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OCT 10 2023

S.C. SUPREME COURT

**NOTICE OF APPEAL FROM A PCR DENIAL BY THE COURT OF  
COMMON PLEAS**

THE STATE OF SOUTH CAROLINA  
In Supreme Court of SC

APPEAL FROM COLLETON COUNTY  
Court of Common Pleas

DeAndrea G. Benjamin, Circuit Court Judge

Case #2016-CP-15-1476

The State,

Respondent,

v.

Qwinton J. Brown

Appellant.

**NOTICE OF APPEAL**

Qwinton J. Brown, appeals the decision of the Court, in the order dated February 23, 2023, where Mr. Brown was denied his request for Post-Conviction Relief. Counsel was not made aware of the filed Order until inquiring about it and receiving a copy on October 2, 2023. Mr. Brown was represented at the hearing by Timothy L. Griffith, Attorney at Law who files this notice on behalf of the Appellant. The order herein attached and a copy of which is also forwarded to the SCCID Appellate Division.

Dated

10/3/23

  
Timothy L. Griffith, Esquire

2338 Mount Vernon Dr.

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Telephone: (803) 499-2012

Attorney for Appellant (relieved)

Will not be representing on appeal

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OCT 10 2023

S.C. SUPREME COURT  
IN THE COURT OF COMMON PLEAS  
FOR THE FOURTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA )  
COUNTY OF COLLETON )

Qwinton J. Brown, SCDC #365193, )

Applicant, )

v. )

State of South Carolina, )

Respondent. )

Case No. 2016-CP-15-01476

ORDER OF DISMISSAL

2023 FEB 23 PM 12:59

COLLETON COUNTY  
COMMON PLEAS COURT

This matter comes before this Court by way of post-conviction relief (PCR) action commenced by Applicant Qwinton J. Brown on October 24, 2016. On September 26, 2018, through its return, the State moved to summarily dismiss the application because it was filed after the statute of limitations had expired. On December 10, 2018, the Honorable Judge Carmen T. Mullen, acting in her capacity as then-Chief Administrative Judge for the Fourteenth Judicial Circuit, signed a Conditional Order of Dismissal, provisionally dismissing the action. Applicant responded to the Conditional Order of Dismissal, asserting he mailed his application for filing before the statute of limitations tolled, that the application was sent back to him to correct, and that any delay in filing was a result of delay caused by the Colleton County Clerk of Court.

On October 2, 2020, by letter to then-Chief Administrative Judge Deadra L. Jefferson, the State requested a hearing be set in light of *Mose v. State*<sup>1</sup>. Thereafter, Applicant was appointed counsel to represent him in this matter. A hearing was convened before the Honorable Robert E. Hood to determine whether Applicant's filing should be considered timely. Judge Hood found good cause shown as to why the case should not be dismissed and ordered an evidentiary hearing

<sup>1</sup> 420 S.C. 500, 512, 803 S.E.2d 718, 723-24 (2017) (holding an applicant is entitled to equitable tolling, if he can establish he was prevented from timely filing due to circumstances beyond his control).

on the merits be scheduled.

An evidentiary hearing into the matter convened on November 1, 2021, before the undersigned, the Honorable DeAndrea G. Benjamin. Applicant was present and represented by Timothy L. Griffith, Esquire. Assistant Attorney General Samantha J. Weidauer represented the State. Applicant testified on his own behalf at the hearing. Applicant's plea counsel, Arie D. Bax, Esquire, also testified.

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

#### **I. Procedural History**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Colleton County Clerk of Court. In May 2014, the Colleton County Grand Jury indicted Applicant for attempted murder (2014-GS-15-0246). The charge resulted from a February 2014 incident in which Applicant, along with two codefendants, shot at the victim, Octavius Davis, with a 9mm handgun. Arie D. Bax, Esquire, represented Applicant. Reed A. Evans, Esquire, prosecuted the case. Applicant pled guilty as indicted to attempted murder before the Honorable Perry M. Buckner, III. Pursuant to the State's recommendation, Judge Buckner sentenced Applicant to imprisonment of fifteen years for attempted murder on August 24, 2015. Applicant did not appeal his from his guilty plea or sentence.

On October 24, 2016, Applicant filed an application for post-conviction relief. An evidentiary hearing into the matter convened before the undersigned on November 1, 2021. This order follows.

## **II. Issues Before This Court**

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

1. Ineffective assistance of counsel
  - a. "Counsel failed to inform me of necessity. Had Counsel done so, I would not have pled guilty and insisted on going to trial."

During the evidentiary hearing, Applicant raised the following allegations:

1. Involuntary guilty plea
  - a. Applicant alleged he was coerced into pleading guilty and
2. Ineffective assistance of counsel
  - a. Failure to effectively communicate with Applicant

To the extent the allegations set forth in Applicant's original application 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.

## **III. Testimony Presented at Evidentiary Hearing**

### ***Applicant Qwinton Brown's Testimony***

At the evidentiary hearing, Applicant testified he was represented by appointed counsel, Arie D. Bax (Counsel). (PCR Tr. 4). Applicant testified Counsel "never really did try to help [him] fight [his] case." (PCR Tr. 5). When asked how many times Applicant met with Counsel, Applicant stated he remembered meeting with Counsel three times between the time he was arrested and the



time he pleaded guilty on August 24, 2015<sup>2</sup>. (PCR Tr. 10-11). Applicant specified that during one of his meetings with Counsel prior to his plea, Counsel informed him of the State's recommendation of a "capital plea of zero to twenty" years' imprisonment. (PCR Tr. 6).

When asked why Applicant felt coerced into pleading guilty, Applicant testified Counsel told him there was no way he could fight his case. (PCR Tr. 6). Applicant stated Counsel told him, "this deal was going to be sweeter, and it's either take this plea right here, or if you go to Court, if the Judge finds you guilty, it'll be 40 years." (PCR Tr. 6). Applicant testified Counsel did not discuss his case with him. (PCR Tr. 7). During direct examination, when asked whether Applicant reviewed discovery with Counsel, Applicant testified he did not review discovery with Counsel. (PCR Tr. 6). Applicant further testified Counsel was unresponsive to letters and phone calls from Applicant and Applicant's family. (PCR Tr. 9).

When Applicant was asked about plea negotiations and his discussions with Counsel regarding plea negotiations, Applicant testified he asked for a reasonable plea "considering the circumstances". (PCR Tr. 7-8). When asked about the amount of time Applicant was given to consider the plea offer that Applicant was given, Applicant stated he had about sixty days to consider the offer. (PCR Tr. 9).

During cross-examination, Applicant testified "to a certain extent," he discussed with Counsel the elements of the crime and what the State had to prove to convict him of attempted murder. (PCR Tr. 11). When asked if Applicant provided any leads or witnesses to Counsel to aid in his defense, Applicant testified the victim in his case, who he was housed with in Colleton County, was attempting to help him with his defense. (PCR Tr. 11). In furtherance of his answer

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<sup>2</sup> During Applicant's direct examination, he testified he met with Counsel one time, before ultimately testifying he met with counsel three times. (PCR Tr. 5-6, 10-11).

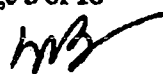
regarding leads or witnesses he provided to Counsel, Applicant testified "they were saying like possibly me and [the victim] could have gotten together and talked about it, and what not, it could affect it." (PCR Tr. 12).

Applicant testified that though he originally wished to proceed to trial, Counsel's advice that he would receive a forty-year sentence at trial was the deciding factor in his decision to plead guilty. (PCR Tr. 12-13). Applicant testified Counsel told him he could proceed to trial if he wished. (PCR Tr. 12). Applicant testified Counsel discussed with him that he would have the right to testify at trial should he wish to. (PCR Tr. 13). Applicant testified that it was ultimately his decision to plead guilty. (PCR Tr. 14). When asked whether Counsel threatened him to take the plea, Applicant answered in the negative. (PCR Tr. 12).

***Plea Counsel Arie D. Bax's Testimony***

After Applicant rested his case, Respondent called Arie D. Bax, Esquire, (Counsel) as a witness. (PCR Tr. 14). Counsel testified he has been practicing law for seventeen years and his practice consists of 60-70% criminal law. (PCR Tr. 14). Counsel testified he was appointed in this matter through his role at the Public Defender's Office. (PCR Tr. 15). Counsel testified that due to the number of public defenders in the Colleton Public Defender's Office at the time of this case and because of the number of co-defendants Applicant had, he was assigned as a conflict attorney in the matter. (PCR Tr. 15-16).

Counsel testified that though he does not have access to his criminal defense file in this matter, he recalls meeting with Applicant at least three times during the course of his representation. (PCR Tr. 16). Counsel elaborated that he met with Applicant in the standard visitation room a couple of times to talk; he met with Applicant at the Colleton County Jail in one of the Lieutenant's offices to review discovery; and he also talked to Applicant on a couple other



occasions -- once when Applicant moved to have him relieved and another time after. (PCR Tr. 16-18). Counsel testified Applicant moved to relieve him as counsel because he did not like his advice, because Applicant did not trust him, and because Applicant did not believe what Counsel was telling him. (PCR Tr. 17). Counsel further testified Applicant's motion to relieve him occurred some months before Applicant was scheduled for either trial or plea. (PCR Tr. 17).

When asked whether Counsel recalled discussing Applicant's version of the facts with him, Counsel testified what he recalled of the facts of the case:

"Mr. Brown along with at least two other individuals was in a small car. I remember -- I think it was green, I don't remember, but anyway, they were in a car, they drove up to a property there in Walterboro. There was -- I believe it was a mobile home. There might have been two -- I think there might have been two mobile homes pretty close in proximity. I think the -- the allegations were that there was an individual -- that law enforcement believed that Qwinton and his other co-defendants had some kind of problem with. I don't recall if there was any allegations that he shot at them, but the allegation was they started shooting at this individual, either when he was outside the house, or when he ran inside the mobile home. Needless to say, the factual evidence was, there was several bullet holes in at least one, if not two, of those mobile homes. There were also two unrelated individuals in one of those mobile homes, and it was common for that to result in a charge of attempted murder from everybody that was inside of the home. If I recall correctly, there was -- they tracked bullet holes, and it came pretty close to the other two -- I think it was a man and a woman who lived in -- in one of those other that was related to the situation. And so those individuals -- that's why you had three charges of attempted murder. However, from my recollection, there was a patrol officer that was not very far away, who'd actually heard the shots, even before he got a dispatch call about, you know, called in about the shooting. He had turned around and headed in the direction of those shots, and as a result, was in pretty close proximity to them, and initiated a pursuit, blue lights and all. My recollection is that Mr. Brown -- I don't remember if Mr. Brown was driving or not, but they fled from the blue lights, and I believe there was even a charge of -- of failure to stop for a blue light in there somewhere; but a relatively short pursuit occurred at the end of which Mr. Brown and the co-defendants -- the car flipped, and it flipped in the parking lot of a daycare very close to the Courthouse. So we know where that -- that parking lot's at. Now -- and then they were arrested right on-scene. So -- and I believe that the firearms or at least one of the firearms was recovered. I don't -- I don't recall if they threw it out the window, but even if they had, it was through the streets of Walterboro, so we were [not] talking about the marshes or anything. So my recollection was they had the individuals, they were able to -- I mean you're talking about the "scene of the crime," you have an officer who witnessed 90

*mb*

percent of this, you have him pursuing, along with the other officers who joined in, the car flips over, and the individuals were arrested right there.”

(PCR Tr. 18-20).

When asked whether he discussed the strengths and weakness of the case with Applicant, Counsel testified he did. (PCR Tr. 20). Counsel testified that he informed Applicant of his willingness to take the case to trial; however, he further testified that if he thought the case was “a flat-out loser of a trial, then that’s what [he] would have told [Applicant].” (PCR Tr. 20). Counsel testified Applicant’s case was “one of those type of caught red-handed situations”. (PCR Tr. 21).

Regarding defenses, Counsel testified he did not recall what Applicant was talking about regarding self-defense as a defense to the charges. (PCR Tr. 21). Counsel testified that in this case, he did not recall seeing facts to support a self-defense defense, nor did he believe he could have been able to get the Judge to charge self-defense at trial. (PCR Tr. 21). Counsel further testified there was a statement made by Applicant that was harmful to Applicant’s case that could have been labeled a confession by the prosecution at trial. (PCR Tr. 22). Additionally, Counsel testified he did not believe Applicant would look very sympathetic to a jury, nor could Applicant argue mutual combat, as there were three victims, two of which were sitting in their homes, uninvolved in the alleged beef that the incident stemmed from, when bullets were shot into their living room. (PCR. Tr. 23-24).

Counsel adamantly testified he told Applicant that he could take the case to trial; however, again, Counsel noted he would have been candid with Applicant regarding his belief of Applicant’s chance of an acquittal at trial. (PCR Tr. 22). Counsel testified he explained to Applicant that the State bears the burden of proof and must prove their case beyond a reasonable doubt as to all elements of the crimes. (PCR. Tr. 23). Counsel testified that on more than one occasion, especially because Applicant was not happy with his situation, he would have reviewed with Applicant

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everything he was required to advise him of. (PCR Tr. 25). Counsel further testified that there was a lengthy colloquy between Applicant and the Judge when Applicant moved to have Counsel relieved as counsel. During that colloquy, Counsel stated the Judge presiding over Applicant's motion informed Applicant of his rights, the Judge told Applicant he could proceed to trial, told Applicant that Counsel would cross-examine witnesses on Applicant's behalf at trial, and told Applicant he could put up whatever defenses were available to him at that time. (PCR Tr. 25). Regarding whether he believed Applicant understood their conversations, Counsel testified that he had no issues with Applicant's competence and testified Applicant is smart. (PCR Tr. 26). Counsel stated he believed Applicant understood what he was saying but did not like or want to hear what Counsel was telling him. (PCR Tr. 26).

Counsel testified he wished he could have gotten Applicant a better plea offer and stated that if there were some leverage to use, Applicant may have received a better plea offer. However, in this case, Counsel testified there was no leverage he could use. (PCR Tr. 24). Regarding the plea offer, Counsel described to this Court the State's adamant position on the plea offer. (PCR Tr. 21). Counsel testified the plea deal involved dropping two of the attempted murder charges in exchange for a guilty plea on one count of attempted murder. (PCR Tr. 21). Additionally, Counsel testified that despite the prosecutor, Judge Buckner, and all parties involved knowing Applicant was unhappy with the offer, the Solicitor's office was not persuaded to budge on their offer. (PCR Tr. 24).

On cross-examination, Applicant's counsel asked Counsel if he told Applicant he would "definitely lose at trial." (PCR Tr. 27). Counsel testified that he would have told Applicant should he proceed to trial, there was a very strong possibility that he would lose. (PCR Tr. 27). Counsel again reiterated that the facts in this case were not good, even should Applicant get the most



favorable jury. (PCR Tr. 28).

#### IV. Standard of Review

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

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

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d



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

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, *Hill v. Lockhart*, 474 U.S. 52 (1985), extended the two-part *Strickland* test to challenge guilty pleas based on ineffective assistance of counsel. See *Padilla v. Kentucky*, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). The analysis of counsel's performance under the first prong of *Strickland* remains unchanged—the applicant must show that counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. *Hill*, 474 U.S. at 58-59; accord *Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000).

An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the competence demanded of attorneys in criminal cases." *Hill*, 474 U.S. at 56. The second, or "prejudice" prong, however, "focuses on

whether counsel's constitutionally ineffective performance affected the outcome of the plea process." *Id.* at 58–59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." *Id.* at 59.

This inquiry "focuses on a defendant's 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).

#### V. 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 counsel, this Court proceeds to the claims raised at the evidentiary hearing 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 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.

### *Involuntary Guilty Plea*

At the evidentiary hearing, Applicant contended he felt coerced into pleading guilty. This Court disagrees, and finds Applicant knew the nature of the charges against him and the consequences of pleading guilty. Moreover, this Court finds Applicant has not shown that but for counsel's alleged errors Applicant would have proceeded to trial.

"[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).

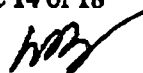
The test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). It is "well established that a guilty plea is not rendered invalid 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).

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.*

As an initial finding, this Court finds Counsel was not ineffective in his representation of Applicant. Furthermore, this Court finds at the evidentiary hearing, Counsel credibly testified he met with Applicant on at least three separate occasions, reviewed discovery with Applicant, informed Applicant that pleading guilty in his case would mean Applicant would be giving up certain constitutional rights, and explained to Applicant he could proceed to trial should he wish. Counsel further testified that, armed with the knowledge Applicant was unhappy with his situation, he explained to Applicant everything he was required to advise him of on more than one occasion, and Counsel had no concerns regarding Applicant's competency. This Court further finds Applicant testified he had sixty days to consider the plea offer before ultimately pleading guilty, that Applicant testified it was his decision to plead guilty, and Applicant testified that Counsel did not threaten him in any way. Therefore, this Court finds it was Applicant's decision to plead guilty and his decision was freely, voluntarily, knowingly, and intelligently made.

Based on the foregoing, the record contradicts Applicant's assertion he was under coercion and that his plea was involuntary as a result of ineffective assistance of counsel. Thus, based on the evidence presented at the evidentiary hearing, 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.

***Allegation Counsel was Ineffective for Failure to Communicate***

At the evidentiary hearing, Applicant further alleged Counsel was ineffective for failing to effectively communicate with him. This Court finds Applicant's allegation Counsel was ineffective for failure to adequately communicate with him during the course of representation is without merit. "[B]revity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation." *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Applicant must show evidence indicating "how additional preparation or communication would have resulted in a different outcome." *Id. See Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (where application failed to show ineffective assistance of counsel based on lack of preparation by neglecting to show evidence of what counsel failed to discover or what defenses counsel could have pursued had he more fully prepared for the case); *Skeen v. State*, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (where applicant failed to show ineffective assistance of counsel when he did not present evidence showing how additional preparation would have impacted the trial).

Applicant's allegation Counsel did not sufficiently communicate with him prior to his plea is refuted by Counsel's credible testimony at the evidentiary hearing. Specifically, Counsel testified he spoke with Applicant at least three times, reviewed discovery of the case with Applicant, informed Applicant that pleading guilty would mean Applicant would be giving up certain constitutional rights, and explained to Applicant he could proceed to trial if he wished.

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 this allegation. Accordingly, Applicant's request for relief by way of this allegation is DENIED.

**VI. All Other Allegations**

As to any and all allegations raised in the application or at the hearing in this matter and not specifically addressed in this order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, 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.

*[conclusion and signature on following page]*



**VII. Conclusion**

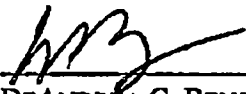
Based on the evidence presented at the PCR hearing, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. This Court finds Applicant freely, knowingly, and voluntarily pleaded guilty. 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 16 day of Feb, 2023.

  
DEANDREA G. BENJAMIN  
Presiding Circuit Court Judge  
Fourteenth Judicial Circuit

Columbia, South Carolina