STATE OF SOUTH CAROLINA OCONEE COUNTY	IN THE COURT OF COMMON PLEAS FOR THE TENTH JUDICIAL CIRCUIT
Steven L. Reynolds, SCDC #370355, Applicant, v. State of South Carolina, Respondent.	CASE NO. 2020–CP–37–0367 **ORDER OF DISMISSAL**

This matter comes before the Court by way of Steven L. Reynolds (Applicant) application for post-conviction relief (PCR) filed on June 9, 2020. Respondent, the State of South Carolina, filed its Return on December 7, 2020, requesting an evidentiary hearing to resolve the claims set forth in the application. On February 22, 2023, Applicant filed an Amended Post-Conviction Relief Application.

On August 22, 2023, an evidentiary hearing was held at the Oconee County Courthouse before the Honorable Daniel Dewitt Hall. Applicant was present and represented by Susannah C. Ross, Esquire. Deputy Attorney General Donald J. Zelenka represented Respondent. In support of these claims, Applicant testified on his own behalf. Respondent presented testimony from Rodney W. Richey, Esquire (Plea Counsel).

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South

Carolina Department of Corrections (SCDC). During its April 2019 term, the November 17, 2021 County Grand Jury indicted Applicant for two counts of murder (2019-GS-37-0523, -0524); two counts of possession of a weapon during the commission of a violent crime (2019-GS-37-0523, -0524); armed robbery (2019-GS-37-0525); and malicious injury to property (2019-GS-37-0526).

On November 21, 2019, Applicant appeared before the Honorable R. Lawton McIntosh and pleaded guilty as indicted. Rodney W. Richey, Esquire represented Applicant. Tenth Circuit Solicitor Lindsey Simmons prosecuted the case. Judge McIntosh sentenced Applicant to concurrent sentences of 35 years on each murder charge, 30 years for armed robbery, and a maximum sentence of 5 years for malicious injury to property pursuant to the State's recommendation. Applicant did not appeal his conviction or sentence.

FACTS GIVING RISE TO THE CONVICTION

The facts giving rise to Applicant's conviction were articulated by the State at Applicant's plea hearing, as follows:

> Thank you, your Honor. May it please the court. On September 10, 2018, here in Oconee County[1], the Defendant, with malice aforethought, did shoot and kill Tim Caldwell and David Tranah [during] an armed robbery. Prior to the killings, the Defendant also [shot] into an unoccupied vehicle belonging to the Oconee County Sheriff's Office causing damage between 2- and $10,000.00.

(Plea Tr. p.10, 16-19).

[1] For the court's summary, the facts giving rise to conviction took place in the "compound." The compound is an area in Seneca widely recognized for drug and criminal activity. The course of investigation revealed Applicant went to the compound to collect an alleged drug related debt and the only shots fired were of Applicant. (Plea Tr. p. 11, 23-25; p. 14, 10-23).

CURRENT ACTION BEFORE THIS COURT

In his original application, Applicant alleged he was being held in custody unlawfully as set forth below:

1. Ineffective Assistance of Plea Counsel
   a. "Counsel failed to do an adequate investigation."
2. Prosecutorial Misconduct
   a. "Prosecutor failed to indict within 90 days and no showing of an ongoing investigation to warrant such a delay".
3. "Will amend other issues upon receipt of representation."

Applicant requested relief in the form of vacating sentence and/or sentence reduction.

On February 22, 2023, Applicant filed an amended PCR application adding the following additional claims for relief (verbatim):

1. Ineffective Assistance of Plea Counsel
   b. "Failing to visit and review discovery with Applicant;"
   c. "Failing to adequately explain the elements of the charges prior to the plea; and"
   d. "Failing to appeal the appeal."

Before this Court are Oconee County Clerk of Court records regarding the subject's conviction, Applicant's records from SCDC, Applicant's guilty plea transcript, and records of Applicant's current PCR action.

SUMMARY OF THE TESTIMONY AT THE EVIDENTIARY HEARING

APPLICANT'S TESTIMONY

On direct examination, Applicant testified Plea Counsel was ineffective because he only spent forty-five minutes consulting with him and failed to review discovery with him before he pled. Applicant testified he did not understand the charges against him, and Plea Counsel merely advised him he could get him a better sentence than a life sentence if he pled. Applicant testified he pled because he did not feel safe in county jail, and believed he would lose his life to police brutality. Applicant testified he did not understand the legal implications of pleading guilty.

Applicant testified he was under the impression he would only have to serve eighty-five percent of his sentence and did not understand he would have to serve his sentence day for day since it was a capital case. Applicant testified he filed his PCR application without appealing because he believed that was what he had to do. Applicant testified Plea Counsel was ineffective for advising him to plea when the State had no evidence against him except hearsay testimony of a co-defendant. Applicant testified he should have gone to trial because of lack of evidence but understands Plea Counsel advised him to plea because he could have received a life sentence if found guilty at trial. Applicant testified if he knew everything he knows now, like State failing to indict within ninety days, he would have decided to proceed to trial.

On cross-examination, Applicant testified he knew he was charged with murder related to Applicant shooting the victim. Applicant testified these were not difficult concepts to understand. Applicant reiterated he knew what he was charged with. Applicant testified he knew he could receive thirty years to life for the charges against him, and that he could receive five years for other charge. Applicant testified Plea Counsel got him a favorable negotiated sentence. Applicant testified Plea Counsel advised him of the possible sentences he could receive, the terms of the negotiated plea offer, and Applicant was aware he could receive two life sentences if he proceeded to trial. Applicant testified he never spoke with Plea Counsel about his guilt and did not give a statement to law enforcement. Applicant testified he understood when he pled he acknowledged he committed the offense he was charged with. Applicant testified Plea Counsel did not explore possible defenses before his plea, and never advised him to go to trial. Lastly, Applicant testified he never indicated to Plea Counsel he wanted to appeal.

PLEA COUNSEL'S TESTIMONY

On direct examination, Plea Counsel testified he had been practicing law for twenty-seven years, criminal law making up about fifty percent of his practice. Plea Counsel testified he

has tried about ten murder cases, and is experienced in preparation of murder cases. Plea Counsel testified he was appointed to Applicant's case. Plea Counsel testified he was the second or third attorney appointed to Applicant's case, and in the initial meeting Applicant brought Plea Counsel up to speed on his case. Plea Counsel testified during initial consultation Applicant informed him he was not at the scene of the crime, which prompted Plea Counsel to hire an investigator. Plea Counsel testified he met with Applicant again before the investigator met with Applicant to ascertain Applicant's alibi, at which point Applicant informed him he was guilty. Plea Counsel testified Solicitor Simmons called him after and offered fifty-years. After the initial offer, Plea Counsel testified there was a sequence of events at the jail, and Solicitor Simmons informed Plea Counsel they needed Applicant out of jail. Upon receiving this information, Plea Counsel testified he proposed a thirty-year plea offer. Plea Counsel testified Solicitor Simmons rejected this offer, but then offered thirty-five years.

Plea Counsel testified he discussed the thirty-five-year offer with Applicant and discussed proceeding to trial. Plea Counsel testified Applicant was excited about 35 year offer and was relieved because he expected substantially more time. Plea Counsel testified he discussed Applicant's right to a jury trial with him, but Applicant did not want to proceed to trial. Plea Counsel testified he advised Applicant the judge might not accept offer. Regarding Applicant's right to appeal, Plea Counsel testified he did not advise Applicant of his right to appeal because Applicant pled guilty and there was no factual basis for an appeal. Plea Counsel testified the trajectory of Applicants case changed when Applicant informed Plea Counsel he was guilty of the charges. There were witnesses to the shooting, and there were multiple co-defendants.

Plea Counsel testified Applicant's case involved drugs and Applicant's tragic upbringing helped him in plea. Plea Counsel testified as soon as he received offer of thirty-five years, he went to the jail and discussed it with Applicant, because he did not know how long the offer would be available. Plea Counsel advised Applicant he could try and push Solicitor Simmons on a thirty-year offer, but Applicant wanted to take the thirty-five-year offer. Plea Counsel testified he advised Applicant the sentence carried day for day, and Applicant would be released when he was fifty.

On cross-examination, Plea Counsel testified he was appointed to Applicant's case three months before Applicant's plea hearing. Plea Counsel testified the State had two witnesses and four co-defendants ready to testify against Applicant at trial. Many people were charged in the case. Plea Counsel understood the officers at county jail wanted Applicant out because Applicant was instigating fights. Plea Counsel testified Applicant jumped to accept the thirty-five-years plea offer.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility.

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), SCRCP (stating that in a post-conviction

relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

Accordingly, set forth below are the relevant findings of facts and conclusions of law as required by § 17-27-80 of the South Carolina Code:

Ineffective Assistance of Plea Counsel

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). 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 or sentence. 466 U.S. at 687. First, the applicant must show that counsel's performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases.

Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential[, as] [i]t is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 8 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," **not** whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690).

Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Id. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that

"there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. Thus, it is not enough "to show that the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to deprive the defendant of a fair trial." Id. at 693 (emphasis added).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel." Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel's performance was deficient; and second, evidence that counsel's deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. Hill, 474 U.S. 52.

The analysis of counsel's performance under the first prong of Strickland remains unchanged—the applicant must show counsel's representation fell below the 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 plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the range of competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56.

The second, or "prejudice" prong, however, "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Id. at 58–59.

Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59. This inquiry "focuses on a defendant's decision making" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. 357, 137 S. Ct. 1958, 1966, 198 L. Ed. 2d 476 (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).

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. 357, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 58 ("[R]equiring a showing of 'prejudice' 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. 357, 137 S. Ct. at 1967. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences. Id. 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 plea and the evidence presented at the PCR hearing. Harres v. State, 282 S.C. at 134, 318 S.E.2d at

361 (1984).

This Court finds Applicant has not met his burden as to his claims of ineffective assistance of plea counsel rendering his guilty plea involuntary. The specific claims are addressed below.

Involuntary Guilty Plea

Applicant also claims his plea was not entered knowingly or voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements 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. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985)).

An Applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to

trial instead. See Roscoe v. State, 345 S.C.16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, a claim of an involuntary guilty plea is, in essence, a claim of ineffective assistance of counsel, and is treated as such.

INITIAL FINDINGS

As a matter of general impression, this Court finds Plea Counsel's testimony at the evidentiary hearing **credible** and **persuasive,** where he presented well-recollected testimony of relevant background, facts, and discussions leading up to and during the plea hearing. This Court further finds applicable the strong presumption that at all stages of Plea Counsel's representation of Applicant, he rendered adequate assistance and exercised reasonable professional judgment in his representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*).

This Court makes the following findings from the record: 1) Applicant understood the charges and sentences he faced at his plea hearing (Plea Tr. pp. 4); 2) Applicant understood the details and circumstances of the negotiated plea (Plea Tr. pp. 4-5); 3) Applicant clearly indicated he was satisfied with Plea Counsel (Plea Tr. p. 9); 4) Applicant understood his right to a jury trial and that he waived those rights by pleading guilty (Plea Tr. pp. 5-7); 5) Applicant indicated he had enough time with Plea Counsel (Plea Tr. p. 9); 6) Applicant indicated no promises were made to him and his decision to plead guilty was voluntary (Plea Tr. p. 7-8); 7) Applicant was not on drugs or medications that would affect his ability to understand the plea proceedings (Plea Tr. p. 5); 8) Applicant understood the sentencing range (Plea Tr. p. 4-5); 9) Applicant agreed with the allocation of the facts surrounding the State's case (Plea Tr. 4); 10) Applicant's plea was qualified as freely, knowingly, and voluntarily entered into (Plea Tr. p. 19-20).

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS ON THE MERITS

Allegations (1)(a), (b): Counsel failed to do an adequate investigation, visit, and review discovery with Applicant.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to adequately investigate his case, visit with him, and review discovery. Counsel has a duty to investigate as "reasonably effective assistance must be based on professional decisions and informed legal choices can be made only after investigation of options." Strickland, 466 U.S.at 680. There is no precise measurement for what constitutes reasonable pretrial investigation, and counsel's investigatory decisions must be assessed in light of the information known at the time of the decisions. Id. The investigation need not be exhaustive, but it must "include an independent examination of the facts, circumstances, pleadings and laws involved." Id., quoting Rummel v. Estelle, 590 F.2d 103, 104 (5th Cir. 1979).

To establish counsel failed to adequately prepare for trial, applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. Jackson v. State, 329 345, 495 S.E.2d 768 (1998); Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (relief denied where applicant failed to present witnesses or specific testimony establishing applicant would have had a defense with additional time to prepare for trial). Also note, that the "brevity of time in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980).

At the evidentiary hearing on direct examination, Applicant testified Plea Counsel was ineffective because he met with him for only forty-five minutes, did not go over discovery, and did not investigate possible defenses. On cross-examination, Applicant testified Plea Counsel did not explore possible defenses before his plea.

On direct examination, Plea Counsel testified he was the second or third attorney appointed to Applicant's case, and in their initial meeting, Applicant brought him up to speed on the status of his case. Plea Counsel testified Applicant informed him he was not at the scene of the crime, prompting Plea Counsel to hire an investigator to investigate a possible alibi. Plea Counsel testified that before the investigator could meet with Applicant, he met with Applicant to ascertain his alibi, at which point Applicant admitted his guilt to the charges against him. Plea Counsel testified the trajectory of Applicant's case after this admission. Plea Counsel testified the tragic upbringing of Applicant helped him in his plea. On cross-examination, Plea Counsel testified the State had two witnesses and four co-defendants ready to testify against Applicant at trial.

This Court finds the testimony of Plea Counsel **credible**, and finds Applicant has failed to show deficiency or any resulting prejudice from Plea Counsel's conduct. This Court finds Plea Counsel hired an investigator to look into a possible defense, but changed the trajectory of Applicant's defense after Applicant admitted his guilt. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996) (Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective). This Court finds Plea Counsel met with Applicant multiple times and discussed his case with him. Plea Counsel evidenced his knowledge of the facts, circumstances, and possible defenses in Applicant's case. Applicant failed to present testimony, documentary evidence, or other evidence of what Plea Counsel could

have discovered had he spent more time in consultation with Applicant or conducted more investigations. Therefore, Applicant's allegations are **DENIED** and **DISMISSED WITH PREJUDICE**.

Allegation (1)(c): **Plea Counsel failed to adequately explain the elements of the charges prior to the plea.**

Applicant alleged Plea Counsel failed to explain the elements of the charges against him. On direct examination, Applicant testified he did not understand the charges against him, and Plea Counsel merely advised him he could get him a better sentence than life if he pled.

However, on cross-examination, Applicant testified he knew he was charged with murder, and that charges against him were not difficult concepts to understand. Applicant testified he knew he could receive thirty years to life for murder, and five years for the other charge. Applicant testified Plea Counsel obtained a favorable negotiated sentence for him.

On direct examination, Plea Counsel testified he was Applicant's second or third attorney, and Applicant knew his case and informed Plea Counsel about his case in their initial meeting.

During Applicant's plea, in the presence of Applicant, Assistant Solicitor Simmons recited to the plea court all the charges against Applicant, including murder, armed robbery, and malicious injury of property. (Plea Tr. p. 2). Additionally, Applicant informed the plea court he understood murder carried a possibility of thirty years to life, and understood the sentences for each charge under the terms of the negotiated plea. (Plea Tr. p. 4). Moreover, Plea Counsel informed the plea court he went over all the elements of all the charges with Applicant and explained the possible sentences Applicant could have received. (Plea Tr. 9).

This Court finds the combination of the testimony presented at the evidentiary hearing and the plea record evidence Plea Counsel informed Applicant of the elements of the charges against him. Applicant initially testified he did not understand the charges against him, but the

rest of Applicant's testimony indicates Applicant knew exactly what he was charged with, and Applicant admits Plea Counsel's conduct ultimately benefited him. Moreover, the plea transcript reflects Plea Counsel explained the elements of the charges, and Applicant understood the nature of the charges against him and the possible sentences he faced. (Plea Tr. pp. 2-4; 9). Applicant has presented no valid reason why he should be able to depart from the statements made during his guilty plea as provided *supra*. See Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975), overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir. 1985) (finding that the accuracy and truth of an accused's statements at a guilty plea proceeding are "conclusively" established unless he makes some reasonable allegation why this should not be so). Therefore, this Court finds Plea Counsel's representation of Applicant was not deficient, and Applicant cannot demonstrate any prejudice flowing from Plea Counsel's performance in this matter. Accordingly, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED WITH PREJUDICE.**

Allegation (1)(d): **Plea Counsel failed to "Appeal the Appeal."**

In his amended application, Applicant alleged Plea Counsel failed to "appeal the appeal." Applicant did not provide specific facts to support this allegation in his amended application or present testimony or any other evidence in support of this allegation at the evidentiary hearing. Therefore, this Court treats this allegation as waived and abandoned. (See also Section related to an alleged failed to appeal the guilty plea below.) Accordingly, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED WITH PREJUDICE.**

Allegation (2)(a): **Applicant alleges prosecutorial misconduct against Solicitor Simmons for failing to indict him within 90 days and no showing of an ongoing investigation to warrant such delay.**

Applicant alleges Solicitor Simmons' failure to indict him within ninety days constituted prosecutorial misconduct, and had he known she failed to do so he would have elected to proceed to trial.

On direct examination, Applicant testified if he knew everything he knows now, including the fact the State failed to indict him within ninety days, he would have decided to go to trial.

This is not a showing of prosecutorial misconduct entitling to relief inasmuch as it did not create a jurisdictional bar to the prosecution under Rule 3, SCRCrimP. The Supreme Court of South Carolina has held Rule 3 of the South Carolina Rules of Criminal Procedure is an "administrative rule adopted for the purpose of insuring an orderly and prompt disposition of cases. While the rule is designed to secure a prompt handling of cases, it was not intended to be the criterion for determining whether the constitutional guaranty of a speedy trial has been met." State v. Culbreath, 316 S.E.2d 681, 681 (S.C. 1984) ("[T]he failure of the solicitor to act upon a warrant within ninety (90) days ... does not within itself invalidate a warrant or prevent subsequent prosecution."). Also, State v. Edwards, 374 S.C. 543, 649 S.E.2d 112 (Ct. App. 2007), rev'd on other grounds, 384 S.C. 504, 682 S.E.2d 820 (2009). As an apparent non-jurisdictional defect, the defect must be timely raised as required by S.C. Code Ann. § 17-19-90 (2003), before the jury is sworn, or the defect is waived. Hooks v. State, 353 S.C. 48, 577 S.E.2d 211 (2003), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E. 2d 494 (2005). There is no prosecutorial misconduct prove and it must be dismissed.[2]

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

[2] In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). Applicant's allegation is not framed in the context of ineffective assistance of counsel.

DISMISSED WITH PREJUDICE.

ALLEGATIONS RAISED DURING THE EVIDENTIARY HEARING

Allegation: Failing to appeal conviction and sentence.

Applicant alleges Plea Counsel was constitutionally ineffective because Plea Counsel failed to appeal his conviction and sentence. "Following a trial, counsel must make certain the defendant is made fully aware of the right to appeal." Simuel v. State, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010). "However, the standard for a guilty plea differs." Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). "Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea." Id. See Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000).

On direct examination, Applicant testified he never informed or otherwise indicated to Plea Counsel he desired to appeal his guilty plea. Applicant testified he filed his PCR application without appealing because he believed that was what he had to do.

On direct examination, when asked whether he discussed an appeal with the Applicant, Plea Counsel testified he did not consult with Applicant concerning his right to appeal because Applicant pled guilty and there was no factual basis for an appeal.

This Court finds Applicant has failed to show extraordinary circumstances requiring Plea Counsel to inform Applicant of his right to appeal or file an appeal from his guilty plea or sentence on Applicant's behalf. No objection was made during the guilty plea of the negotiated thirty–five (35) year sentence. Accordingly, Applicant's request for appellate relief by way of a

belated appeal of his guilty plea is **DENIED** and **DISMISSED WITH PREJUDICE.**

Allegation: Applicant pled because of Plea Counsel's advice.

Applicant alleged Plea Counsel was ineffective for advising him to plea. This Court finds that counsel advice was within the standards of competence demanded of lawyers practing criminal law and not deficient. On direct examination, Applicant claimed Plea Counsel was ineffective for advising him to plea when the State had no evidence against him except hearsay testimony of a co-defendant. Applicant testified he should have gone to trial because of lack of evidence, but understands Plea Counsel advised him to plea because he could have received a life sentence if found guilty at trial. On cross-examination, Applicant testified Plea Counsel never advised him to proceed to trial.

On direct examination, Plea Counsel testified he met with Applicant at jail and discussed the State's thirty-five year offer. Counsel claimed Applicant was excited about the offer. Plea Counsel testified he also discussed Applicant's right to a jury trial, and fact the plea judge might not accept the negotiated thirty-five year recommendation by the State. Plea Counsel testified Applicant did not want to proceed to trial. Plea Counsel testified he advised Applicant he could push Solicitor Simmons to accept a thirty-year offer, but Applicant expressed he wanted to accept the thirty-five-year offer. Plea Counsel testified he met with Applicant multiple times before this, and during those times he discussed Applicant's case and possible defenses. Contrary to the claim of Applicant, Plea Counsel was aware and advised the Applicant about the evidence the State intended to use against Applicant at trial, including the possibility of the testimony of two eyewitnesses and four co-defendants. The Applicant was excited to learn of the thirty-five year sentence recommendation, as he expected to receive a higher sentence under the circumstances.

At his plea hearing, Applicant made the following statement to the plea court:

> THE DEFENDANT: I don't remember her name, but to the widow, I'd like to tell her, I hope some day she can find it in her heart to forgive me because that could be one of the biggest things, no matter what happens here in the courtroom today, to know that the family could be able to forgive me for the wrongs in my life and just to make me feel better, even though I don't deserve it, but I hope she will be able to find it in her heart to forgive me.

(Plea Tr. p. 19).

This Court finds the combination of Plea Counsel's **credible** testimony and the record establish Applicant's plea was given freely and voluntarily. Notably, Applicant made a statement of guilt to the plea court during his plea hearing and expressed his remorse to the victim's family. (Plea Tr. p. 19). see Dalton v. State, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (Ct. App. 2007) ("[S]tatements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements."). Accordingly, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED WITH PREJUDICE.**

Allegation: **Plea Counsel failed to inform Applicant his negotiated sentence was to be served day to day prior to his plea.**

Applicant alleged he did not understand his sentence was to be served day for day. On direct examination, Applicant testified he was under the impression he would only have to serve eighty-five percent of his sentence, and did not understand he would have to serve his sentence day for day since it was a capital case.

On direct examination, Plea Counsel testified he advised Applicant the negotiated sentence carried day for day and Applicant would not be released until he was fifty years old. Plea Counsel testified Applicant jumped to accept the thirty-five-year offer. The plea transcript

reflects Applicant understood the negotiated thirty-five-year sentence carried day for day, based on the following colloquy between Applicant and the plea court:

THE COURT:	Do you understand that on the murder charges, you will serve at least -- you will serve day-for-day if I go forward with your recommended sentence?
THE DEFENDANT:	Yes, sir.
THE COURT:	You will not be given good time or good credits; you will serve day-for-day 35 years?
THE DEFENDANT:	Yes, sir

(Plea Tr. pp. 5, l. 25 – 6, ll. 1-7).

This Court finds credible counsel testimony that he advised his client that he would serve day to day of the negotiated thirty-five year sentence for murder, rather than 85% requirement. Further, prejudice under Strickland cannot be shown. Even where counsel offers misinformation, this deficiency can be cured where the trial court properly informs the defendant about the sentencing range. See Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997) (even if counsel gives erroneous advice, an applicant is not entitled to PCR where any misconceptions are cured by the colloquy during the guilty plea proceeding); Burnett v. State, 352 S.C. 589, 576 S.E.2d 144 (2003) (any possible misconceptions on PCR applicant's part were cured by the colloquy during the plea proceeding); see also Moorehead v. State, 329 S.C. 329, 333, 496 S.E.2d 415, 416 (1998) ("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"); Bennett v. State, 371 S.C. 198, 205, 638 S.E.2d 673, 676 (2006) (same).

This Court finds the combination of Plea Counsel's **credible** testimony and the plea transcript reflect Applicant understood his murder sentences were to be served day to day. Accordingly, Accordingly, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED WITH PREJUDICE.**

Allegation: **Applicant's plea was coerced because he feared for his life in county jail.**

Applicant alleged his plea was coerced. On direct examination, Applicant testified he pled because he did not feel safe in county jail, and believed he would lose his life to police brutality.

On direct examination, Plea Counsel testified Solicitor Simmons informed Plea Counsel of a sequence of violent events and complaints at the county jail involving Applicant, where Applicant was instigating fights. Plea Counsel testified before this, Solicitor Simmons offered fifty (50) years, but because the officers wanted Applicant out of the local jail, she offered the lesser thirty-five-year negotiated sentence. Additionally, Plea Counsel testified with the 35 year offer, Applicant did not wish to proceed to trial but wished to plea. On cross-examination, Plea Counsel testified the officers at the county jail wanted Applicant out because of the issues he was causing.

At his plea hearing, the following colloquy occurred between the plea court and Applicant:

THE COURT:	Mr. Reynolds, has anybody forced, threatened, or promised you anything to get you to plead today?
THE DEFENDANT:	No, sir.
THE COURT:	Are you doing so of your own free will?
THE DEFENDANT:	Yes, sir.

(Plea Tr. p. 5, ll. 18-25).

This Court finds the combination of Plea Counsel's **credible** testimony and the record establish Applicant's plea was given freely and voluntarily. Notably, Applicant informed the plea court he was not forced or threatened to plea, and was doing so of his own free will. see Dalton v. State, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (Ct. App. 2007) ("[S]tatements made

during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements."). Accordingly, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED WITH PREJUDICE.**

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be **DENIED and DISMISSED with PREJUDICE.**

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf if the Applicant wishes to seek appellate review. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 8th **day of** October **, 2023.**

THE HONORABLE DANIEL DEWITT HALL
Presiding Judge
Tenth Judicial Circuit

York, South Carolina

FILED OCONEE COUNTY, SC
MELISSA C. BURTON
CLERK OF COURT
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