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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	FOR THE TWELFTH JUDICIAL CIRCUIT
	)	
Anthony M. Hudson, #381313,	)	CASE NO. 2022–CP–21–821
Applicant,	)	
	)	
v.	)	**ORDER OF DISMISSAL WITH PREJUDICE**
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

This matter comes before the Court by way of Anthony M. Hudson's (Applicant) application for post-conviction relief (PCR) filed on April 11, 2022. Respondent, the State of South Carolina, filed its Return and Motion for a More Definite Statement on October 3, 2022, requesting an evidentiary hearing to resolve the claims as set forth in the application. On March 28, 2023, Applicant filed a Petition for Writ of *Habeas Corpus*. Respondent filed its Motion for Merger on April 10, 2023, requesting Applicant's Petition for Writ of *Habeas Corpus* be merged with this current PCR action. On April 17, 2023, the Honorable Michael G. Nettles, Chief Administrative Judge for Common Pleas, filed an Order of Merger, leaving this PCR action as the surviving action.

An evidentiary hearing was convened on June 13, 2023, at the Florence County Courthouse before the Honorable Debra R. McCaslin. Applicant was present and represented by Steven W. Fowler, Esquire. Assistant Attorney General D. Russell Barlow, II, represented Respondent. At the hearing, Applicant proceeded on the claims in his original and amended applications. In support of these claims, Applicant testified on his own behalf, and Respondent presented testimony from Matthew S. Swilley, 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). In November 2018, the Florence County Grand Jury indicted Applicant for Murder, Armed Robbery, Burglary—1st Degree, and Criminal Conspiracy (2018–GS–21–2120). Applicant was represented by Matthew S. Swilley, Esquire. Assistant Solicitor J. Ryan White prosecuted the case.

On August 30, 2019, Applicant appeared before the Honorable D. Craig Brown and pled guilty to the lesser included offenses of Voluntary Manslaughter and Attempted Armed Robbery. Judge Brown sentenced Applicant to concurrent terms of twenty-eight years' imprisonment for Voluntary Manslaughter and twenty years imprisonment for attempted armed robbery.

On September 4, 2019, Applicant filed a motion to reconsider the sentence. Judge Brown denied that motion on November 22, 2021, by filed order.

Applicant did not appeal.

FACTS GIVING RISE TO THE CONVICTION

The facts in support of the plea were articulated at Applicant's plea hearing by the Solicitor as follows:

> This incident occurred on December 24, 2017, at the home of Johnny and Amos Cameron, Judge at 709 North Old Georgetown Road in Lake City, which is Florence County and that was Christmas Eve. Your Honor, the family was gathering at that home eating food celebrating the holidays. They were there pretty much all day long. I think there were as many as maybe 30 head just

having a good time and celebrating. One of the last people to leave was Johnny Cameron's daughter. About 30 minutes after she left, Mr. Amos Cameron, Johnny Cameron's brother, went into the bedroom to retire for the evening. About that time, he hears a loud car pull into the yard. He would describe it as being so loud like a race car, like a jet engine. Shortly, thereafter, Judge, they hear a knock at the door. They hear some commotion. Mr. Amos Cameron comes to the bedroom door. He looks out the door to the mobile home where they are residing. He sees his brother Johnny Cameron fighting with an individual who's masked and has a gun. Just then, he hears about four shots and some people, you know, run back out the door and Johnny Cameron stumble into kitchen shot very bad, Judge, and dies right there on the kitchen floor. This case was investigated by Roger Tilton who's with the sheriff's office is here today. They start looking into this car and how loud it is. They have very little to go on until some people on Facebook appear to be talking about the incident as if they know a lot about it, Judge. So they have some suspects in mind. One of them is Charlie Roberson who's on Facebook talking about it. They go to Mr. Roberson's home Investigator Roger Tilton along with Investigator Ben Price. While Investigator Tilton is at the front door speaking to the residents inside the house, Investigator Ben Price kind of goes around the side and he notices a vehicle, a burgundy vehicle with the muffler laying beside it. Mr. Hudson also lives there with Charlie Roberson. He comes to the door. They ask if he can crank it up and sure enough it's loud, Judge. They ask Mr. Roberson if he can come in. They actually find him there with a pistol in his book bag. They ask Mr. Roberson to come on down to the sheriff's office. They ask Mr. Hudson to come down to the sheriff's office both of them give statements, and the statements are that Mr. Hudson, Mr. Roberson, and a third co-defendant Carl McDowell were all hanging out in Lake City. They drive to Florence. They pick up a Mr. Justin Pringle and a Curtis Nelson. Mr. Nelson is about 50 years old. At that time they start plan to hit a lick, Judge, an arm robbery. They don't know exactly where they're going to go. They throw out several different places. It's Mr. Nelson, the older of the individuals, who has the idea to go to Mr. Johnny Cameron's home because Mr. Cameron is know to be a bootlegger, Judge. He sells beer and potato chips, and so they go there, Judge. And at that time they pull up in Mr. Hudson's vehicle, three of them get out of the car. Mr. Hudson is one of the three individuals who goes to the door where Mr. Johnny Cameron is ultimately shot to death. The two individuals in the car are Carl McDowell who gives a statement and a Curtis Nelson who does not. Judge, there's a lot of evidence in this case, but most notably against Mr. Hudson is his statements. You know, he gives a statement to law enforcement initially and that statement

is damning. However, he indicates that he did not leave the vehicle. Well, you know, they do some more investigation, they don't believe that's true. They bring him back in. At that time he admits that he is one of the three that gets out of the vehicle and actually admits that he's the one that knocked on the door. Judge, but we don't believe at this time that he's the one that fired the gun that killed Mr. Cameron. We believe that Mr. Pringle had the .40 caliber that fired and killed Mr. Cameron, and the pathologist will testify that the bullet holes in Mr. Cameron were consistent with a .40 caliber handgun. The other two handguns were the .9 millimeter that was found on Charlie Roberson's person when they first came in contact with him. And then there was a .380 that was mention. We believe that .380 was in the hand of Mr. Hudson. Now, we're preparing this case, Judge, and we got ready to go to trial on the trigger man, Mr. Pringle, but at that time there was a curious thing about the case. We believe that the .40 cal was the one that shot and killed - - we're pretty certain that that was the one that Mr. Pringle used to kill Mr. Cameron, but there was a bullet hole in the mobile home that was inconsistent and it was a smaller caliber bullet. And we didn't know who fired that bullet. So we were talking to Mr. Hudson as well the other co-defendants to try to get them to cooperate, and we went out to the sheriff's office. It was me, Investigator Tilton, Investigator Street from our office, Mr. Swilley and Mr. Hudson who sat down in preparation for the trial against the trigger man. At that time Mr. Hudson tells us something he hadn't told us before that when he went to the door and all the commotion, he is actually the one that fired that small caliber bullet and he's lucky that it missed Mr. Cameron. Judge, we did everything we could to try to get Mr. Hudson to cooperate. We would go out there several times, but I can't say that he, you know, cooperated with the State in preparations for a trial. In fact for the first trial, we were making preparations to treat him as a hostile witness. Luckily for everybody, I think the trigger man ended up pleading guilty. He was sentence to 30 years. Judge, a few months later, we got ready for that 50-year-old co-defendant, Mr. Nelson. We believe he was the master mind behind all this, and we, again, went to talk to Mr. Hudson. And at that time he, again, became kind of combative towards us and discussions broke down. And we, again, began to prepare him as a hostile witness. Luckily for everybody, Mr. Nelson pled guilty and he received a 30 year sentence. Judge, you know, we're just kind of going one by Judge, you know, we're just kind of going one by one over the co-defendants, and Mr. Hudson is the next one to fall. There be two co-defendants after this, and I can't say that he's as culpable as maybe that trigger man, but only because he missed.

(Plea Tr. pp. 11–16).

CURRENT ACTION BEFORE THIS COURT

In his application for post-conviction relief, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Hill v. Lockhart: U.S. Supreme Court Case Law
2. There is evidence that which warrants a trial: Inconsistent statements that are exculpatory evidence
3. Ineffective assistance of counsel

As relief, Applicant requests "sentence reduction, lesser charge, parole."

On March 28, 2023, Applicant filed a Petition for Writ of *Habeas Corpus*, alleging that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
   a. Failure to file an appeal.
2. Involuntary Guilty Plea

On April 5, 2023, Respondent moved to have Applicant's *habeas* petition and PCR application merged. On April 18, 2023, the Honorable Michael G. Nettles filed an Order of Merger merging Applicant's PCR application with the *habeas* petition.

Before this Court are the Florence County Clerk of Court records, Applicant's SCDC records, Applicant's guilty plea transcript, Applicant's *habeas corpus* records, and the records of this PCR action.

INEFFECTIVE ASSISTANCE OF PLEA 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] S.C. Code Ann. §§ 17–27–10 to –160.

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, 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 due to 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 that 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— **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).

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 he 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 generally **not credible**. 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*). 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, 104; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

From the record, this Court makes the following findings: 1. Applicant affirmed he understood the charges and sentences he faced (Plea Tr. pp. 3–11); 2. Applicant affirmed he understood the details and circumstances of a straight-up plea (Plea Tr. pp. 5–8); 3. Applicant affirmed he was satisfied with Plea Counsel (Plea Tr. pp. 9–11); 4. Applicant affirmed he understood his right to a jury trial and right to present defenses and that he waived those rights by pleading guilty (Plea Tr. p. 11); 5. Applicant affirmed he had enough time with his attorney (Plea Tr. p. 10); 6. Applicant affirmed Plea Counsel answered all questions about his case (Plea Tr. p. 10); 7. Applicant affirmed no promises were made to him, and his decision to plead guilty was

voluntary (Plea Tr. p. 10); 8. Applicant affirmed he was not on drugs, and nothing affected his ability to understand the plea proceedings (Plea Tr. p. 4); 9. Applicant affirmed he understood the minimum and maximum range of sentencing for both charges (Plea Tr. p. 4; p. 6); 10. Applicant agreed with the allocution of the facts surrounding the State's case against him, and he still wanted to plead guilty (Plea Tr. pp. 11–17); 11. Applicant's plea was qualified as freely, knowingly, and voluntarily entered into. (Plea Tr. p. 17).

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS ON THE MERITS[2]

Allegation: Failure to Investigate

Applicant alleges Plea Counsel was constitutionally ineffective for failing to investigate. Specifically, Applicant avers Plea Counsel did not investigate the kite exchanges between his co-defendants, and Plea Counsel should have investigated his mental health.

"[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 690-91. "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Id. at 691. "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Id.

"The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Id. "Counsel's actions are usually based, quite

[2] This Court notes that Applicant was ordered to provide a More Definite Statement to Respondent on October 20, 2022, by the Honorable H. Steven DeBerry, IV. As of the date of this evidentiary hearing, Applicant failed to comply with Judge DeBerry's order. This Court will address the allegations in the order they were raised at the evidentiary hearing.

properly, on informed strategic choices made by the defendant and on information supplied by the defendant." Id. "In particular, what investigation decisions are reasonable depends critically on such information." Id.

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)). 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 not sufficient to support a grant of relief. 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)).

1. Failure to Investigate Kites[3] Exchanged by Co-Defendants

Applicant alleges Plea Counsel was constitutionally ineffective for failing to investigate the kites exchanged by his co-defendants. Specifically, Applicant avers that if Plea Counsel had investigated the kites, they would have shown his co-defendants were conspiring against Applicant. This Court disagrees and finds this allegation is without merit.

[3] "'Kite' is a prison term for an informal message or a complaint. According to one theory, the term originated in the mid-1800s when prisoners were not allowed to speak and instead passed messages to each other using Kite branded cigarette rolling papers. Another theory holds that the word came from the practice of people communicating with others by attaching a note to a string and swinging it to their friend's cell, much like a kite." https://prisonjournalismproject.org/category/kites.

At the August 8, 2019, hearing before the Honorable Thomas A. Russo, Applicant moved to have Plea Counsel relieved because Plea Counsel had not investigated the kites. (August 8th Tr. p. 5). Applicant testified that his co-defendants were passing kites to each other and discussing changing their statements and who to implicate in the crime. (August 8th Tr. p. 7). Applicant testified that at least one of the kites was intercepted by a prison guard and turned in. Id. Plea Counsel informed the court that he had the kites that were intercepted, and Applicant had seen those kites. (August 8th Tr. p. 101).

Assistant Solicitor addressed the kite issue in the following colloquy:

> MR. WHITE: And, Judge, if I may address the kite situation, those kites were damning in regards to the two co-defendants, who have since been convicted. The State, you know, definitely used those against those particular individuals, you know.
> THE COURT: Nothing to be used against Mr. Hudson?
> MR. WHITE: I -- and I don't want to speak out of turn, but I don't believe -- I want to say that when they – they dumped the rooms, they did search warrants on the rooms, he kind of got off scott-free. I mean there wasn't anything incriminating as to his particular case. So --
> THE COURT: Yeah. Okay.
> MR. WHITE: -- that's sort of it there.

(August 8th Tr. p. 11).

At the evidentiary hearing on direct examination, Applicant testified that Plea Counsel should have investigated the notes exchanged by his co-defendants because they would have shown his co-defendants were "conspiring against" him to implicate him in the crime. (PCR Tr. p. 10). Applicant testified that "it was two of [his] co-defendants just saying that [he] and another co-defendant [were] the mastermind behind everything, and [they] took part in doing whatever the crime was." Id.

This Court finds the combination of the record and Applicant's failure to present any

evidence to this Court that Applicant has failed to meet the burden of showing Plea Counsel was constitutionally ineffective. See Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006). Furthermore, Applicant failed to present "any evidence of how additional preparation or communication would have resulted in a different outcome." Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012); see Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998) (explaining that, where an applicant failed to present any evidence of what counsel could have discovered or what other defenses he would have requested counsel pursue had counsel more fully prepared for the trial, applicant failed to show his counsel's lack of preparation prejudiced him); Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (finding that, when there is evidence counsel met with a defendant in preparation for trial and there is no evidence additional preparation on the part of counsel would have affected the outcome at trial, counsel cannot be said to have been ineffective), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

Moreover, to whatever extent Applicant was not entirely satisfied with the amount of time spent with Plea Counsel or his failure to investigate the kites, he was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to proceed with his guilty plea. (Plea Tr. pp. 8–10); 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, this Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

2. Failure to Investigate Mental Health

Applicant alleges Plea Counsel was constitutionally ineffective for failing to investigate his mental health. Specifically, Applicant avers that his Veteran's Administration (V.A.) file would have shown he could not have participated in a crime where a gun was used. This Court finds this allegation is without merit.

As is the case with any other allegation that a defense attorney failed to adequately investigate some matter, an applicant must present some proof of identifiable mental health issues that undermine his or her competency; mere speculation and conjecture by the applicant is insufficient to establish prejudice. Garren v. State, 423 S.C. 1, 13-14, 813 S.E.2d 704, 711 (2018).

At Applicant's guilty plea hearing, Applicant testified that he had been treated for alcohol substance abuse while in the military. (Plea Tr. p. 3). Applicant testified that he had no physical, emotional, or nervous problems that would prevent him from understanding what was going on during the plea. (Plea Tr. p. 4). Applicant testified that he was satisfied with Plea Counsel's representation and Plea Counsel had done all he had asked him to do. (Plea Tr. p. 9).

At the evidentiary hearing on direct examination, the following colloquy occurred with Applicant:

> Q. You're a military vet, correct?
> A. Yes, sir.
> Q. And I certainly thank you for your service. In page seven, lines 14 through 19, it talks about you being a military vet and it says on page 16 and 17: I ask him to see as far as what he could do possibly to make my V.A. appointments. Now, what does his V.A. appointments have to do with his representation of you?
> A. At the time I was in the process of getting all my V.A. benefits started up and going. I had a couple appointments while I was in the county and I asked him to look into that as far as what process do I have to go by as far as rescheduling my appointments or getting them because I've been diagnosed with PTSD, I did five and a half years in the

military. As far as I know I got sentenced to mental health counseling so I could tell the judge knew I had some type of, you know, mental issues, but Mr. Swilley never checked into that, looked into it, as far as my knowledge I never heard anything about it.

Q. So you feel like -- now, were you diagnosed with PTSD -- by who?

A. The military.

Q. So the military said, in your words, you had PTSD?

A. Yes, sir.

Q. What is that? Post Traumatic Stress Disorder?

A. Yes, sir.

Q. Do you feel like Mr. Swilley should have helped you work with the V.A. on some things?

A. Basically, it was, I guess, what I'm trying to say is for my mental health status as far as what the military had to say as far as my rehabilitation and mental health status.

Q. So you feel like Mr. Swilley should having looked into your mental health status through the Veteran's Administration; is that correct?

A. Yes, sir.

Q. He did not do that, did he?

A. No, sir.

Q. Do feel like he should have?

A. Yes, sir.

Q. Starting on line 20 -- well, first of all, is there anything about your PTSD or Mr. Swilley's interaction, or lack thereof, with the Veteran's Administration that you'd like to bring to the Court's attention?

A. From my knowledge of my medical records from the military, certain interaction as far as with -- socially, it describes how I interact socially with other people. It describes how I react to loud noises and stuff like that, so what I'm saying is, putting it towards this case, me being around a gun or anything like that would have caused some type of reaction as far as would I be able to actually pull a gun or take part into some type of crime. Me socializing, I don't really socialize, you know like that, so as far as me with this group of individuals, I'm not going to sit there and talk to them or plan anything with them, I'll be off in my own little world, you know, doing my own little thing.

Q. So you're saying that you could have an adverse reaction to just being around a gun, possibly, correct?

A. Not just being around the noise, like, really the noise that, like -- okay, they say there was gun fire. Me, I would have reacted. I would have probably took cover or did something,

you know, to as far as mess up whatever they had going on at that time.

Q. And Mr. Swilley did nothing to look into that?

A. No, sir.

Q. Did he have you take a mental health evaluation?

A. No, sir.

Q. Do you feel like you should have?

A. At the time, yes, sir, because the way I look at it, if Judge Brown sentenced me to mental health counseling then that means some type of mental health issue was brought up and that he felt like I should get it looked at while I'm incarcerated.

Q. And that could have helped you in your defense, correct?

A. Yes, sir.

Q. Do you feel like his lack of interaction with your mental health records or evaluation served as ineffective assistance of counsel?

A. Yes, sir.

(PCR Tr. pp. 11-14).

On direct examination, Plea Counsel **credibly** testified that he did get the V.A.'s medical and mental health records for the motion to reconsider, which he provided to the court. (PCR Tr. p. 36). Plea Counsel **credibly** testified that if he could help his client in any way, he would, but it is his understanding that any doctor's appointments would be handled by the jail. (PCR Tr. p. 37). Plea Counsel **credibly** testified that he believed Applicant was competent under McNaghten[4] and Blair[5]—that there was no question about his competency, so he did not think they needed an evaluation. Id.

As an initial matter, this allegation was first raised in testimony provided at the evidentiary hearing. This Court finds this issue is not sufficiently meritorious or substantial to justify excusing Applicant's procedural default in failing to properly plead the issue in his application or any subsequent amendment. Applicant failed to present this Court with substantive evidence to

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[4] M'Naghten's Case, 8 Eng.Rep. 718 (1843).

[5] State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981).

support a potentially meritorious claim that he failed to amend into the application, but rather asserts a claim that is breezily unburdened by any meaningful factual support.

The merits of the claim as they are presented to this Court reinforce the Court's finding of procedural default. The plea transcript reflects Applicant's complete understanding of events as they were occurring, and his answers to the plea court's questions reflect that he was paying attention and knew what was happening. While Applicant testified at the evidentiary hearing that the V.A. records would show that he could not have committed this crime because he was not social and reacted to noises, Applicant provided no medical or mental health records to this Court to support his claim. Therefore, this Court finds Applicant has failed to present any evidence to meet his burden under Strickland or Hill, and failed to demonstrate any reason why he should be relieved of his procedural default.

Furthermore, even if this claim were not procedurally barred, Applicant has failed to provide this Court with any meaningful evidence to substantiate his claim. As noted previously, Applicant bears the burden of proving his claims—including presenting evidence to the Court. Here, Applicant testified at length about medical and mental health records that were pertinent to his defense. Yet, Applicant provided nothing but his self-serving testimony and conjecture as to how the purported records would have supported his claim. Mere speculation and conjecture are not enough to prove prejudice.

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

3. Failure to Investigate Discovery and Review Discovery[6]

Applicant alleges Plea Counsel was constitutionally ineffective for failing to investigate and thoroughly review discovery with him. This Court finds this allegation is without merit.

As provided *supra*, 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 he felt like "various issues" should have been looked into "because it [did not] add up." (PCR Tr. p. 14). Applicant testified that one of the issues was that one of the co-defendants said he never got out

[6] This allegation was first raised at the evidentiary hearing and not within Applicant's original pleadings.

of the car, and Applicant contemplated how the co-defendant could see anything in the dark if he was inside the car. Id. Applicant testified that he never saw the ballistic reports but went on to testify that the trajectory of the gunfire was in a straight line. Id. Applicant contemplated how the gunfire was in a straight line if he was in front of the shooter. Id.

Notably, Applicant testified that "[n]o one ever breached the door, the doorway . . . that didn't add up as far as [his] knowledge of how everything went." Id.

Applicant went on to testify that Plea Counsel did review discovery with him, but not thoroughly. (PCR Tr. p. 15). Applicant testified that no evidence was found linking him to the crime. Id. Applicant testified that he tried to contact Plea Counsel to inform him that he had lied about things previously and that he wanted to clear it up with Plea Counsel, but Plea Counsel would not return his phone calls. (PCR Tr. pp. 16-17). Applicant testified that he requested a polygraph from Plea Counsel and the Solicitor, but he was told it was inadmissible. (PCR Tr. p. 18). Applicant testified that the polygraph would have proved whether or not he was telling the truth. Id.

On direct examination, Plea Counsel **credibly** testified that he reviewed discovery with Applicant. (PCR Tr. p. 35). Plea Counsel **credibly** testified that it would not have been fruitful to have a polygraph done. (PCR Tr. p. 38).

The Court, *sua sponte*, asked Plea Counsel if he reviewed the discovery with Applicant and if he appeared to understand it, to which Plea Counsel **credibly** replied, "He did."

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).

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 of Applicant's questions. Applicant also represented to the plea court that Plea Counsel had done everything he was asked to do. (Plea Tr. pp. 9-10); 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.").

Moreover, to whatever extent Applicant was not entirely satisfied with Plea Counsel's discovery investigation or his time spent reviewing discovery, Applicant was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to proceed with his guilty plea.

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

Allegation: Involuntary Guilty Plea

Applicant contends his guilty plea was involuntary because he relied on erroneous advice from Counsel regarding the potential sentence he could have faced, and that he was emotionally unfit to sign a plea agreement. Applicant cites Hill v. Lockhart specifically, asserting that the voluntariness of his plea depends on whether Plea Counsel's advice to enter an open plea was within the range of competence required of criminal attorneys. This Court finds this allegation is without merit.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full 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, 243 (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, 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, 134, 318 S.E.2d 360, 361 (1984).

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.

After a review of the record and testimony at the evidentiary hearing, this Court finds Plea Counsel's representation was well within the range of competence required of criminal attorneys. Also, this Court finds Applicant understood the proceedings, interacted intelligently with the plea court, and entered his guilty plea knowingly, voluntarily, and intelligently. At the plea hearing, the plea judge explained to Applicant the constitutional rights he was waiving by pleading guilty, including his rights to remain silent and confront and cross-examine the State's witnesses and

present any defenses. (Plea Tr. pp. 4-8). Applicant informed the court that he understood the charges he was pleading to, he understood the range of sentencing the plea court could impose, and the implications of being convicted of a crime classified as violent. (Plea. Tr. pp. 4-7). Applicant advised the court he had no emotional, physical, or nervous problems preventing him from understanding the agreement and that he had not been threatened, pressured, intimidated, or promised anything in exchange for his guilty plea. (Plea Tr. p. 4; p. 10). Lastly, Applicant affirmed that he was pleading guilty of his own free will. (Plea Tr. p. 11).

Further, this Court finds Applicant has failed to present any valid reason why he should be able to depart from the above statements made during his guilty plea. 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).

Based on the foregoing, this Court finds Applicant's guilty plea was knowingly, voluntarily, and intelligently entered into. Accordingly, Applicant's request for relief by way of this allegation is **DENIED.**

Allegation: Failure to File an Appeal

Applicant alleges that he was denied the right to a direct appeal of his plea and sentence. This Court finds this allegation is without merit.

Though counsel is required to make certain that a defendant is made fully aware of his or her right to appeal after a trial, a different standard applies to a guilty plea:

> 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.

Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008) (citations omitted); see also Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000) (imposing the duty to consult when there is reason to think either that a rational defendant would want to appeal or that the particular defendant reasonably demonstrated interest in doing so); contra Frazer v. South Carolina, 430 F.3d 696 (4th Cir. 2005) (reading Flores-Ortega to mean counsel generally has a duty to consult with his client regarding whether to pursue an appeal). Therefore, in a collateral action attacking a guilty plea, the "bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief." Jones v. State, 382 S.C. 589, 596, 677 S.E.2d 20, 23-24 (2009) (quoting Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995)).

Where an Applicant reasonably demonstrates an interest in appealing, or where there is a reason to think a rational defendant would want to appeal, and where Counsel fails to either initiate that appeal or comply with Anders[7] procedure, "White permits consideration of the full trial record on [an] issue in conjunction with appellate review of the PCR proceeding under an exception to the prohibition against appellate courts considering appeals in the absence of notice of direct appeal given and timely served."[8] Smith v. State, 309 S.C. 413, 415, 424 S.E.2d 480, 481 (1992) (citing Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986)).

At the evidentiary hearing and on direct examination, Applicant testified that he asked Plea Counsel to do "some type of appeal." (PCR Tr. p. 26). Applicant testified that Plea Counsel told him he would file a motion to reconsider. Id. Applicant testified that he asked Plea Counsel to file an appeal and thought the motion to reconsider was an appeal. Id.

7

8 White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

On cross-examination, Applicant testified that the basis of his appeal would have been "wrongful conviction and ineffective assistance of counsel." (PCR Tr. pp. 32-33).

On direct examination, Plea Counsel **credibly** testified that he did not recall Applicant requesting that he file an appeal. (PCR Tr. p. 39).

On cross-examination, Plea Counsel testified to the following:

> Q. In terms of, I did not expect the sentence – strike that. It says: What I plan on doing at this point is moving for a reduction in your sentence by gathering some mitigation materials. Tell me about that. What did you do in terms of a reduction of the sentence?
> A. I made a written motion for a reduction of sentence. I went and got some records, I believe, of Mr. Hudson, and I presented those to the judge via e-mail, you and Mr. Barlow have been afforded that e-mail, and I presented that to Judge Brown, I think he kind of sat on it for a long time and then when it came back up I think he asked for me to send it again, I sent it again, and then he issued a written order, I guess, denying my motion after that.
> Q. But you could have just simply appealed it, couldn't you?
> A. I could have done that, yeah.
> Q. But you didn't, did you?
> A. No.
> Q. Even though you said you were shocked at the sentence that was handed down, right?
> A. Right, yes, that's correct.
> Q. So why didn't you appeal it?
> A. Because I didn't think there was any way the Court of Appeals was going to reverse it, you know, based upon just the issue of sentencing. I thought we had a better chance of going back before the judge, asking him to reconsider and then to reconsider some of this mitigating, to present it to him, I didn't think there was virtually any chance that the Court of Appeals would have -- I mean, it was a voluntary guilty plea and the sentencing is in discretion of the judge so I didn't believe that the Court of Appeals would have --
> Q. But that was the decision for the Court of Appeals, not you, right?
> A. Yes.

(PCR Tr. pp. 43-44).

The Court finds Applicant has not met his burden of proving that he requested an appeal by a preponderance of the evidence. See Rule 71.1(e), SCRCP. Because Applicant has not shown that he actually requested an appeal, Plea Counsel was not ineffective for failing to file one. See Kinard v. State, 418 S.C. 478, 481, 795 S.E.2d 15, 16 (2016).

Furthermore, based upon the record before this Court and testimony presented at the evidentiary hearing, this Court finds Applicant has failed to show extraordinary circumstances existed that would have warranted an appeal. Plea Counsel **credibly** testified that based on the guilty plea and sentencing alone, he did not see a basis for an appeal that the Court of Appeals would reverse. After a thorough review of the record, this Court agrees with Plea Counsel.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, this allegation must be **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.

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

THE HONORABLE DEBRA R. MCCASLIN
Presiding Judge
Twelfth Judicial Circuit

Florence, South Carolina

FILED
2023 OCT 10 AM 11:33

FORM 4

FILED

2023 OCT 17 AM 9:15

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 2022CP2100821

Anthony Hudson		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	10/17/2023 Date

For Clerk of Court Office Use Only

This judgment was entered on **October 17th, 2023**, and a copy mailed first class or placed in the appropriate attorney's box on **October 18th, 2023**, to attorneys of record or to parties (when appearing pro se) as follows:

Steven Willard Fowler 730 Main Street Unit # 237 North Myrtle Beach, SC 29582

D Russell Barlow II PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Dolly P. O'Hara

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.