocket.[3] (App'x p. 20). As a result, Hutchinson—an experienced criminal with a prior record that spanned nearly two decades and included numerous earlier drug convictions—was arrested for several drug-related offenses as well. (App'x p. 3; pp. 20-23).

Two days later, Hutchinson was placed inside a transport van along with several other inmates and was driven towards the Moss Justice Center in York, South Carolina. (App'x p. 21). However, as the transport van neared the center, Hutchinson turned to the other inmates, advised them he was getting out of there, and then jumped out of the back of the van. (App'x pp. 21-22).

[3] Notably, the discovery of the drugs during the search was recorded by the officer's body camera. (App'x p. 17; p. 77).

After that, Hutchinson quickly ran across the road, fled into the woods, and found a barn to hide inside. (App'x p. 21). Ultimately though, officers—with the assistance of a tracking dog—were able to locate Hutchinson, and they took him back into custody. (App'x p. 21).

Subsequent to his apprehension, Hutchinson was indicted for possession of heroin with intent to distribute, possession of cocaine, and escape. (App'x p. 2; p. 7; pp. 151-156). Following plea negotiations between defense counsel and the solicitor, the solicitor extended an offer that would have allowed Hutchinson to resolve those charges while receiving a two-year sentence, and defense counsel relayed that offer to Hutchinson, who indicated he wanted to accept it. (App'x pp. 107-108). However, Hutchinson—who was directed to appear for a particular term of court to formally accept the offer—failed to appear as instructed, and the solicitor withdrew the offer based on Hutchinson's non-appearance.[4] (App'x pp. 107-108; p. 111; pp. 117-118). Hutchinson's case was then scheduled for trial on February 12, 2018. (App'x p. 109).

On the morning of trial, Hutchinson appeared at the courthouse as directed, and defense counsel advised Hutchinson not to leave before renewing negotiations with the solicitor in an effort to obtain a new plea offer for Hutchinson, who had consistently expressed a desire to plead guilty and avoid trial. (App'x p. 109; p. 115; p. 125). As a result of those negotiations, defense counsel—with the assistance of the circuit public defender—was able to convince the solicitor to extend a revised plea offer that would have allowed Hutchinson to resolve his charges while receiving an eleven-year sentence. (App'x p. 109). Once again, Hutchinson expressed a desire

[4] Later on, Petitioner denied defense counsel informed him when he needed to appear in order to accept the offer and enter his guilty plea. (App'x pp. 66-67). However, the PCR judge credited defense counsel's contrary testimony on the matter over Petitioner's. (App'x pp. 148-149).

to accept the plea offer. (App'x p. 78). However, he followed that by absconding from the courthouse and failing to return. (App'x pp. 78-79).

Due to Hutchinson's disappearance, the plea judge issued a bench warrant for his apprehension, and Hutchinson was taken into custody and brought back to the courthouse on the following morning. (App'x p. 69; pp. 97-98). After that, Hutchinson appeared before the plea judge along with defense counsel, and Hutchinson initially advised the plea judge he wanted defense counsel to be relieved due to the fact the amount of time he was going to be required to serve if he pled guilty continued to increase. (App'x pp. 2-3). In response to that, the plea judge noted Hutchinson had failed to appear when his case was scheduled to go forward, which was something that led to a change in the offer extended by the State. (App'x p. 3; p. 5). Hutchinson then attempted to claim did not understand the actual trial was going to begin, but he conceded he had prior experience with the criminal justice system and understood the difference between a trial and guilty plea. (App'x pp. 3-4). At that point, the plea judge advised Hutchinson he could either enter a guilty plea or go forward with trial that day but would not be receiving a new lawyer. (App'x p. 4; p. 6). In response to that, Hutchinson indicated he would cooperate and stated multiple times he wished to plead guilty. (App'x pp. 4-6).

As the colloquy continued, Hutchinson—after swearing to tell the truth—confirmed he understood each of the potential penalties for his offenses along with the nature of his offenses. (App'x pp. 10-11). Likewise, he confirmed no threats or promises were made to induce him to enter the guilty plea, and he affirmed multiple times he did, in fact, wish to plead guilty to the charged offenses. (App'x pp. 11-12).

Following those remarks, the plea judge asked Hutchinson if he was under the influence of alcohol or drugs that day, and Hutchinson responded: "I *was* -- I'm just coming down off of

heroin." (App'x p. 12) (emphasis added). Based on the response given, the plea judge probed into the matter further, and Hutchinson verified his "last use" was the preceding morning, which he acknowledged was approximately twenty-four hours earlier. (App'x pp. 12-13). Hutchinson further indicated he did not know how long it usually took him to get a clear head after using heroin but asserted he used it on a "day-to-day basis." (App'x p. 13). Moreover, despite his use of heroin on the preceding morning, Hutchinson confirmed he could answer questions, he had been able to understand everything discussed up to that point, he was "mainly . . . okay," and his ability to think, reason, and understand was not being affected. (App'x pp. 13-14). Furthermore, Hutchinson confirmed he understood his constitutional rights and was aware he would be surrendering them by pleading guilty. (App'x pp. 14-16). Hutchinson then proceeded to discuss the details of defense counsel's representation of him, and, after doing so, he indicated he did not believe there was anything else defense counsel could have done for him. (App'x pp. 17-19).

After that, the solicitor recounted the details of Hutchinson's crimes along with his lengthy criminal record. (App'x pp. 20-23). Once the solicitor concluded her remarks, Hutchinson affirmed her description of his drug crimes was accurate but claimed he only fled from the transport van after the door "came open" and so he "wouldn't get hurt." (App'x pp. 23-24). However, Hutchinson conceded he did hide in the barn after fleeing from the van and continued to do so until he was tracked down by law enforcement. (App'x pp. 23-24). Furthermore, Hutchinson again confirmed he wished to plead guilty and acknowledged he understood his sentence would rest in the plea judge's discretion. (App'x pp. 24-25).

Ultimately, following that colloquy, the plea judge accepted Hutchinson's guilty plea as freely, voluntarily, and intelligently entered. (App'x pp. 25-26). He then sentenced Hutchinson to an aggregate fifteen-year term of imprisonment for his crimes. (App'x pp. 29-30).

Subsequently, following an unsuccessful appeal, Hutchinson filed a PCR application through which he expressed a primary desire to receive a two-year sentence and a secondary wish for his plea to be vacated if—and only if—he did not receive his preferred sentence. (App'x pp. 32-48). Notably, along with his application, Hutchinson included an affidavit in which—despite nearly two years having elapsed—he was able to recount his memories from both the date he pled guilty *and* the day before he did so. (App'x pp. 44-45).

In response to Hutchinson's application, an evidentiary hearing was conducted on the matter. (App'x p. 61). During that hearing, Hutchinson's claims—including ones alleging his plea was rendered involuntary and defense counsel was constitutionally ineffective for failing to seek a continuance because he was "coming down" from the effects of heroin usage at the time of the plea—were explored. (App'x pp. 63-64; Supp. App'x pp. 1-3).

More specifically, Hutchinson again personally recounted—and verified he could remember—the events of both the day before and the day of his guilty plea, and he confirmed his decision not to return to the courthouse after leaving on the first day was a conscious choice made because he knew he would be going to jail and did not want his vehicle to be stuck at that location due to his inevitable imprisonment. (App'x pp. 68-70; pp. 78-79; p. 85). Hutchinson further confirmed he was truly guilty of the indicted offenses and did, in fact, want to plead guilty on the date he did so. (App'x p. 72; p. 78; p. 88). Beyond that, Hutchinson claimed his ability to understand what was going on at the time of the plea was affected by him "coming down" off of heroin usage on the preceding day, but he further acknowledged he did understand "[a] lot of stuff" during the plea hearing. (App'x p. 88; p. 92). Likewise, he confirmed he remembered his conversation with the plea judge, he told the plea judge he understood

everything they had talked about, and he was *not* lying to the plea judge during their colloquy. (App'x p. 85; p. 87; p. 91).

In addition to Hutchinson's testimony, defense counsel also testified about what occurred in Hutchinson's case. (App'x p. 103). As part of his testimony, defense counsel explained he first learned during the guilty plea hearing itself about Hutchinson having supposedly used heroin on the preceding day. (App'x p. 115). Defense counsel further stated Hutchinson seemed normal to him at that time, Hutchinson indicated he understood what was going on during the hearing, and Hutchinson had seemed to understand what they were talking about during a conversation that took place prior to the beginning of the plea hearing. (App'x pp. 115-116; p. 121). As a result, defense counsel affirmed he did not personally think Hutchinson was having any issues understanding what was happening during the plea hearing and, thus, did not think there was any need for a continuance. (App'x p. 116).

At the conclusion of the evidentiary hearing, the PCR judge took the matter under advisement. (App'x p. 133). Thereafter, upon considering the matter, the PCR judge declined to grant relief. (App'x pp. 136-150). In declining to do so, the PCR judge—who noted Hutchinson's claims at the evidentiary hearing were contradicted by his statements during the plea hearing—found Hutchinson was not incapacitated at the time of his guilty plea to such an extent he could not validly enter a guilty plea and had failed to establish he was incompetent by a preponderance of the evidence. (App'x pp. 145-147). Relatedly, the PCR judge determined defense counsel was not constitutionally ineffective for failing to seek a continuance since Hutchinson stated during the plea hearing he was capable of understanding the proceedings at that time. (App'x p. 145; p. 147). Accordingly, the PCR judge denied and dismissed Hutchinson's application with prejudice. (App'x p. 150).

STANDARD OF REVIEW

In PCR cases, the standard of review to be applied on appeal is directly dependent on the specific issues raised. Smalls v. State, 422 S.C. 174, 180, 810 S.E.2d 836, 839 (2018). When reviewing a PCR judge's factual findings on appeal, the appellate court will defer to those findings and uphold them if they are supported by any evidence of probative value appearing in the record. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); see Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018) ("Under the proper standard of review, the appellate court's 'view' must be limited to whether there is probative evidence to support the PCR court's factual findings."). Meanwhile, when reviewing a pure question of law, an appellate court will consider such a matter de novo and is not required to give deference to the PCR judge's rulings. Jamison v. State, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014). Ultimately, if the PCR judge's decision is controlled by an error of law, an appellate court will reverse that decision on appeal. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

The PCR judge correctly determined Hutchinson failed to meet his burden of establishing he was entitled to relief because: (1) he did not credibly demonstrate he was incompetent or otherwise incapable of validly entering a guilty plea at the time he did so as a result of his supposed use of heroin on the preceding morning; and (2) he failed to show either defense counsel was deficient for failing to request a continuance under the circumstances involved or there was a reasonable probability of a different outcome but for defense counsel's supposed deficiency in that regard.

Hutchinson contends the PCR judge reversibly erred by failing to grant him relief. As support for that contention, Hutchinson maintains the PCR judge should have determined: (1) his guilty plea was not a voluntary, intelligent, and knowing one because he stated he had "recently" used heroin prior to his entry of the plea; and (2) defense counsel was constitutionally ineffective for failing to request a continuance to have the case continued "to a time where he was not under the influence of heroin." To the contrary, Hutchinson—just as the PCR judge correctly concluded—failed to meet his burden of establishing either he was incompetent at the time he pled guilty due to his claimed usage of heroin a day earlier or defense counsel's performance was constitutionally ineffective. Under such circumstances, the PCR judge properly determined Hutchinson was not entitled to relief since he did not and could not meet his burden of establishing either the degree of incompetency necessary to support his claim concerning the validity of his guilty plea or the deficiency and prejudice required to support his ineffective assistance of counsel claim. Hutchinson's petition for a writ of certiorari should be denied.

Law Applicable to Ineffective Assistance of Counsel Claims

In every criminal case tried in South Carolina, the defendant has a constitutional right to a fair trial. State v. Woods, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001). Pursuant to that right, the defendant is entitled to effective assistance of counsel. McMann v. Richardson, 397 U.S. 759, 771 n. 14 (1970). However, that does not mean entitlement to perfect or mistake-free

representation. Burt v. Titlow, 571 U.S. 12, 24 (2013). Instead, it simply means assistance that was objectively reasonable under prevailing professional norms. Strickland v. Washington, 466 U.S. 668, 687-688 (1984). Meanwhile, counsel's assistance is considered constitutionally ineffective only when "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Id. at 686.

When faced with a claim of ineffective assistance of counsel, a reviewing court must conduct a two-pronged analysis. Franklin v. Catoe, 346 S.C. 563, 570, 552 S.E.2d 718, 722 (2001). Pursuant to that two-pronged analysis, an applicant must establish: (1) counsel's representation fell below an objective standard of reasonableness; and (2) there is a reasonable probability the outcome of the proceeding would have been different but for counsel's deficient performance. Williams v. State, 363 S.C. 341, 343, 611 S.E.2d 232, 233 (2005). Thus, the applicant has the heavy burden of establishing both deficiency and prejudice in order to be entitled to relief. Hughes v. State, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001).

Regarding the deficiency prong of the analysis, the proper measure of performance is whether counsel provided representation within the objectively reasonable range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); see Harrington v. Richter, 562 U.S. 86, 110 (2011) (instructing the proper analysis "calls for an inquiry into the objective reasonableness of counsel's performance, not counsel's subjective state of mind"). To establish deficiency, the applicant must demonstrate "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 687. Thus, counsel's performance will be considered deficient only when it objectively amounted to incompetence under prevailing professional norms and not when it simply "deviated from best practices or most common custom." Richter, 562 U.S. at 105.

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the burden of establishing prejudice in order to be entitled to relief as "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691. For that burden to be met, counsel's deficient performance must have prejudiced the applicant to such an extent there is a reasonable probability the result of the proceeding would have been different but for counsel's unprofessional errors. Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989). Moreover, "[t]he likelihood of a different result must be substantial, not just conceivable." Richter, 562 U.S. at 112; see Strickland, 466 U.S. at 694 ("A reasonable probability is a probability sufficient to undermine confidence in the outcome.").

Furthermore, when an applicant is raising a challenge to a guilty plea predicated upon an ineffective assistance of counsel claim, the same two-pronged analysis remains applicable. Hill v. Lockhart, 474 U.S. 52, 58 (1985). "In the context of a guilty plea, the deficiency prong inquiry turns on whether the plea was voluntarily, knowingly, and intelligently entered." Taylor v. State, 404 S.C. 350, 360, 745 S.E.2d 97, 102 (2013). Meanwhile, to establish prejudice in the context of a guilty plea, the applicant must demonstrate there was a reasonable probability the applicant would not have pled guilty and, instead, would have insisted on going to trial but for defense counsel's errors. Hill, 474 U.S. at 59; see Jones v. State, 333 S.C. 6, 8, 507 S.E.2d 324, 325 (1998) ("A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty."). Significantly, due to the finality interests at stake, caution must be exercised before a guilty plea is set aside in a case

in which a proper plea colloquy was conducted. Jamison v. State, 410 S.C. 456, 468-469, 765 S.E.2d 123, 129 (2014).

Law Concerning Capacity to Enter a Valid Guilty Plea

In order to plead guilty, a criminal defendant must be competent. State v. Finklea, 388 S.C. 379, 383, 697 S.E.2d 543, 546 (2010); see Drope v. Missouri, 420 U.S. 162, 171 (1975) (recognizing "a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not" enter a valid guilty plea); Pate v. Robinson, 383 U.S. 375, 378 (1966) (recognizing that the conviction of an incompetent person violates due process). Furthermore, the defendant's decision to plead guilty must be a knowing and voluntary one. Garren v. State, 423 S.C. 1, 14, 813 S.E.2d 704, 711 (2018).

Concerning the competency requirement, an accused must have "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and "a rational and as well as factual understanding of the proceedings against him" in order to be competent to enter a guilty plea. Dusky v. United States, 362 U.S. 402, 402 (1960); see Godinez v. Moran, 509 U.S. 389, 398 (1993) ("[W]e reject the notion that competence to plead guilty or to waive the right to counsel must be measured by a standard that is higher than (or even different from) the Dusky standard."). Importantly, the burden of establishing incompetency rests solely upon the accused, and the accused must prove his incompetency by a preponderance of the evidence in order to be found to lack the requisite competency and capacity to enter a plea. State v. Nance, 320 S.C. 501, 504, 466 S.E.2d 349, 351 (1996). Relatedly, to obtain relief in the PCR setting based on purported incompetency, "the petitioner must prove by a preponderance of the evidence

that he was incompetent when he entered his guilty plea." Matthews v. State, 358 S.C. 456, 458-459, 596 S.E.2d 49, 50 (2004).

Meanwhile, concerning the "knowing and voluntary" requirement, the defendant must actually understand the significance and consequences of a particular decision and that decision must be uncoerced. Garren, 423 S.C. at 14, 813 S.E.2d at 711. Obviously, in some circumstances, ingestion of medication or drugs *could* affect a defendant's mental state to a sufficient degree to undermine the defendant's ability to enter a voluntary plea. Id. at 15, 813 S.E.2d at 711. However, "[t]he mere ingestion of drugs is insufficient to render a person incapable of pleading guilty[,]" and that "is true even when dealing with recent ingestion of drugs or drug addiction." Cross v. State, 928 S.W.2d 418, 419 (Mo. Ct. App. 1996) (citations omitted). Instead, in order to establish the influence of drugs or medication rendered a guilty plea involuntary in the PCR setting, the defendant bears the burden of showing the defendant's mental faculties were so impaired by drugs at the time of the guilty plea the defendant was incapable of: (1) fully understanding and appreciating the charges; (2) comprehending the defendant's constitutional rights; and (3) realizing the consequences of the plea. Garren, 423 S.C. at 15, 813 S.E.2d at 712; see Green v. State, 792 S.W.2d 15, 17 (Mo. Ct. App. 1990) ("The ingestion of drugs only invalidates a guilty plea where the ability of the defendant to understand the proceedings and give free assent are impaired.").

Application of the Relevant Law to Hutchinson's Case

In the case sub judice, Hutchinson made repeated representations to the plea judge he understood what was going on and was capable of going forward with the guilty plea despite having supposedly ingested heroin roughly *twenty-four hours* earlier, and Hutchinson later affirmed during the PCR evidentiary hearing afforded to him he had *not* been lying to the plea

judge during their colloquy. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977) ("[T]he representations of the 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. Solemn declarations in open court carry a strong presumption of verity."); see also Sanders v. United States, 373 U.S. 1, 21 (1963) (remanding for an evidentiary hearing upon concluding a transcript from a plea hearing did not *standing alone* "conclusively" show Sanders was not entitled to relief as required by a federal statute applicable to Sanders's case). In addition to that, defense counsel explained during the evidentiary hearing his interactions with Hutchinson prior to the guilty plea were not unusual and did not cause him to suspect Hutchinson's ability to understand was impaired at that time, which meant he had no reason to suspect a continuance was warranted or needed in a case in which Hutchinson had already once delayed the proceedings by absconding from the courthouse before the matter could proceed forward. See Cross, 928 S.W.2d at 419 ("The motion court found that trial counsel's remarks negated any claim that [Cross] was under the influence of drugs at the time his guilty plea was entered. In a proceeding for postconviction relief, the credibility of the witness is for the motion court's determination."); see also State v. Burgess, 356 S.C. 572, 575, 590 S.E.2d 42, 44 (Ct. App. 2003) ("Factors to be considered in determining whether further inquiry into a defendant's fitness to stand trial is warranted include evidence of his or her irrational behavior, *his or her demeanor at trial*, and any prior medical opinion on his or her competence to stand trial." (emphasis added)); cf. Jeter v. State, 308 S.C. 230, 233, 417 S.E.2d 594, 596 (1992) (concluding defense counsel's testimony concerning Jeter's behavior at the time he pled guilty supported the PCR judge's determination Jeter had failed to meet his burden of establishing he was incompetent at the time of his plea). Beyond that, Hutchinson's expressed ability to

remember in detail *years later* what occurred during the guilty plea hearing, what occurred on the day before that hearing when he supposedly had actually ingested heroin, and what his personal motivations were for his actions on those two days appeared to be starkly inconsistent with Hutchinson having been in an altered and incompetent state at the time he pled guilty to his crimes. See United States v. Hardimon, 700 F.3d 940, 943 (7th Cir. 2012) ("A combination of deeply confused or clouded thinking with coherent speech and a normal demeanor is rare[.]"); cf. Burgess, 356 S.C. at 576 n. 8, 590 S.E.2d at 44 n. 8 (concluding Burgess's demonstrated ability to provide a detailed account of past events "seem[ed] to undercut any question of her lack of competency to stand trial"). Meanwhile, no expert testimony, medical evidence, or anything similar was presented to suggest usage of heroin one day earlier would render a person—including Hutchinson—incompetent or otherwise incapable of entering a valid guilty plea. See Garren, 423 S.C. at 15, 813 S.E.2d at 712 ("If a PCR applicant claims his guilty plea was involuntary due to the influence of medication, he must show that his mental faculties were so impaired by drugs when he pleaded that he was incapable of full understanding and appreciation of the charges against him, of comprehending his constitutional rights, and of realizing the consequences of his plea. A PCR court must consider *objective data* about the nature and effect of the medication the defendant had taken and evaluate whether such medication had the capability to produce a sufficient effect on his mental faculties to render him incompetent to enter a guilty plea." (emphasis added and citations and internal quotations omitted)).

Considering the testimony and evidence that was presented along with the testimony and evidence that was *not* presented, Hutchinson—just as the PCR judge aptly concluded—failed to establish he was incompetent or otherwise incapable of entering a valid guilty plea at the time he pled guilty as a result of his supposed use of some heroin roughly one full day earlier. Cf.

Barker v. State, 776 S.W.2d 451, 453 (Mo. Ct. App. 1989) ("Movant's response that he had had no drugs or alcohol for one day preceding the plea hearing, except for Librium and allergy medication, and his responses to the trial court's detailed questions about those medications, coupled with his straightforward responses to the trial court's other inquires, offer ample support in the record that he was not incapable of pleading guilty by reason of drugs."). Likewise, Hutchinson failed to demonstrate defense counsel was constitutionally ineffective for failing to seek a continuance in Hutchinson's case because he did not establish the existence of the requisite deficiency and prejudice. See Johnson v. Catoe, 336 S.C. 354, 359, 520 S.E.2d 617, 619 (1999) (explaining "a PCR applicant who has pled guilty on advice of counsel cannot satisfy the prejudice prong on collateral attack if he states he would have pled guilty in any event"); cf. Wolfe v. State, 326 S.C. 158, 163, 485 S.E.2d 367, 370 (1997) ("To show prejudice stemming from the late continuance motion, Wolfe would have to demonstrate that (1) the trial court would have abused its discretion in refusing to grant a continuance motion so that Wolfe could get a private competency evaluation, and (2) such a competency evaluation likely would have affected the ultimate result of the competency hearing. Wolfe presented no medical evidence at the PCR hearing suggesting he had been incompetent to stand trial or to participate in his defense. Given the absence of such evidence, Wolfe has failed to demonstrate he was prejudiced by the trial court's failure to grant a continuance.").

Because Hutchinson failed to meet his burden of proving either he was incapable of entering a valid guilty plea due to his supposed drug usage or defense counsel's act of not seeking a continuance under the circumstances involved constituted deficient performance resulting in the prejudice necessary to warrant a grant of relief, the PCR judge correctly rejected Hutchinson's claims, and his ruling in that regard was neither unsupported by the evidence

appearing in the record nor clearly erroneous. See Speaks v. State, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008) ("In post-conviction proceedings, the burden of proof is on the applicant to prove the allegations in his application."); see also Sellner, 416 S.C. at 610, 787 S.E.2d at 527 (instructing a post-conviction relief judge's factual finding will be upheld if supported by any evidence and a post-conviction relief judge's decisions will only be reversed where controlled by an error of law). Accordingly, Hutchinson's PCR application was properly denied and dismissed. See Strickland, 466 U.S. at 700 ("Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim."); Garren, 423 S.C. at 16, 813 S.E.2d at 712 ("In a PCR action, the petitioner bears the burden of proof and is required to show by a preponderance of the evidence he was incompetent at the time of his plea." (citations and internal quotations omitted)). Hutchinson's petition for a writ of certiorari should be denied.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the petition for a writ of certiorari should be denied.

Respectfully submitted,

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MARK R. FARTHING
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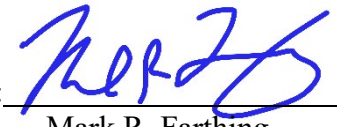
BY: 
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S.C. Bar Number 76901

ATTORNEYS FOR RESPONDENT

June 12, 2023