STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Deadra L. Jefferson, Circuit Court Judge

Case No. 2021-CP-40-05882

Desmond Cromer, ...Petitioner,

v.

State of South Carolina, ...Respondent.

NOTICE OF APPEAL

Petitioner, Desmond Cromer, appeals the order of the Honorable Deadra L. Jefferson, dated October 17, 2023 and filed October 19, 2023. Petitioner received written notice of entry of this order on October 25, 2023.

10/30, 2023

Michael H. Lifsey
Post Office Box 548
Chester, South Carolina, 29706
(803) 899-5040
ATTORNEY FOR PETITIONER

Opposing Counsel:
D. Russell Barlow, II
Assistant. Attorney General
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Desmond Cromer, #384672, Applicant, v. State of South Carolina, Respondent.	)	CASE NO. 2021–CP–40–05882 **ORDER OF DISMISSAL**

Presiding Judge:	Hon. Deadra L. Jefferson
Applicant's Attorney:	Michael H. Lifsey, Esq.
Respondent's Attorney:	D. Russell Barlow II, Esq.
Plea Counsel:	J. Rhodes Bailey, Esq. Lauren W. Young, Esq.
Date of Hearing:	July 18, 2023
Court Reporter:	Karen Ambroziak

This matter comes before the Court by way of Desmond Cromer's (Applicant) application for post-conviction relief (PCR) filed December 2, 2021, challenging his guilty plea for two counts of Attempted Murder, one count of Voluntary Manslaughter, and one count of Attempted Armed Robbery. Respondent, the State of South Carolina, made its Return on February 10, 2022, requesting an evidentiary hearing to resolve the claims as set forth in the application. On July 6, 2023, Applicant, through appointed Post-Conviction Relief Counsel, Michael H. Lifsey, Esq., filed an Amended Post-Conviction Relief Application asserting additional claims of ineffective assistance of counsel.

An evidentiary hearing was convened on July 18, 2023, at the Richland County Courthouse before the Honorable Deadra L. Jefferson. Applicant was present and represented by Michael H. Lifsey, Esq. D. Russell Barlow II, Esq., of the South Carolina Attorney General's Office represented the Respondent. The Applicant testified on his own behalf at the PCR hearing. The

Applicant's Plea Counsel, J. Rhodes Bailey, Esq., also testified at the hearing. This Court had before it the guilty plea transcript, the records of the Richland County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, the Amended PCR application, and Respondent's Return thereto.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections (SCDC). In May 2018, the Richland County Grand Jury indicted Applicant for Murder[1] (2018-GS-40-1438), two counts of Attempted Murder[2] (2018-GS-40-1443; -1450), two counts of Attempted Armed Robbery[3] (2018-GS-40-1440; -1449), and two counts of Possession of a Weapon During the Commission of a Violent Crime[4] (2018-GS-40-1445; -1448). Applicant was represented by Richland County Public Defenders J. Rhodes Bailey, Esq. and Lauren W. Young, Esq. Fifth Circuit Assistant Solicitor Anna R. Browder, Esq. prosecuted the case.

On January 6, 2021, Applicant appeared before the Honorable George M. McFaddin, Jr., and pled guilty to the lesser included offense of Voluntary Manslaughter[5], two counts of Attempted Murder, one count of Attempted Armed Robbery, Malicious Injury[6], and Furnishing Prisoners

---

[1] The offense of Murder is a violent, most serious felony punishable by death, by imprisonment for life, or by a mandatory minimum term of imprisonment for thirty (30) years. See S.C. CODE ANN. § 16–3–20 (2015); S.C. CODE ANN. § 16–1–60 (2015); S.C. CODE ANN. § 17–25–45 (2014).

[2] The offense of Attempted Murder is a violent, most serious felony punishable by imprisonment for not more than thirty (30) years. See S.C. CODE ANN. § 16–3–29 (2015); S.C. CODE ANN. § 16–1–60 (2015); S.C. CODE ANN. § 17–25–45 (2014).

[3] The offense of Attempted Armed Robbery is a violent, most serious felony punishable by imprisonment of not more than twenty years. See S.C. CODE ANN. § 16–11–330 (2015); S.C. CODE ANN. § 16–1–60 (2015); S.C. CODE ANN. § 17–25–45 (2014).

[4] The offense of Possession of a Weapon During the Commission of a Violent Crime is punishable by imprisonment of five (5) years, in addition to the punishment provided for the principal crime. See S.C. CODE ANN. § 16–23–490 (2015).

[5] The offense of Voluntary Manslaughter is a violent, most serious felony punishable by imprisonment of not more than thirty years or less than two years. See S.C. CODE ANN. § 16–3–50 (2015); S.C. CODE ANN. § 16–1–60 (2015); S.C. CODE ANN. § 17–25–45 (2014).

[6] A person who is convicted of or pleads guilty to Malicious Injury must be fined in the discretion of the court or imprisoned not more than three years. See S.C. CODE ANN. § 4–17–70.

with Alcohol or Drugs[7]. Judge McFaddin sentenced Applicant to concurrent terms of twenty-five (25) years imprisonment for Voluntary Manslaughter, twenty (20) years for each count of Attempted Murder, fifteen (15) years for Attempted Armed Robbery, three (3) years for Malicious Injury, and thirty (30) days for Furnishing Prisoners with Alcohol or Drugs. The Applicant did not appeal.

FACTS GIVING RISE TO THE CONVICTION

The incidents giving rise to the charges occurred in January and February of 2018. The facts in support of the plea were articulated by the State at Applicant's plea hearing as follows:

> The first incident is one of the attempted murders. It occurred January 25th, 2018, at 7648 Garners Ferry Road, which is here in Richland County. The victim of that case is Joy Lewis. She was a cab driver, Yellow Checker Cab. The defendant called for a cab and Ms. Lewis was the one that was dispatched to pick him up your Honor.
>
> While on route to the destination after picking him up, he indicated he needed to return to get his wallet that he forgot. So, she took him back to the original location where she picked him up, which was an apartment complex and began walking away. As he was walking away, it became clear to Ms. Lewis that he was not going to come back and pay her. So, she followed him at that point, your Honor and yelled for him to come back and pay her. At that point, Mr. Cromer turned around and pointed a gun at her and demanded her money. When Ms. Lewis refused to give him her money, he shot at her five times. He began shooting at her your Honor and he had missed. So, he went closer to her and he ended up hitting her twice in the leg. The shell casings were recovered from the scene your Honor showing that there were five shots.
>
> At the time of the incident no arrest could be made because law enforcement or the victim didn't know who the defendant was as he called through an app on a phone, so it was impossible to know what his name was. During the murder investigation which I'll get to in a minute, it came out through evidence that -- in statements that the defendant made that he had shot a cab driver. At that time, they put it together that it was the incident with Ms. Lewis. They showed her a photo lineup and she did identify the

[7] A person who is convicted of or pleads guilty to Furnishing Prisoners with Alcohol or Drugs must be punished by a fine of five hundred dollars ($500), or imprisonment for six (6) months, or both. See S.C. CODE ANN. § 24–13–460.

defendant as the one who shot at her. She is present your Honor, and I believe may like to address the Court at the appropriate time.

The next incident your Honor is a murder, attempted murder and attempted arm robbery. That incident occurred February 25th, 2018 at 1510 St. Andrews Road here in Richland County. In that case your Honor—Laquay Dawkins, who is in the courtroom today—he was 15 years old at the time your Honor. He knew who Mr. Cromer was. He set up a meeting with Mr. Cromer for his friend, Tyquan Taylor, who was 14 years old at the time to sell a PlayStation to Mr. Cromer because Mr. Cromer wanted to buy the PlayStation. When they arrived at the incident location to sell the PlayStation, Mr. Cromer got in the backseat of the car with Mr. Taylor. Paris Nauls, who is a witness in the case your Honor, was the driver and Laquay Dawkins was in the front passenger seat.

At that time there was some discrepancy over how much money it was going to be to pay for the PlayStation. At that time Mr. Cromer pulled out a gun your Honor. He shot Tyquan Taylor in the neck. He was the one sitting in the backseat. Mr. Taylor ended up dying from that gunshot wound your Honor. He then turned and pointed the gun on Laquay Dawkins, who was sitting in the front passenger seat, and shot him in the head. Mr. Dawkins did live through that your Honor and I'll get to his injuries here in a little bit. At that point the magazine fell out of the gun your Honor, so he did not -- it's our contention in what we would show at trial is that he would have then tried to kill Paris Nauls, but the magazine fell out of the gun. At that time Mr. Cromer got out of the vehicle and began to run away. Paris Nauls now drove away a little bit down to get away from the incident location and 9-1-1 was called. When they began speaking with Paris Nauls, he was able to tell them who it was that they were meeting Mr. Cromer.

Investigation then began as to who Mr. Cromer was. They found out that he was on probation through DJJ at that time and had on an ankle monitor. So, they got with OMS and they began tracking his ankle monitor. When they did that, it showed that he was at the scene of the murder at the time. They then tracked it to where he would have run, which was by Apple Valley pond. At that point he had cut his electronic monitor off your Honor, so they did not know his whereabouts.

After Mr. Nauls ID'd him through a photo lineup, your Honor, Mr. Cromer was arrested. At that time, they began receiving tips through various witnesses that Mr. Cromer had seen and spoken to afterwards. One of those your Honor was a student named Charise Howard. She indicated that Mr. Cromer contacted her via Facebook messenger after this and stated that he had shot just - - he gotten into something and shot some people. He also told her that he had cut off his ankle monitor and robbed a cab driver off Garners Ferry, that's how the investigation came to put the two together between Ms. Lewis' incident and Mr. Cromer. He then told her your Honor regarding the

 4 of 26

cab driver incident, to put it in his words your Honor, that Lewis was following him talking trash which made him mad so he shot her and called her a bitch.

Then your Honor there was another witness Sequan Brooks. He indicated that Cromer came to his house after the shooting and told him he had just shot two people in the face. At that time, your Honor, as I said, he was already under arrest. Mr. Dawkins had been taken to Richland Memorial Hospital at that time due to being shot. He was conscious. However, he did lose his right eye as part of being shot your Honor. In addition, this is something I would like to show that Mr. Dawkins family brought. The hospital did a mold of his skull prior to the surgery. This is the hole your Honor where he had been shot in the head that they had to fix where his skull was missing as a result being shot in the head.

The next incident your Honor is the malicious injury to the jail, that occurred this year 7-10 July 10th, which is at the Alvin S. Glenn Detention Center here in Richland County. Mr. Cromer was incarcerated there pending these charges. He was assigned to room 405. At that time, he damaged a sprinkler head, the heads that were on the ceiling. The guard saw him doing it and it's captured on video camera.

And then finally the contraband your Honor is from November of 2020, so a couple months ago at the Alvin S. Glenn Detention Center here in Richland County. He had marijuana in his cell in plain view your Honor with his cell mate and they were smoking marijuana. It was discovered after the guards noticed an odor of marijuana and they went and they saw it.

(Plea Tr. 10-14).

ALLEGATIONS

In his original application for post-conviction relief filed December 2, 2021, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "ineffective assistant counsel"
   a. "i was a juvenile when the crime was commited and I never wave my rights as a juvenile."

On July 6, 2023, Applicant, through counsel, filed an amended PCR application adding these additional claims for relief:

1. Ineffective assistance of counsel
   a. Plea Counsel did not meet with Applicant a sufficient number of times, did not fully explain the strengths and

weaknesses of the State's case, and did not explain the elements of the crimes of which he was charged.

b. Plea Counsel treated Applicant's case as a plea case, informed Applicant that he would lose if he went to trial, and never discussed potential trial strategies.
c. Plea Counsel told Applicant that if he did not enter a guilty plea, he would have to remain incarcerated with an Alvin S. Glenn Detention Center Officer who had previously assaulted Applicant.[8]
d. Plea Counsel told Applicant that, if he entered a plea, he would receive a sentence of 15 years, not the 25 years he actually received.
e. Plea Counsel told Applicant that the State would stand silent at sentencing and not argue against the 15 year sentence he would receive.
f. Plea Counsel told Applicant to answer the judge's questions during the plea colloquy in a manner that would result in the judge accepting his plea, rather than answering them truthfully.

2. The ineffective assistance of counsel as described above, rendered Applicant's plea involuntary.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the post-conviction relief hearing. This Court further had the opportunity to observe each witness who testified at the evidentiary hearing, and closely evaluate their credibility. This Court has weighed their testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. CODE ANN. § 17–27–80 (2014).

[8] In the amended application, Applicant alleges it was an inmate however, at the evidentiary hearing it was corrected to allege an officer at Alvin S. Glenn Detention Center had assaulted Applicant. Therefore, this Court will address this claim as presented at the hearing.

SUMMARY OF RELEVANT PCR EVIDENTIARY TESTIMONY

APPLICANT'S TESTIMONY

On direct examination, Applicant testified he was sixteen years old at the time of his arrest and met with Plea Counsel about a month after he was arrested. Plea Counsel explained he was charged with Murder but did not discuss the severity of the charge. Applicant testified that Plea Counsel did not discuss the elements of the charges against him, did not discuss defenses, did not discuss his rights, the strength of the State's case, strategies, or going to trial. He testified that he did not understand the evidence the State had against him until six (6) months before the plea. Applicant stated he would have made a different decision if Plea Counsel elaborated more about the evidence against him. Six months before Applicant's plea, Applicant testified Plea Counsel explained an open plea and explained the minimum and maximum sentences he could receive. Applicant stated he told Plea Counsel he did not want to take a plea. Applicant testified that Plea Counsel informed him he would be housed with the officer who had assaulted him if he did not plea. Applicant testified that Plea Counsel told him that if he pled, he would receive a fifteen-year sentence and that the Solicitor would not challenge the fifteen years and stay silent at the plea, and that is what led him to plea. It was also Applicant's testimony that Plea Counsel told him to answer the judge's question so that his plea would be accepted.

On cross-examination, Applicant was informed he potentially faced life without parole if granted PCR relief, and Applicant stated he still wanted to proceed. Applicant testified that Plea Counsel met with him about ten (10) times and he could not recall the exact time frame. He recalled that an open plea meant a judge had the discretion to impose a sentence between the minimum and the maximum allowed, and he understood the judge had this discretion at his plea hearing. He further testified that he understood the plea judge had the discretion to give him the maximum sentence. Applicant then testified he did not really understand his situation and swore Plea Counsel

 7 of 26

told him to lie at his plea and told him to say "yes" to all of the judge's questions. Applicant testified that he wanted to go to trial and not plead, even though he did not understand his situation and did not know the elements of his charges. Regarding trial strategy, Applicant stated that Plea Counsel did not discuss trial strategy or self-defense with him. Applicant testified he did not recall the Court explaining the open plea and that the Court could give Applicant the maximum sentence. Applicant testified that he did not recall the Court explaining that the Court only agreed to run his sentences concurrently. Lastly, Applicant testified he could not recall promising he was pleading of his own free will, and he swore Plea Counsel told him to lie at the plea hearing.

On re-direct, Applicant testified he was offered an open plea and told Plea Counsel he did not want to take the offer, but Plea Counsel told him he would receive a fifteen-year sentence.

PLEA COUNSEL'S TESTIMONY

On direct examination, Plea Counsel testified he has sixteen (16) years of experience practicing law, ten (10) of those years in the Public Defender's Office. At the time, Plea Counsel was the chief litigator and head of the violent crimes team and took Applicant's case because the charges against Applicant made him eligible to receive life without parole.[9] Plea Counsel had crafted a self-defense theory based on Applicant's injury, a broken jaw, from being punched in the face. However, Plea Counsel also had to consider that the victims in the case were sympathetic with horrible injuries and Applicant was charged with Attempted Murder in a separate event where he shot a cab driver twice in the leg, creating a two-front war. Adding to Counsel's quandary was the fact that Applicant had confessed in a Facebook message.

[9] Mr. Bailey was appointed as Applicant's counsel in March of 2018.

Plea Counsel further testified that Applicant was challenging to deal with because of his intellectual limitations.[10] Plea Counsel explained that Applicant required a lot of attention, was immature, would get himself into trouble regularly, and one officer was unnecessarily violent toward him. Plea Counsel testified he involved Laura Young, Esq., a mitigation expert, and hired an independent mitigation lawyer, Hannah Freeman, Esq. of Justice 360, because of the amount of work Applicant's case needed. Plea Counsel testified he treated Applicant's case like a capital case and tried to cultivate a pseudo-family with the team and Applicant. Plea Counsel worked on a trial strategy but also worked on getting Applicant a plea for Voluntary Manslaughter because he was worried about Applicant's ability to testify due to his intellectual limitations. Plea Counsel testified Applicant was not accurate in relaying his advice. Plea Counsel advised Applicant there were better services at SCDC. Plea Counsel testified that due to Judge McFaddin's Family Court background he felt Judge McFaddin would have a better understanding of an intellectually challenged teenager and be a friendly judge for Applicant.

Plea Counsel testified he explained to Applicant the strategy of claiming self-defense but that it was a 50/50 roll of the dice with the jury, mainly because there were two sympathetic victims. Plea Counsel testified that he explained to Applicant he was trying to get him Voluntary Manslaughter and emphasized that even if Applicant was found not guilty, Applicant still had another Attempted Murder charge pending. Plea Counsel stated that he explained the elements of the charges to Applicant, and there was no question of competence, just of Applicant's low intelligence. Plea Counsel was adamant he never told Applicant he would remain with the officer who assaulted him if he did not plea.

[10] Dr. Susan Knight evaluated the Defendant and advised his counsel that the Applicant had a borderline I.Q. of 68-70. However, Dr. Knight found the Applicant competent.

Plea Counsel testified Applicant would fixate on one thing. He advised Applicant there was more stability at SCDC but did not advise him to plea or else. Plea Counsel testified that before Applicant's plea, Plea Counsel made sure to put Applicant's best foot forward, cutting Applicant's hair and getting staging done, as well as arranging that the jail provide him with shaving materials which was important to Applicant. He further testified that he was concerned about the Applicant's "boredom" due to his childish mentality and Counsel did not want him getting into any more trouble at the detention center. Plea Counsel then referenced an incident at the detention center where the Applicant jumped like "Tarzan" from a height which was captured on video. Plea Counsel testified he did not advise Applicant he would only get fifteen years, and he went over the form with Applicant advising Applicant of his rights and potential sentences. Plea Counsel further testified that the silence on the end of the Solicitor that Applicant testified to was not silence in not challenging the fifteen-year sentence, but silence on their part in not asking for thirty years or consecutive sentences. Plea Counsel adamantly testified that he never told Applicant to lie at his plea hearing, and he stands by his representation of Applicant. He further testified that he put a "team" on the Applicant's case.

On cross-examination, Plea Counsel testified Applicant was young and had intellectual limitations/disabilities, but he was careful to ensure Applicant understood what was happening. Plea Counsel testified that Hannah Freeman was very good at helping Applicant understand Plea Counsel's advice. He further testified that they would meet with the Applicant as a group where Hannah Freeman would reinforce and reexplain the concepts. Plea Counsel stated it would not be shocking if Applicant misunderstood some things, but even people without disability sometimes have difficulty understanding legal matters. Plea Counsel testified he intended to ask for a low sentence relative to Applicant's charges, asking for a range between fifteen to twenty depending

on the judge's and victims' response. Plea Counsel did not recall Applicant's reluctance to plead guilty and stated Applicant was impressionable and could have been reluctant based on advice from older inmates. Plea counsel testified that he got a professional makeup artist to cover a tattoo on his forehead before the plea. However, Plea Counsel testified that he did not recall Applicant showing hesitation or reluctance about the plea. Concerning Applicant's understanding of receiving fifteen years, Plea Counsel testified he was careful not to make such promises or guarantees, and employed the whole team to ensure Applicant understood everything. Plea counsel testified that the Applicant was a good-hearted young man that the State decided to charge as an adult. He further testified he wished the system had not and that there was a different alternative for the Applicant. He also testified that prior to COVID 19 he explained strategy to the Applicant several times with Dr. Knight present.

STANDARD OF REVIEW

Under the Uniform Post-Conviction Procedures Act, an applicant may seek post-conviction relief 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).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence – a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

The Applicant alleges he received ineffective assistance of counsel. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. See Strickland at 690, 104 S. Ct. at 2066. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See id. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. See id. at 117–18, 386 S.E.2d at 625. Under this prong, attorney performance is measured by its "'reasonableness under prevailing professional norms.'" Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 668, 104 S. Ct. at 2052). Second, counsel's deficient performance must have prejudiced the applicant such that "'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" Id. at 117–18, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068).

From the record, this Court makes the following findings: 1) Applicant understood the charges and sentences he faced at his plea hearing (Plea Tr. pp. 4 – 25); 2) Applicant understood the details and circumstances of a straight up plea (Plea Tr. pp. 5 – 10); 3) Applicant clearly indicated he was satisfied with Plea Counsel (Plea Tr. p. 5, ll. 6 – 7); 4) Applicant understood his

 12 of 26

right to a jury trial and that he waived those rights by pleading guilty (Plea Tr. p. 5); 5) Applicant indicated he had enough time with his attorneys and the attorneys were aware of all circumstances of the case (Plea Tr. p. 6); 6) Plea Counsel went over all discovery and answered all questions Applicant had regarding his case (Plea Tr. p. 7); 7) Applicant indicated no promises were made to him and his decision to plead guilty was voluntary (Plea Tr. p. 7); 8) Applicant was not on drugs, did take prescribed medication, but did not have his morning dose, and that did not affect his ability to understand the plea proceedings (Plea Tr. p. 7); 9) Applicant understood the range of sentencing (Plea Tr. p. 9); 10) Applicant understood what the State was offering in the agreement that his sentences would be concurrent and that was it (Plea Tr. p. 9); 11) Applicant was clearly advised of his right to appeal (Plea Tr. p. 9); 12) Applicant agreed with the allocation of the facts surrounding the State's case against him and he still wanted to plead guilty (Plea Tr. p. 10 – 16); 13) Applicant's plea was qualified as freely, knowingly, and voluntarily entered into (Plea Tr. pp. 16 – 17). The Court further finds the contemporaneous record of the plea compelling and persuasive.

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 lacks credibility. This Court further finds applicable the strong presumption that at all stages of Plea Counsel's representation of Applicant Counsel 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.

 13426

Strickland, 466 U.S. at 689, 104 S.Ct. 2052; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

This Court finds counsel is a criminal practitioner who has extensive experience in the trial of serious offenses. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 5, 239 S.E.2d 750, 752 (1977); Strickland, 466 U.S. at 687–88, 104 S. Ct. 2052, 2064–65; Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 687–88, 104 S. Ct. at 2064–65, Turner v. Bass, 753 F.2d 342, 348 (4th Cir. 1985), *rev'd on other grounds*, Turner v. Murray, 106 S. Ct. 1683 (1986); Marzullo v. Maryland, 561 F.2d 540, 543 (4th Cir. 1977)). This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, and provided thorough representation. This Court finds that Counsel's representation did not fall below an objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. See Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in her representation of the Applicant. The Applicant failed to show that Counsel's performance was deficient. Therefore, this Court need not address whether the Applicant was prejudiced by counsel's representation. See id.

INVOLUNTARY GUILTY PLEA

The Applicant alleges he was coerced to plead guilty by Counsel. This Court finds the Applicant's guilty plea was entered freely, voluntarily, and intelligently and the Applicant had a

full understanding of the consequences of pleading guilty. This Court does not find credible Applicant's testimony that he was coerced to plead guilty by Plea Counsel. A defendant knowingly, freely, voluntarily, and intelligently pleads guilty when the defendant has a full understanding of the consequences of his plea and the charges against him. Boykin, 395 U.S. at 243–44, 89 S. Ct. at 1712. Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (quoting State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." Dalton v. State, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 73–74, 97 S. Ct. 1621, 1629–30 (1977)). Therefore, statements 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. Crawford v. United States, 519 F.2d 347, 350 & n.1 (4th Cir.1975), *overruled on other grounds*, United States v. Whitley, 759 F.2d 327, 331; Edmonds v. Lewis, 546 F.2d 566, 567–68 (4th Cir. 1976) (citing Rule 11, Fed. R. Crim. P.; Crawford, 519 F.2d at 350). This Court finds the Applicant's statements to the Court during his guilty plea are conclusive and the Applicant should not be allowed to depart from the truth of his statements.

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness

 15 of 26

and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 52, 106 S. Ct. 366, 366 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Lockhart, 474 U.S. at 52, 106 S. Ct. at 366; Jackson v. State, 342 S.C 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

Allegation 1a: **Plea Counsel Did Not Meet With Applicant A Sufficient Number Of Times, Did Not Fully Explain The Strengths And Weaknesses Of The State's Case, And Did Not Explain The Elements Of The Crimes Of Which He Was Charged.**

Allegation 1b: **Plea Counsel Failed To Discuss Potential Trial Strategies.**

Applicant alleges Plea Counsel was constitutionally ineffective for failing to meet with him a sufficient number of times, failing to explain the strengths and weaknesses of the State's case, and failing to explain the elements of the crimes he was charged with. Applicant further contends Plea Counsel never discussed potential trial strategies. This Court disagrees and finds Plea Counsel adequately explained the offenses charged and the strength and weaknesses of the State's case. Furthermore, this Court finds credible and persuasive the testimony of Plea Counsel, who presented well-recollected testimony of the conversations he had with Applicant, including properly informing Applicant of all aspects of his case.

At the evidentiary hearing on direct examination, Applicant testified that Plea Counsel did not explain the severity of a Murder charge, did not discuss the elements of the charges, and did not discuss the strength of the State's case.

On cross-examination, Applicant testified that he could not give an exact number, but Plea Counsel maybe met with him ten (10) times over the three (3) years he represented him.

On direct examination, Plea Counsel **credibly** testified that he approached this case like a death penalty case in light of South Carolina precedent in juvenile cases, so he created a pseudo-family for Applicant. Plea Counsel **credibly** testified that he hired a mitigation expert, Laura Young, Esq. and an independent mitigation lawyer, Hannah Friedman, Esq. Plea Counsel further **credibly** testified that he had help from Justice 360, and they were visiting Applicant weekly.

Plea Counsel **credibly** testified that if they were not meeting with Applicant regularly, Applicant would get into trouble, so they made sure they had constant contact with Applicant. Plea Counsel **credibly** testified that he explained the strength of the State's case and explained the elements of the crimes to Applicant as well as the range of penalty. Plea Counsel **credibly** testified that they thoroughly discussed the trial strategy of self-defense but that it was a problematic defense due to the two victims.

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland). Plea Counsel's **credible** testimony indicates he and his team met with Applicant several times and thoroughly informed Applicant of his charges, the elements of the crimes, potential defenses, and potential trial strategy of self-defense. 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 in consultation with Plea Counsel, 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. This Court further finds Applicant has failed to meet his burden of showing Plea Counsel was constitutionally ineffective for failing to meet with Applicant a sufficient number of times. See Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) (no constitutional minimum number of meetings to satisfy competency); United States v. Olson, 846 F.2d 1103, 1108 (7th Cir. 1988) (reciting that there is no constitutional minimum number of meetings between attorney and client and observing that an experienced attorney may get more out of a single meeting than a neophyte); Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980) ("Brevity of time spent in consultation, without more, does not establish that counsel was ineffective.").

Furthermore, this Court finds Applicant has failed to meet his burden of showing Plea Counsel was constitutionally ineffective for failing to explain the strengths of the State's case, for failing to explain the elements of Murder, and for failing to discuss a trial strategy. Plea Counsel

credibly testified that he and his team thoroughly explained what the State had stacked against him, the elements of Murder, and their trial strategy. Plea Counsel **credibly** testified that Applicant's jaw was broken from being punched, and they were going to build a self-defense case from that.

Additionally, this Court finds the record supports that Applicant knowingly, intelligently, and voluntarily pled guilty. Applicant clearly understood the charges against him. (Plea Tr. pp. 4 – 25). Applicant advised the plea court that Plea Counsel had explained all the circumstances of the case, Plea Counsel informed him of all the evidence, his choice to plead guilty was voluntary, and he agreed with the allocation of the facts and pled guilty. (Plea Tr. pp. 5 – 7; pp. 10 - 16).

Accordingly, Applicant's claims pertaining to Plea Counsel's failure to meet with him a sufficient number of times, failure to explain the strengths of the State's case, failure to explain the elements of Murder, and failure to discuss a trial strategy are **DENIED** and **DISMISSED.**

Allegation 1c: **Plea Counsel Told Applicant That If He Did Not Enter A Guilty Plea, He Would Have To Remain Incarcerated With An Alvin S. Glenn Detention Center Officer Who Had Previously Assaulted Applicant.**

Applicant alleges Plea Counsel was constitutionally ineffective in coercing Applicant to plead guilty by telling him he would have to remain incarcerated with an Alvin S. Glenn Detention Center Officer who had previously assaulted Applicant. This Court disagrees and finds Plea Counsel did not coerce Applicant, and this allegation is without merit.

At the evidentiary hearing on direct examination, Applicant testified that Plea Counsel told him he would remain housed with the officer that assaulted him if he did not plead.

On direct examination, Plea Counsel credibly and adamantly testified that he never told Applicant he would remain with the officer who assaulted him if he did not plead.

At the plea hearing, Applicant informed the Plea Court that no one had forced him to plead guilty, and that his plea was voluntary. (Plea Tr. p. 7).

After considering the combination of the record and Plea Counsel's **credible** testimony, this Court finds that the Applicant has failed to meet the burden of showing Plea Counsel was constitutionally ineffective. As well, this Court reasserts its finding that the record supports that Applicant knowingly, intelligently, and voluntarily pled guilty.

Accordingly, Applicant's claim pertaining to Plea Counsel telling Applicant he would remain housed with an officer who assaulted him if he did not plead guilty is **DENIED** and **DISMISSED.**

Allegation 1d: Plea Counsel Told Applicant If He Pled, He Would Receive 15 Years, Not The 25 Years He Actually Received.

Applicant alleges Plea Counsel was constitutionally ineffective for telling him that if he pled, he would get fifteen (15) years, not the twenty-five (25) he received. This Court finds this allegation is without merit.

At Applicant's plea hearing, the following colloquy occurred:

THE COURT:	Now, aside from sentencing discussions, has anybody promised you anything else to plead guilty today?
THE DEFENDANT:	No, sir.
THE COURT:	Are you doing this today pleading guilty freely and voluntarily?
THE DEFENDANT:	Yes, sir.

(Plea Tr. p. 7, ll. 12 – 17)

THE COURT:	Would you give me the maximum on each charge please?
MS. BROWDER:	Yes, sir, your Honor for voluntary manslaughter it is 30 years, attempted murder is 30 years, attempt arm robbery is 20 years, malicious injury to the jail is three years and

	the furnishing contraband is 30 days.
THE COURT:	Did you hear that, Mr. Cromer?
THE DEFENDANT:	Yes, sir.
THE COURT:	Now, again, the agreement is these will be concurrent but you could be looking at up to 30 years. Do you understand that?
THE DEFENDANT:	Yes, sir.
THE COURT:	Now, and I could give you that 30 years. Do you understand?
THE DEFENDANT:	Yes, sir.

(Plea Tr. p. 9, ll. 5 – 20).

At the evidentiary hearing on direct examination, Applicant testified that he would receive fifteen (15) years if he pled guilty. On cross-examination, Applicant testified that he understood that an open plea meant the judge could sentence Applicant to the minimum or the maximum sentence.

On direct examination, Plea Counsel **credibly** testified that he did not tell Applicant he would only get fifteen (15) years if he pled. On cross-examination, Plea Counsel **credibly** testified that he intended to ask for a low sentence relative to Applicant's charges, asking for a range between fifteen (15) to twenty (20) years, depending on the judge's and victim's responses. Plea Counsel **credibly** testified that he was careful not to make promises to Applicant regarding how much time he would receive, and he employed a whole team to make sure Applicant understood.

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." Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by Counsel was cured by the information conveyed at the plea hearing. Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997); cf.

Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that where the transcript of the guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant's claim his lawyer misadvised him).

This Court finds Applicant knew the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty pursuant to the requirements of Boykin. Moreover, the plea colloquy cured any alleged deficiency regarding Plea Counsel's advice. 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). Applicant did not allege any facts tending to prove he was prevented from informing the plea court that his attorneys told him he would only receive a fifteen (15) year sentence if he pled guilty. Thus, based on the evidence presented at the plea proceeding, the Court finds Applicant freely, knowingly, and voluntarily pled guilty.

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 1e: Plea Counsel Told Applicant The State Would Stand Silent At Sentencing And Not Argue Against The 15-Year Sentence He Would Receive.

Applicant alleges Plea Counsel was constitutionally ineffective for telling Applicant the

Solicitor would stand silent at sentencing and not argue against the fifteen (15) year sentence he would receive. This Court finds this allegation is without merit.

At the evidentiary hearing on direct examination, Applicant testified that the Solicitor would stand silent at sentencing and not argue against the fifteen (15) year sentence.

On direct examination, Plea Counsel **credibly** testified that he did not tell Applicant the Solicitor would stand silent and not argue against the fifteen (15) year sentence. Plea Counsel **credibly** testified that the only thing the Solicitor agreed to was not asking for consecutive sentences and not requesting a thirty (30) year sentence. Plea Counsel **credibly** testified that he told Applicant he was going to ask the judge to sentence on the lower end.

On cross-examination, Plea Counsel **credibly** testified that his intent to ask the Plea Court for a low number in sentencing was low as it relates to the charges. Plea Counsel **credibly** testified that he told Applicant he would ask for a range of fifteen (15) to twenty (20) years, depending on his gauging of the judge and victims. Plea Counsel **credibly** testified that he explained he would tailor his request based on the situation in the courtroom.

As noted *supra*, Applicant was fully aware of the time the Court could impose on him at sentencing and still chose to plead guilty. This Court further finds Applicant has failed to meet his burden that but for Plea Counsel's advice, Applicant would have chosen to go to trial and would not have pled guilty. It is undeniable that Applicant could have addressed the Plea Court at any time the Solicitor did not remain silent, yet Applicant decided to avail himself of the plea deal and not risk a jury finding him guilty and facing life without parole. Again, the Court reasserts its finding that from the record and the testimony presented at the evidentiary hearing, Applicant freely, knowingly, and voluntarily pled guilty.

234 26

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 1f: Plea Counsel Told Applicant To Answer The Judge's Questions During The Plea Colloquy In A Manner That Would Result In The Judge Accepting The Plea, Rather Than Answering Them Truthfully.

Applicant alleges Plea Counsel was constitutionally ineffective for telling him to lie to the Plea Court so the judge would accept his plea. This Court finds this allegation is without merit.

On direct examination at the evidentiary hearing, Applicant testified that Plea Counsel told him the plea judge would ask him several questions that did not mean anything and to just say "yes sir" to speed up the process. Applicant testified that had he known the questions meant something, he would not have pled guilty and would have gone to trial.

On cross-examination, Applicant testified that it was his sworn testimony that Plea Counsel told him to lie. Applicant testified that he was not lying to the Court at the evidentiary hearing.

On direct examination, Plea Counsel **credibly** testified that he did not tell Applicant to lie to the Court.

This Court finds Applicant has offered no valid reason to be allowed to depart from the truth of the statements made under oath during his guilty plea. See Crawford v. United States, 519 F.2d 347 (4th Cir.1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976) (Statements 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.). Thus, based on the record and the evidence presented at the plea proceeding, the Court finds Applicant freely, knowingly, and voluntarily pled guilty.

24 of 26

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**.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence or testimony in support of the claims. Accordingly, this Court deems these allegations abandoned by the Applicant. Therefore, they are hereby denied and dismissed.

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. Applicant's attention is also directed to South Carolina Appellate Court Rules 203, 206, and 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

25 of 26

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

AND IT IS SO ORDERED this 17th **day of** October**, 2023.**

Hon. Deadra L. Jefferson
Presiding Judge
5th Judicial Circuit

Charleston, South Carolina
At Chambers

26 of 26