

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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**RECEIVED**

**Sep 12 2023**

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas  
Post Conviction Relief

S.C. SUPREME COURT

Honorable Robert J. Bonds, Circuit Court Judge

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Case No.: 2016-CP-18-0017

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Tyrone D. Ellison,

Petitioner,

vs.

State of South Carolina,

Respondent.

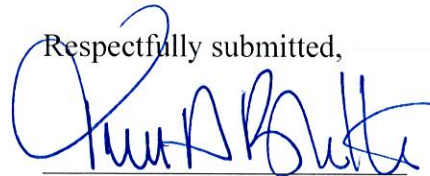
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NOTICE OF APPEAL

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Tyrone D. Ellison, Petitioner, appeals the Order of Dismissal issued by the Honorable Robert J. Bonds on September 19, 2022, which was filed on October 5, 2022. Petitioner, through counsel timely filed a Rule 59, SCRCP, Motion. Thereafter, the Court issued an Order Denying Applicant's Rule 59 (a) & (e) Motion on December 8, 2022, which was filed on August 4, 2023. Petitioner, through counsel, received notice of the entry of the Order on August 14, 2023.

Respectfully submitted,



Tricia A. Blanchette  
S.C. Bar No. 74904  
PO Box 2147  
Leesville, SC 29070  
(803) 908-3266

September 12, 2023

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

IN THE COURT OF GENERAL SESSIONS  
FIRST JUDICIAL CIRCUIT

CASE No: 2016-CP-18-0017

*Robert J. Bonds*  
CLERK OF COURT  
DORCHESTER COUNTY

2023 AUG -4 PM 1:59

CERTIFIED COPY

Tyrone D. Ellison #324947  
Applicant,

v.

**ORDER DENYING APPLICANT'S RULE 59(a)  
& (e) MOTION**


State of South Carolina,  
Respondent.

This matter came before the Court on December 8<sup>th</sup>, 2022, upon the Applicant's Rule 59(a) & (e) Motion. The Applicant was represented by Tricia Blanchette. The Respondent was represented by Sammie Weidauer. This was held by consent in the WebEx Virtual Courtroom.

After hearing arguments of Counsel and reviewing briefs provided to me, the Court respectfully denies the Defendant's Rule 59 (a) & (e) Motion. The Court finds there is no appropriate grounds to alter or amend its October 17<sup>th</sup>, 2022 Order.

**IT IS HEREBY ORDERED** that the Defendant's Rule 59(a) &(e) Motion is respectfully, **DENIED.**

**IT IS SO ORDERED!**

  
\_\_\_\_\_  
The Honorable Robert J. Bonds  
Presiding Judge

Dorchester County, South Carolina  
December 8, 2022

FORM 4

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

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2016CP1800017

Tyrone Ellison		South Carolina State Of	
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):  Rule 40(j) SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):  
 Affirmed;  Reversed;  Remanded;  Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order; (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.  
 Additional Information for the Clerk: \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

<u>Robert Bonds</u>	<u>2770</u>	<u>10/6/2022</u>
Circuit Court Judge	Judge Code	Date

**For Clerk of Court Office Use Only**

This judgment was entered on 10/6/2022, and a copy mailed first class or placed in the appropriate attorney's box on 10/6/2022, to attorneys of record or to parties (when appearing pro se) as follows:

Tyrone Ellison Lee Corr Institution, #324947 990 Wisacky  
Highway Bishopville, SC 29010  
Tricia A. Blanchette PO Box 2147 Leesville, SC 29070

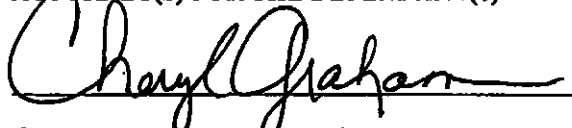
Megan Harrigan Jameson PO Box 11549 Columbia, SC  
29211  
Samantha Jo Weidauer PO Box 11549 Columbia, SC 29211

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**ATTORNEY(S) FOR THE PLAINTIFF(S)**

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**ATTORNEY(S) FOR THE DEFENDANT(S)**



**Court Reporter**

**Cheryl Graham - Clerk of Court**

**Court Reporter:**

**E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.**

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**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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STATE OF SOUTH CAROLINA )  
 COUNTY OF DORCHESTER )  
 Tyrone Ellison, SCDC #324947, )  
 Applicant, )  
 v. )  
 State of South Carolina, )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE FIRST JUDICIAL CIRCUIT

Case No.: 2016-CP-18-0017

**ORDER OF DISMISSAL**

FILED  
 2022 MAY 20 PM 4:02  
 ORANGEBURG COUNTY CLERK  
 ORANGEBURG, SOUTH CAROLINA  
 CERTIFIED COPY

This matter comes before this Court by way of post-conviction relief (PCR) action commenced by Tyrone Ellison on January 7, 2016. The State requested an evidentiary hearing through its return filed July 14, 2016. An evidentiary hearing into the matter convened before the undersigned on May 20, 2022, at the Orangeburg County Courthouse. Applicant was present and represented by Tricia A. Blanchette, Esquire. Assistant Attorney General Samantha J. Weidauer represented the State. Applicant testified on his own behalf at the hearing. Plea counsel, James K. Falk, Esquire, also testified.

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

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.

*TS*

## **I. Procedural History**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Dorchester County. Applicant was indicted by the Dorchester County Grand Jury for one count of failure to stop for a blue light (2013-GS-18-1267), one count of entering a bank with intent to steal (2013-GS-18-1268), two counts of hit and run involving great bodily injury (2013-GS-18-1354, 2013-GS-18-1355), one count of armed robbery (2013-GS-18-1813), one count of obstructing justice (2015-GS-18-0025), one count of criminal conspiracy (2015-GS-18-0026), and one count of intimidation of court officials, jurors or witnesses (2015-GS-18-0024).

On August 12, 2015, Applicant pleaded guilty to all charges before the Honorable Edgar W. Dickson pursuant to a negotiated plea. Applicant pled as indicted to all charges other than the intimidation of court officials charge, which was pled down to attempting to influence a juror by written or oral communication. James Falk, Esquire, represented Applicant. Don Sorenson of the First Circuit Solicitor's Office prosecuted the case. Judge Dickson sentenced Applicant to concurrent sentences of time served for the failure to stop for a blue light charge, thirty years for entering a bank with intent to steal, ten years for each of the hit and run involving great bodily injury charges, thirty years for the armed robbery charge, ten years for the obstructing justice charge, five years for the criminal conspiracy charge, and time served for the lesser-included attempting to influence a juror charge. Applicant did not appeal his convictions or sentences.

## **II. Facts Giving Rise to the Plea**

The facts for this indictment were articulated by the State at Applicant's plea hearing as follows:

The first handful of charges, the bank robbery, the entering -- the armed robbery, the entering the bank with intent to steal and then the failure to stop and the two hit and runs, those five indictments all stem out of basically the same set of facts. That



would be on the afternoon of July 1st of 2013, about 4:45 or so in the evening, or afternoon, at 8610 Dorchester Road in North Charleston, which is in Dorchester County, it's a Sun Trust Bank, two individuals came in, had their faces covered, with guns, ended up robbing the bank of several thousand dollars. There was several employees and I believe a customer that were in the bank at the time. The State would allege that, as I said, there were two of them. The codefendant in this case that came in the bank's a man by the name of Ronald Lance. Mr. Lance basically held the bank manager, Mr. Baker, on the floor at gunpoint, while Mr. Ellison took another employee over to the teller counter and held her at gunpoint, while making the teller behind -- they'd put up bullet proof glass shortly before this, to provide the money.

The two of them end up fleeing the bank. During the process of that Mr. Baker had run over to lock the door and observed a white Hyundai Sonata that appeared to have just pulled out of the bank parking lot and was actually behind a car at a traffic light and saw the two robbers go and hop into that car. They end up taking off. North Charleston Police Department and Dorchester County Sheriff's Office respond. They have a description, they have also gotten, in the money that was provided they had put a GPS tracker which they began tracking at that point in time. It was coming up back in a nearby neighborhood, Wescott Plantation, kind of the back part of that neighborhood.

As a result of that officers with North Charleston started coming into that area. Ultimately a couple of the officers came up behind a white Hyundai Sonata that was stopped, was pulling up to a stop signs. The officers got behind that vehicle. They had -- their cameras were on at that point in time, when they observed an individual basically come flying out of the driver's side, the driver's seat of that vehicle, landing in the middle of the roadway. He was taken into custody at that point in time. He was a young man by the name of Christopher Coburn. At that point in time you see somebody slide over, reach out and close the driver's side door. And a chase then ensues which leads ultimately out to Dorchester Road, down Dorchester Road, takes a left onto Highway 17 and ultimately onto I believe it's Highway 61, basically out into the Givhans area. That chase is captured by several patrol car vehicles exceeding, you know, I think almost close to 100 miles an hour down Dorchester Road at rush hour, which is an area pretty close to where I live, so I'm pretty familiar with the traffic; and looking at the video, there are literally hundreds of vehicles that this chase passes during the course of it.

It ultimately comes to -- they actually had lost sight of the vehicle, and officers ultimately come upon where this Hyundai Sonata has wrecked with a vehicle driven by a couple, Mr. and Mrs. Campbell. They were pulling out and ultimately ended up getting hit by this vehicle. By the time the patrol cars got there, the two suspects that had been in that vehicle still had fled on foot and ultimately had gotten away. They attempted to bring K-9 units and other officers out there, but unfortunately shortly after that wreck there was a pretty heavy rainstorm that came through that area. They ultimately found in the field nearby some money with I believe some blood on it. They ultimately found some clothing items, including the jacket that, looking at the video it appears this defendant was wearing, in a field nearby. But ultimately they did not locate either one of them that evening.

Mr. Coburn, meanwhile, was brought back, was taken into custody and ultimately gave a statement implicating the two individuals involved, this Mr. Ellison and Mr. Lance, that evening. The following morning then, July 2nd, fairly close to where this accident occurred, a couple had gotten up and were getting ready to do some stuff and ultimately came out, I believe it was the wife, and discovered two individuals pretty much passed out on her front porch. The codefendant, Mr. Lance, I believe actually had suffered a broken arm, I believe it was, and they were both fairly beat up looking, consistent with having been involved in a fairly violent accident.

They were taken into custody at that point in time by law enforcement without any problems. At that point in time Mr. Ellison -- Mr. Lance gave a statement admitting to his involvement in the bank robbery, basically indicating he wasn't going to say anything more about anybody else's involvement but did admit his involvement in the bank robbery. This defendant, Mr. Ellison, gave a statement admitting he was the one actually driving the car at the time of the accident through the chase and the accident, admitted to that but denied any involvement in the bank robbery. Mr. and Mrs. Campbell, the two of them both suffered some pretty substantial injuries which led to the great bodily injury charges. I think that would basically be the facts, Your Honor. Mr. Lance plead guilty to this bank robbery several months back and received a 30-year sentence. Mr. Coburn, who had been the getaway driver, and that's what he admitted to being was the driver, plead guilty to entering a bank with intent to steal and I believe received an eight-year sentence.

Additionally, Your Honor, and this hadn't really come out yet in any of the colloquy, Mr. Ellison was subsequently, kind of through this investigation of this bank robbery, ultimately charged with a previous robbery of that same bank that had occurred three months earlier on April 1st of 2013. He was convicted of that armed robbery and entering a bank with intent to steal back in October of last year and ultimately received a life sentence, so he's currently, as you can see, in the Department of Corrections serving that sentence that is currently on appeal.

It was during the course of that trial, the week of October 20th of last year, that the other series of indictments came to rise. We tried that case, and Mr. Falk was his lawyer for that trial. Put up all the evidence Monday, Tuesday and Wednesday and ultimately had Thursday where Judge Brown, who was presiding, had some other engagement that he had scheduled, so we didn't have Court on Thursday; and it's that Thursday afternoon that one of our jurors, Mr. White, answered a knock at his door at his residence about 4:00 or so in the afternoon, 4:30 in the afternoon, and ultimately indicated that there was a young black male at his door that ultimately offered him \$500 to basically hang the jury.

He came in the following morning, unfortunately did not contact law enforcement or anybody that night, came in the following morning, ultimately told the rest of the jurors about it and also the courtroom bailiffs about it. That ultimately led to him being shown a lineup with a guy by the name of David Jeter, who is a friend of Mr. Ellison's, who was actually on his witness list, who we knew he had been communicating with from the jail by way of telephone calls pretty frequently, and Mr. White picked Mr. Jeter out of that lineup.

*FyB+*

Subsequent investigation showed multiple phone calls the week of the trial culminating in a phone call that Thursday afternoon, about two hours prior to the juror being approached, from Mr. Ellison to Mr. Jeter, where through a code he gives Mr. Jeter the juror's address and indicated that he had gotten it from somebody at the jail that was familiar with the juror and lived in that neighborhood. There is a subsequent call then that Friday morning at about 7:30 or so before court from another inmate on behalf of this defendant to his mother, Mr. Ellison's mother, basically where she verifies that that thing that he had asked Little D, who's David Jeter, to do the evening before had been taken care of and that everything should be good. So that ultimately led to all three of them, David Jeter, Mr. Ellison, and his mother, Ms. Annette McKinney, all being charged with criminal conspiracy, obstructing justice, and this charge dealing with tampering with a jury.

(Plea Tr. 10-16).

### III. Issues Before This Court

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

1. Ineffective Assistance of Counsel
  - a. "Counsel advised was wrong [*sic*] and I should not have pled guilty;" and
2. Involuntary Guilty Plea.

Pursuant to Rule 71.1, SCRCF, on March 10, 2016, Applicant filed an amendment to his application to include the following allegations:

1. "The Applicant guilty plea for armed robbery was not knowingly and intelligently made to the court;"
2. "Counsel was ineffective before my guilty plea;" and
3. "Prosecutor Misconduct."

Pursuant to Rule 71.1, SCRCF, on July 26, 2021, Applicant, through PCR counsel, filed a second amendment to his application to include the following allegations:

1. "Failure to effectively represent Applicant at this prior trial, which rendered Applicant's plea involuntary as such ineffective representation was a primary contributing factor in the entry of Applicant's guilty plea;"
2. "Failure to properly prepare with Applicant for a trial prior to the entry of the plea, which rendered Applicant's guilty plea involuntary and let to the court convincing Applicant to plea after voicing his dissatisfaction with counsel;" and
3. "Failure to effectively negotiate and ensure that there was a benefit from the plea bargain."

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To the extent the allegations set forth in Applicant's original application and amended applications can be construed as separate grounds for relief from the grounds stated at the PCR hearing, this 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<sup>1</sup>

##### *Applicant Tyrone Ellison's Testimony*

Applicant testified James Falk (Counsel) represented him at his guilty plea as well as his prior trial<sup>2</sup>. Applicant testified Counsel did not meet with him prior to his plea and posited he was under duress prior to pleading guilty because Counsel had not adequately discussed his case with him, had not addressed trial arguments with him, and had not reviewed discovery with Applicant. Specifically, Applicant testified he informed Counsel he had not reviewed any videos from the bank that were in discovery. Applicant testified immediately prior to his plea, he and Counsel watched the videos together. Applicant testified that after viewing the video, Counsel indicated to Applicant he did not believe Applicant was the perpetrator in the video and told him the State would have to prove it was Applicant in the video. Applicant testified that prior to pleading guilty, he knew he had not viewed some of the evidence; specifically, Applicant testified there were some videos he knew had not been presented to him. Applicant contended his decision to plead guilty was not based on any evidence he had viewed, rather Applicant testified his decision to plead was based on Counsel's advice. Contradictory to Applicant's assertion he relied on Counsel's advice

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<sup>1</sup> This PCR actions stems from Applicant's 2015 guilty plea. The evidentiary hearings for this PCR action and for Applicant's PCR action stemming from his 2014 trial were consolidated in the interest of judicial economy. At Applicant's PCR hearing on the two PCR actions, this Court clarified the consolidation was solely for purpose of the record and denied to merge the cases – finding two separate Orders and two separate findings were appropriate. This Court notes Applicant has requested the two applications be considered together pursuant to *United States v. Cronic*, 466 U.S. 648, 658 (1984).

<sup>2</sup> Applicant testified he retained Counsel after firing prior defense counsel, Tommy Bolus, Esquire.

when making his decision to plead, Applicant testified he had doubts regarding Counsel's ability to represent him as Counsel had represented him at his previous trial. Applicant further postited he was mistrustful of Counsel.

Regarding possible trial defenses, Applicant testified he believed there was an alibi witness that could have testified on his behalf should he have proceeded to trial. Applicant testified he had not discussed the alibi witness with Counsel, but understood that by pleading guilty he waived the right to have witnesses testify on his behalf. Applicant additionally testified he understood the plea court's questions regarding the rights he was waiving as he had already been tried for seperate charges. Applicant also testified he understood that by pleading guilty he was waiving his rights, including his right to a trial. Applicant agreed he testified during his plea that he believed pleading was his best and safest option.

Applicant testified he indicated to the plea court he was not satisfied with Counsel's representation and attempted to communicate his concerns to the plea court. Applicant testified he did not feel he had an option regarding whether or not to proceed with his guilty plea – adding, Counsel had advised him to plead guilty and asserted the plea judge did not hear his concerns. In response to the State's inquiry regarding why Applicant indicated to the plea court no one threatened or forced him to plead guilty, Applicant testified: "I mean, it was a court proceeding. Like, I didn't want to sound crazy in the courtroom." Applicant asserted he tried to speak up at his plea but felt as though he wasn't heard. Applicant further testified he did not raise any concerns to Counsel regarding Counsel's representation.

Regarding plea negotiations, Applicant testified Counsel informed him about the plea offer for a negotiated 30 year sentence and advised him to take the offer. Applicant contends Counsel did not convey the plea offer to him until the date of the plea. Applicant further testified Counsel

advised him a plea on his remaining charges was in his best interest. Applicant additionally asserted he did not feel fairly represented and believed he should have been advised to take the plea offer that was extended by the State and conveyed to his previous defense counsel, Tommy Bolus, before his trial prior to this guilty plea. Applicant contended that by failing to plead prior to his trial, he missed his to plead guilty in a way that was beneficial to him – Applicant testified he did not believe there was any benefit to him via the instant negotiated plea as he had already received a life sentence at trial.

*Plea Counsel James K. Falk's Testimony*

Counsel testified he has been licensed as an attorney since 1984 and has primarily practiced criminal law since 1996. Counsel testified he was retained to represent Applicant roughly five weeks before Applicant's trial prior to the plea from which this application arises. Counsel testified he was thereafter appointed to represent Applicant on the subject charges Applicant pleaded guilty to. Counsel testified he was familiar with the evidence the State had prior to his appointment to Applicant's case. Regarding Counsel's communications with Applicant, Counsel testified his appointment to the case was close in time to Applicant's guilty plea.

Regarding Counsel's review of Applicant's case with Applicant, Counsel testified Applicant was aware of the evidence the State had against him. Counsel testified Applicant's case had previously been called for trial. Counsel testified Applicant gave "pushback" when he informed Applicant a plea offer was on the table. Specifically, Counsel testified Applicant told him he had not seen the evidence in this case. In response to Applicant's assertion he had not reviewed all evidence in this case, Counsel testified he explained to Applicant that pleading guilty "was a way to keep one of the LWOPs off the table" should Applicant's appeal from his trial be

successful. Counsel testified he informed Applicant of the plea offer on the date of Applicant's plea and informed Applicant of the consequences of pleading guilty.

Counsel further testified he discussed the elements of each of the eight indictments with Applicant prior to his plea and discussed the State's plea offer<sup>3</sup>. Counsel testified he informed Applicant of the benefits of the plea and stated he believed pleading guilty was in Applicant's best interest. Counsel testified he told Applicant he had a right to proceed to trial instead of pleading guilty. Counsel further testified the case was not set for trial on the date of Applicant's plea and the State had not indicated they would revoke their offer should Applicant choose not to plead<sup>4</sup>. Counsel testified he did not believe Applicant was forced to plead guilty and testified Applicant understood what he was pleading to. Counsel additionally testified there was no pressure on Applicant to plead guilty on the date of his plea as the case was not set for trial at that time.

#### 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

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<sup>3</sup> Counsel testified Solicitor Sorenson was "concerned" with a juror intimidation issue that had occurred at Applicant's trial and therefore offered the plea as "some kind of backstop" should Applicant's conviction be overturned on appeal.

<sup>4</sup> After review of the written plea agreement (Applicant's Exhibit #6), Counsel conceded on re-direct examination the written plea offer expired on August 13, 2015, the day after Applicant's plea.

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.

***Applicant's Allegations Asserting His Plea was Involuntary Entered Because Counsel was Ineffective for Failing to Properly Prepare Applicant for a Trial and Ineffective for Failing to Effectively Negotiate and Ensure a Benefit from the Plea Bargain***

Applicant alleges Counsel was ineffective for failing to adequately prepare Applicant for a trial prior to the entry of a plea and was ineffective for failing to effectively negotiate and ensure there was a benefit to Applicant's plea bargain. Additionally, at the evidentiary hearing, Applicant contended he was under duress at the time he pleaded guilty. Applicant testified he had not reviewed the discovery materials in full with Counsel. Applicant testified he had doubts regarding Counsel's ability to represent him and testified he felt he had no other choice to plead after the

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concerns he raised to the plea court regarding Counsel's representation went unheard. This Court disagrees, and finds Applicant knew the nature of the charges against him 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 (Cl. 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.

This Court finds the plea court entered into a thorough colloquy with Applicant. Judge Dickson explained to Applicant the constitutional rights he waived by pleading guilty, including the right to remain silent, challenge the State's evidence, present defenses, and the right to a jury trial. (Plea Tr. 7). Applicant further informed the plea court he understood the State would seek life without parole on Applicant's armed robbery charge should he proceed to trial but had withdrawn LWOP as a condition of Applicant's plea. (Plea Tr. 6). Applicant further informed the plea court that though he had not reviewed all evidence in this case, he was willing to plead guilty. (Plea Tr. 6). Though Applicant represented to the plea court he was dissatisfied with Counsel's

representation, he stated he understood he could either plead to the charges or proceed to trial. (Plea Tr. 8). Applicant further stated he believed pleading guilty was the safest option for him and wished to plead guilty. (Plea Tr. 8, 10). Applicant confirmed to the plea court he had not been promised anything in exchange for his plea, nor had he been threatened or forced to plead. (Plea Tr. 8). Applicant indicated to the plea court he understood all conversations with Counsel. (Plea Tr. 8).

Applicant testified at the evidentiary hearing his decision to plead guilty was not based on the State's case against him, but rather, based on Counsel's advice to plead. This Court finds Applicant's assertion not credible and wholly self-serving as Applicant also testified, he had doubts regarding Counsel's ability to represent him following his prior trial. This Court finds Applicant's inconsistent testimony telling. Specifically, Applicant indicated to the plea court he believed pleading was the safest option for him, indicated he understood he could proceed to trial, indicated he understood the State had withdraw their intention to seek life without parole as a condition of the negotiated guilty plea, and represented to the Court that though he had not reviewed all of the evidence in this case, he wished to plead guilty.

Additionally, though Applicant contends Counsel failed to properly prepare Applicant for trial, this Court finds Counsel credibly testified the case was not yet set for a trial at the time of Applicant's plea. Counsel testified he informed Applicant of the benefits of pleading guilty and informed Applicant he had a right to proceed to trial instead of pleading guilty. Though Counsel and Applicant agree Applicant had not reviewed all discovery in this case, Counsel credibly testified he explained the benefits of pleading guilty to Applicant – specifically, that by pleading guilty Applicant could “keep one of the LWOPs off the table” benefitting Applicant should Applicant's appeal from his prior trial and LWOP sentence be successful. Additionally, though

Counsel testified Applicant gave “pushback” when informed the State had conveyed a plea offer, Counsel testified he believed Applicant understood what he was pleading guilty to and did not believe Applicant felt pressured to plead guilty. This Court finds Counsel’s advice to plead guilty and “keep one of the LWOPs off the table” was strategic and reasonable based on Applicant’s prior sentence and pending appeal from his trial. This Court finds Applicant did receive a benefit from the plea as he did not receive a second sentence of life without parole, the sentence the State would have sought should Applicant proceeded to trial. Thus, this Court disagrees with Applicant’s allegations, and finds the combined record from the plea hearing and the evidentiary hearing establishes Applicant freely, knowingly, and voluntarily pleaded guilty.

Therefore, this Court finds Applicant has failed to meet his burden and finds no deficiency on the part of Counsel nor prejudice therefrom in regard to these allegations. Accordingly, Applicant’s request for relief by way of this allegation is **DENIED**.

***Applicant’s Allegation Counsel was Ineffective for Failing to Effectively Represent Applicant at His Prior Trial Rendering Applicant’s Plea Involuntary***

Applicant alleges Counsel’s failure to effectively represent Applicant at his prior trial rendered Applicant’s plea involuntary as Counsel’s alleged prior ineffective representation was a primary factor in the entry of Applicant’s guilty plea.

“[T]he right to the effective assistance of counsel is recognized not for its own sake, but because of the effect it has in the ability of the accused to receive a fair trial.” *United States v. Cronin*, 466 U.S. 648, 658 (1984). Further, “[a]bsent some effect of challenged conduct on the reliability of the trial process, the Sixth Amendment guarantee is generally not implicated.” *Id.* The burden of proof still remains on Applicant to demonstrate a constitutional violation, though there are “circumstances that are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified.” *Id.* Among these are “if the accused is denied counsel at

a critical stage of his trial”, “if counsel entirely fails to subject the prosecution’s case to meaningful adversarial testing”, and circumstances in which “although counsel is available to assist the accused during a trial, the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial.” *Id.* at 659-60.

In South Carolina, structural issues, as addressed in *Cronic*, have been found sparingly and typically in the most egregious of cases. *See Nance v. Ozmint*, 367 S.C. 547, 555, 626 S.E.2d 878, 882 (2006) (finding ineffective assistance of counsel under *Cronic* when lead counsel was ill and on heavy medication and co-counsel had only practiced law for eighteen months, for failure to communicate to the jail to stop anti-psychotic medication when claiming mental illness in court, for clearly communicating to the jury that the defense attorneys did not want to be at the trial, for failure to qualify the defense expert when asserting a defense of guilty but mentally ill, and for failure to present adaptability evidence at the sentencing hearing); *McKnight v. State*, 320 S.C. 356, 359-60, 465 S.E.2d 352, 354 (1995) (finding ineffectiveness under *Cronic* when trial counsel was absent during the testimony of a victim at trial).

This Court finds Applicant’s case does not fit any of the structural errors or circumstances as delineated by the Court in *Cronic* and its progeny. Counsel was present for the entirety of the guilty plea, was professional and otherwise adequately did his job, and properly advised Applicant of his options prior to the plea. Thus, a structural error is not present, and prejudice cannot be presumed. This Court further finds any prior representation of Counsel was non-prejudicial to Applicant’s decision to plead guilty. The plea hearing transcript itself reflects that the plea was entered freely, knowingly, intelligently, and voluntarily. Applicant informed the Court he wanted to plead to the eight charges. (Plea Tr. 21). Applicant stated he was not on any

substances impacting his ability to understand the plea. (Plea Tr. 5-6). He stated he was not promised or threatened into pleading, that the plea was free and voluntary, and that he understood the rights he was waiving by pleading. (Plea Tr. 7-8). This Court finds Applicant understood what he was pleading to. Though Applicant asserts his plea was involuntary, he has failed to establish any prejudice on this ground as the record reflects Applicant understood the plea proceedings, did not want to proceed to trial, understood he could be sentenced to life without parole should he proceed to trial and be found guilty, and believed pleading guilty was in his best interest. Thus, no prejudice has been established in this instance. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

#### 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 her 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 19 day of Sept, 2022.

  
\_\_\_\_\_  
ROBERT J. BONDS  
Presiding Circuit Court Judge  
First Judicial Circuit

Walterboro, South Carolina

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

Tyrone Ellison, #324947,

Applicant,

v.

State of South Carolina,

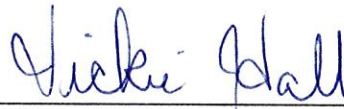
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Order of Dismissal has been served upon the applicant by mailing one copy in the United States mail, postage prepaid, addressed to:

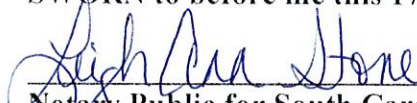
**Tricia A. Blanchette, Esquire**  
**Law Office of Tricia A. Blanchette, LLC**  
**Post Office Box 2147**  
**Leesville, SC 29070**

This 17<sup>th</sup> day of October, 2022.



\_\_\_\_\_  
Vickie Hall  
Legal Assistant for Respondent

SWORN to before me this 17<sup>th</sup> day of October, 2022.

  
\_\_\_\_\_  
Notary Public for South Carolina.  
My Commission Expires: *May 16, 2029*