STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
Debra R. McCaslin., Circuit Court Judge

2020-CP-21-0830

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OCT 25 2023
S.C. SUPREME COURT

Timothy C. Turbeville, #299569,

Appellant,

v.

State of South Carolina,

Respondent.

NOTICE OF APPEAL

Timothy C. Turbeville, # 299569, appeals the Order of Dismissal with Prejudice denying his Application for Post-Conviction Relief filed October 18, 2023, issued by The Honorable Debra R. McCaslin, Presiding Judge of the Twelfth Judicial Circuit Court of Common Pleas. The undersigned received a certified copy of the Order of Dismissal with Prejudice on October 23, 2023.

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA COUNTY FLORENCE	IN THE COURT OF COMMON PLEAS FOR THE TWELFTH JUDICIAL CIRCUIT
Timothy C. Turbeville, #299569, Applicant, v. State of South Carolina, Respondent.	CASE NO. 2019-CP-21-0830 2020 **ORDER OF DISMISSAL WITH PREJUDICE**

This matter comes before the Court by way of Timothy C. Turbeville's (Applicant) application for post-conviction relief (PCR) filed on March 16, 2020. Respondent, the State of South Carolina, filed its Return on July 8, 2020, requesting an evidentiary hearing to resolve the claims set forth in the application. On November 30, 2022, Applicant filed an Amended Post-Conviction Relief Application.

On June 12, 2023, an evidentiary hearing was held at the Florence County Courthouse before the Honorable Debra R. McCaslin. Applicant was present and represented by Joshua A. Bailey, Esquire. Assistant Attorney General D. Russell Barlow, II, represented Respondent. At the hearing, Applicant proceeded forward on the claims set forth in his original application *only* and withdrew his amended application allegations. In support of these claims, Applicant testified on his own behalf, and Respondent presented testimony from Karen E. Parrott, 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.

CERTIFIED: A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections (SCDC). During the June 2019 term, the Florence County Grand Jury indicted Applicant for Attempted Murder (2019–GS–21–00702). Twelfth Circuit Assistant Public Defender Karen E. Parrott represented Applicant. Twelfth Circuit Assistant Solicitor Todd S. Tucker prosecuted the case.

On January 9, 2020, Applicant appeared before the Honorable Thomas A. Russo, and pled guilty to Attempted Murder. Judge Russo accepted Applicant's plea and sentenced him to a negotiated term of twenty years imprisonment for Attempted Murder.

Applicant did not appeal his conviction and sentence.

FACTS GIVING RISE TO THE CONVICTION

Applicant stabbed his girlfriend, Crystal Lane Gandy (Victim), at the Economy Inn in Florence County. (Plea Tr. p. 17). On April 15, 2018, at about 8:15 a.m., law enforcement responded to an assault complaint from the hotel manager. (Plea Tr. pp. 17–18). The manager called 911 after Victim rushed into the manager's door, pleading that he call 911 because she had been stabbed. (Plea Tr. p. 18). Police observed horrific knife wounds on Victim's neck and shoulder. (Plea Tr. p. 18). Victim explained she had shared the room with Applicant, and they had stayed at the hotel for the past two weeks. (Plea Tr. p. 18). Victim informed police that Applicant borrowed her car earlier that morning to go get breakfast. (Plea Tr. p. 18). When he returned, Applicant asked Victim if she wanted something to eat; however, Victim declined. (Plea Tr. p. 18). Victim got out of bed, and as she was walking, Applicant stabbed her repeatedly from behind. (Plea Tr. pp. 18–19). One of Victim's wounds was in the left back of the deltoid muscle, and she still had problems raising her arm at the time of the plea hearing.

(Plea Tr. p. 19). However, the worst stab wound Victim endured was a large laceration from the point of her right jaw, down her throat, and almost to the back of her neck. (Plea Tr. p. 19).

After the attack, Applicant fled to North Carolina in Victim's car. (Plea Tr. p. 20). When North Carolina law enforcement attempted to pull Applicant over, he led them on a chase. (Plea Tr. p. 20). Applicant was charged in North Carolina for increasing speed to allude and was imprisoned for the offense from April 23, 2018, to January 2, 2019. (Plea Tr. p. 20). Applicant was extradited to South Carolina immediately after completing his North Carolina sentence to face the underlying charges. (Plea Tr. p. 20).

CURRENT ACTION BEFORE THIS COURT

In his application for post-conviction relief commenced on March 16, 2020, Applicant alleged he was being held in custody unlawfully as set forth below:

1. Ineffective Assistance of Plea Counsel
   a. Failure to investigate and present the defense of self-defense.
2. Involuntary Guilty Plea
   a. Plea Counsel coerced Applicant into a plea by telling him if he did not accept the plea he would start trial the following week and would get thirty years.

On November 30, 2022, Applicant filed an amended PCR application adding the following additional claims for relief:

1. Involuntary Guilty Plea:
   a. Failed to investigate and interview potential witnesses to establish a defense of self-defense.

Before this Court are Florence County Clerk of Court records regarding the subject's conviction and sentence, Applicant's records from the South Carolina Department of Corrections, Applicant's guilty plea transcript, and the records of Applicant's current PCR action.

INEFFECTIVE ASSISTANCE OF COUNSEL

The Uniform Post-Conviction Procedure Act[1] (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based 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 insufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442,

[1] S.C. Code Ann. §§ 17-27-10 to -160.

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, 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 "[without 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 range of competence demanded

of attorneys in criminal cases." Hill, 474 U.S. at 56. However, the second, or "prejudice" prong "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. 357, 367 (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—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).

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 observed 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:

INITIAL FINDINGS

As a matter of general impression, this Court finds Plea Counsel's testimony at the evidentiary hearing **credible** and **persuasive**, where she presented well-recollected testimony of relevant background, facts, and discussions leading up to and during the plea hearing. This Court finds Applicant's testimony at the evidentiary hearing **not credible**. This Court further finds applicable the strong presumption that at all stages of Plea Counsel's representation of Applicant, she rendered adequate assistance and exercised reasonable professional judgment in her representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

This Court makes the following findings from the record: 1. Applicant understood the charges and sentences he faced at his plea hearing (Plea Tr. p. 7); 2. Applicant understood the details and circumstances of the negotiated plea (Plea Tr. pp. 14-17); 3. Applicant clearly

indicated he was satisfied with Plea Counsel (Plea Tr. p. 16); 4. Applicant understood his right to a jury trial and that he waived those rights by pleading guilty (Plea Tr. p. 14); 5. Applicant indicated he had enough time with Plea Counsel (Plea Tr. p. 13–14); 6. Applicant indicated no promises were made to him, and his decision to plead guilty was voluntary (Plea Tr. p. 17); 7. Applicant was not on drugs or medications that would affect his ability to understand the plea proceedings (Plea Tr. p. 16–17); 8. Applicant understood the sentencing range (Plea Tr. p. 14–15); 9. Applicant agreed with the allocation of the facts surrounding the State's case except that he did not just attack Victim "out of the blue" (Plea Tr. pp. 21–22); 10. Applicant's plea was qualified as freely, knowingly, and voluntarily entered into (Plea Tr. pp. 23).

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS ON THE MERITS

Allegation: Failure to Investigate and Present a Defense of Self-Defense.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to investigate and present the defense of self-defense. This Court finds this allegation is without merit.

At the evidentiary hearing on direct examination, Applicant testified that he told Plea Counsel what happened and how he was injured, which supported his contention this was self-defense. (PCR Tr. pp. 6–7). Applicant testified that Plea Counsel was a woman, and the Victim was a woman, so Plea Counsel had already made her mind up. (PCR Tr. p. 10). Applicant testified that while he tried to explain how it was self-defense, Plea Counsel just scribbled on paper and would not listen to him. (PCR Tr. pp. 10–11).

On direct examination, the following colloquy occurred with Plea Counsel:

> Q. What was your inclination as to a self defense defense?
> A. When you got someone who's telling you that they've done $3,000.00 worth of cocaine over a period of days as well as a bunch of Jagermeister and that he doesn't have a full memory of everything, she doesn't -- she's not gonna have a full memory, I think you have to go with what the evidence

is and she's got a cut that goes all the way up her neck, basically, and it's gaping open, he's only got a couple of teeny tiny wounds, to me it was inconsistent with self defense, and then whenever he put that whatever he did on the record as part of the plea and the judge asked him are you waiving self defense, he said, yes, and he had told me he wanted to plea, even from that first time when we went over all of the evidence, so I felt that was the right thing to do.

(PCR Tr. pp. 20–21).

On cross-examination, the following colloquy occurred with Plea Counsel:

Q. After sustaining that wound do you think you could have argued that she had to have attacked him first?
A. If he would have wanted to have gone to trial then I think you can make that argument, I also think it loses.
Q. But it was his choice?
A. Yes.
Q. And did you explain that to him?
A. Yes. He told me from the front that he didn't want to go to trial, that he wanted a plea, and I did give him a copy of all of his rule five, by the way. I gave him that on – I dropped it off at the pod for his guard to give him on June the 6th, so two days after he and I had gone through all of his discovery I left the copy for him to have.
Q. But Mr. Turbeville's position is did you explain to him specifically that based on the severity of the wound that she sustained she would have had to have attacked him first, based on his defensive wounds on his hands?
A. He told me what happened as far as what he remembered, so I don't think that my telling him that she started it is relevant. He's telling me what happened, I'm going with his version of the events.

(PCR Tr. pp. 21–22).

This Court finds Plea Counsel **credibly** testified that Applicant indicated he never wanted to go to trial. Plea Counsel **credibly** testified that they could have made the self-defense argument if he had wanted to go to trial, but she thought it would lose. Plea Counsel **credibly** testified that Applicant's facts of the events, as presented to her, were inconsistent with self-

defense.

Notably, when Applicant did not fully agree with the facts as presented by the Solicitor, the plea court asked Applicant if he understood that if he had any defenses to include self-defense, he would waive that defense if he pleaded guilty, to which Applicant replied, "Yes, sir. Yes, sir." (Plea Tr. p. 22). Applicant had the opportunity to avail himself of the defense of self-defense at trial, and he informed the plea court he understood he was waiving that right. 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.").

Applicant has the burden to prove every allegation in his application. See Butler, 286 S.C. at 441, 334 S.E.2d at 814. Based on Plea Counsel's **credible** testimony, this Court finds Applicant never wanted to go to trial, and Plea Counsel advised Applicant accordingly, and Applicant chose to plead guilty. 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**.

Allegation: Involuntary Guilty Plea

Applicant alleges Plea Counsel was constitutionally ineffective and that his guilty plea was involuntary. Specifically, Applicant alleges Plea Counsel coerced him into pleading guilty because she told him he could either take the twenty years and plead or go to trial and get thirty years. This Court disagrees and finds Plea Counsel did not coerce Applicant, and this allegation is without merit.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a complete understanding of the consequences of the plea and the charges against him or her. Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991); see also Boykin v. Alabama, 395 U.S. 238, 244 (1969) (Courts must make sure defendants have "a full understanding of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought (Garner v. Louisiana, 368 U.S. 157 (1961); Specht v. Patterson, 386 U.S. 605 (1967), and forestalls the spin-off of collateral proceedings that seek to probe murky memories.").

In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984) (finding the voluntariness of a guilty plea "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.").

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. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001); Richardson v. State, 310 S.C. 360, 363, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

As an initial matter, this Court finds the record reflects that Applicant's guilty plea was knowingly, intelligently, and voluntarily entered with a complete understanding of the charges and consequences of the plea. 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 conclusively 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)).

At the evidentiary hearing on direct examination, Applicant testified that he pled guilty on Plea Counsel's advice because she told him that if he did not take the twenty, he would get thirty at trial. (PCR Tr. p. 10). Applicant testified that Plea Counsel was brusque and just told him he would get thirty years at trial. Id. Applicant testified that Plea Counsel was a woman, and the Victim was a woman, and "it was already in [Plea Counsel's] head [he] was guilty." Id. Applicant testified that had Plea Counsel prepared for self-defense, he would have gone to trial because twenty is not much different from thirty.[2] (PCR Tr. pp. 10–11).

On cross-examination, Applicant testified that Plea Counsel did not force him to take the plea deal; instead, he told the plea court that Plea Counsel said to him that if he did not take the twenty years, he would get thirty years at trial.[3] (PCR Tr. p. 12). Applicant further testified that he did not recall telling the plea court he was satisfied with Plea Counsel, and instead, he told the

[2] Contrary to Applicant's testimony here, at the plea hearing, Applicant begged the plea court to accept the negotiated twenty years and not give him any more time. (Plea Tr. p. 25).

[3] This Court notes Applicant's assertion is wholly refuted by the plea transcript. At no point during Applicant's plea hearing did he tell the plea court that Plea Counsel told him he would get thirty years if he went to trial. Instead, the plea court informed Applicant that the maximum sentence for his charge was thirty years. (Plea Tr. p. 7).

plea court Plea Counsel told him if he did not take the twenty, he would get thirty years at trial. Id. Applicant further testified that he agreed to the State's recitation of facts except that he was the initial aggressor. (PCR Tr. p. 13). Applicant also testified that he recalled asking the plea court to accept the plea negotiations and not give him any more time than the negotiated 20 years. Id. Applicant testified that he did not recall the plea court explaining that he would be waiving the right to self-defense if he had a defense of self-defense by pleading guilty. Id.

On direct examination, Plea Counsel **credibly** testified in the following colloquy:

> Q. And did Mr. Turbeville ever indicate that he wanted to go to trial?
> A. No. In fact, on the first meeting, first real meeting, I will say, there was one meeting that I was down at the jail, and that was on March 6, 2019 that I saw him and he wanted to discuss the case and I told him that I didn't have anything yet but I would be back to talk to him once I did. He had already called me once on February 27th to discuss the case. I had made a note that it doesn't appear that he was given a bond, and I didn't have the file even yet on February 27th, so it was so new to where I didn't even have it yet. I went and filed the bond motion for him on April the 17th and then went to the jail and talked with him about all of the discovery and all of that, as well as any information he might have on June the 4th.
> Q. Did you force Mr. Turbeville to take the plea deal?
> A. No, I did not.
>
> ....
>
> Q. Did you inform Mr. Turbeville of the consequences of a plea?
> A. Yes. He told me on June the 4th, I went over all of the discovery that I had with him, I showed him the pictures that I had, including the one with the gaping wound, he told me he wanted ten years or less, that he did not want to go trial, that he wanted a plea and that the victim -- yeah, it was everything. The victim had sent word through his brother that she still loves him and wishes him well, and she was also cut on her shoulder. I'm sorry, I did not note that earlier, but -- and he said something to me then about the fact that he had two cuts on his hands, that he was

trying to get the knife away, that she bent down and the knife was then -- cut her as it was -- as they were fighting over it. I'm sorry, and my notes are that they'd been drinking Jagermeister, they hadn't -- that he hadn't been out for 15 days and that she found a year-old text in his phone from another female saying that they argued and it went from there and he had told me that they had done $3,000.00 worth of cocaine in that time as well as all that Jagermeister, and so he really didn't have full memory of everything, she wouldn't have had full memory of everything, but that they were drunk and that they had done $3,000.00 worth of cocaine in those days they were together.

Q. Did you agree with Mr. Turbeville's inclination to plea?

A. I did.

Q. Do you stand by your representation?

A. I do. We had a bond hearing in September of that year, as well, I met with him prior to the bond hearing and went over the information that was for that, and I specifically recall her being in the courtroom on that side. It was not in C but A or B, that she was on that side and she had a gentlemen sitting with her but she was wailing throughout the bond hearing, so I knew that she was not, even though she may love him, he may love her, she was not going to be his witness on the stand.

(PCR Tr. pp. 18–20).

This Court finds the combination of the record and Plea Counsel's **credible** testimony that Applicant knew the nature of the charges against him, the terms of the negotiated plea agreement, and the consequences of pleading guilty pursuant to the requirements of Boykin. Moreover, if there was any deficiency in Plea Counsel's advice, which this Court does not find, the plea colloquy cured any alleged deficiency. 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 plea court's questions. 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). Thus, based on the plea transcript and the evidence presented at the evidentiary hearing, this Court finds Applicant freely, knowingly, and voluntarily pled guilty.

Accordingly, this Court finds Applicant has failed to establish his guilty plea was involuntary and further failed to establish any deficiency by Plea Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED.**

NEW ALLEGATIONS RAISED AT THE EVIDENTIARY HEARING

Allegation: **Failure to Meet with Applicant a Sufficient Number of Times to Properly Review the Evidence and Discuss the Case.**

Applicant alleges Plea Counsel was constitutionally ineffective for failing to meet with him a sufficient number of times to properly review the evidence and discuss the case. This Court finds this allegation is without merit.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). Likewise, in order to prevail on a claim that counsel did not review discovery with applicant, the applicant must demonstrate prejudice by showing what evidence could have been discovered or what other defenses could have been pursued. Id.

Furthermore, an applicant must also present evidence to show how the discoverable

matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is insufficient to support a relief grant. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

At the evidentiary hearing on direct examination, Applicant testified that Plea Counsel met him once at jail one time "for about a minute," and eight months later at court for about a minute and a half. (PCR Tr. pp. 8–9). Applicant testified that Plea Counsel never reviewed the discovery with him. (PCR Tr. p. 10).

On direct examination, Plea Counsel **credibly** testified that she met Applicant on at least four occasions and had multiple phone calls with him. (PCR Tr. p. 16). Plea Counsel **credibly** testified that she reviewed all of the discovery with Applicant. (PCR Tr. pp. 18–20).

This Court finds Applicant failed to identify precisely what Plea Counsel did not explain or disclose to him from materials provided in discovery or what, if anything, could have been achieved had Plea Counsel spent more time with him in consultation regarding the contents of the evidence. See Smith v. State, 404 S.C. 493, 500–501, 745 S.E.2d 378, 382 (Ct. App. 2012) (noting that an applicant must present evidence to show how additional time spent in consultation regarding discovery would have resulted in a different outcome); see also Moody v. Polk, 408 F.3d 141, 148 (4th Cir. 2005) (citing United States v. Olson, 846 F.2d 1103 (7th Cir. 1988)) ("[T]here is no established 'minimum number of meetings between counsel and client prior to trial necessary to prepare an attorney to provide effective assistance of counsel.'").

This Court further notes Applicant's representation to the plea judge that he was completely satisfied with Plea Counsel and that Plea Counsel had answered all his questions.

(Plea Tr. p. 16); 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.").

For the foregoing reasons, the Court finds Plea Counsel was not deficient, nor did Applicant suffer any prejudice resulting therefrom.

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

Allegation : Failure to Explain the Elements of Attempted Murder.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to explain the elements of attempted murder. This Court finds this allegation is without merit.

Before a court can accept a guilty plea, the defendant must be advised of the nature and crucial elements of the offense, including the maximum and any mandatory minimum penalty. 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 the court and the defendant, between the court and defendant's counsel, or both." State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993).

At the evidentiary hearing on direct examination, Applicant testified that Plea Counsel never explained the elements of attempted murder to him. (PCR Tr. p. 10).

On direct examination, Plea Counsel **credibly** testified that she explained the elements of attempted murder to Applicant. (PCR Tr. p. 16).

Applicant has the burden to prove every allegation in his application. See Butler, 286 S.C. at 441, 334 S.E.2d at 814. Based on Plea Counsel's **credible** testimony, this Court finds

Plea Counsel explained the elements of attempted murder to Applicant. 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**.

|CONCLUSION PAGE FOLLOWS|

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.

FILED
2023 OCT 18 PM 2:22
FLORENCE COUNTY, S.C.

AND IT IS SO ORDERED this 9 **day of** October, **2023.**

Debra McCaslin
THE HONORABLE DEBRA R. MCCASLIN
Presiding Judge
Twelfth Judicial Circuit

Florence, South Carolina

CERTIFIED: A TRUE COPY
Dana Paulo O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

FORM 4

FILED

2023 OCT 18 PM 2:30

DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2020CP2100830

Timothy Christopher Turbeville	**South Carolina State Of**
PLAINTIFF(S)	**DEFENDANT(S)**

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant ☐ 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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ 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.

Circuit Court Judge **Judge Code** 10/18/2023 **Date**

For Clerk of Court Office Use Only

This judgment was entered on **October 18th, 2023**, and a copy mailed first class or placed in the appropriate attorney's box on **October 19th, 2023**, to attorneys of record or to parties (when appearing pro se) as follows:

CERTIFIED A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Joshua A. Bailey PO Box 555 Florence, SC 29503

D Russell Barlow II PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Doris P O'Hara

Court Reporter

Doris Poulos O'Hara - 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.

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.