NOTICE OF APPEAL FROM COMMON PLEAS REGARDING A

POST CONVICTION RELIEF

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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM LEXINGTON COUNTY

Court of Common Pleas

George McFaddin, Circuit Court Judge

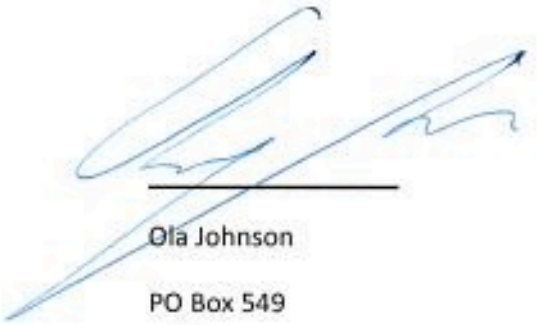
Case No. 2020-CP-32-01725

The State,.....Respondent,

Jaren Meyers,.....Appellant,

Notice of Appeal

Jaren Meyers appeals the order of the Honorable George McFaddin, dated January 2nd, 2024, which denied his application for Post-Conviction Relief with prejudice. Appellant received written notice of the order on January 9th, 2024.



Ola Johnson

PO Box 549

Lexington, South Carolina 29071

(803) 360-8692

Other Counsel of Record:
Donald J. Zelenka
Post Office Box 11549
Columbia, SC 29211

(803)734-3737

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	IN THE COURT OF COMMON PLEAS FOR THE ELEVENTH JUDICIAL CIRCUIT
Jaren Bernard-Alan Meyers, SCDC #380507, Applicant, v. State of South Carolina, Respondent.	Case No. 2020-CP-32-1725 **ORDER OF DISMISSAL**

This matter comes before this Court by way of Applicant Jaren Bernard-Alan Meyers' Application for Post-Conviction Relief and Amendment to Application for Post-Conviction Relief filed May 4, 2020 and September 29, 2022, challenging his decision to pled guilty to armed robbery, criminal conspiracy, two counts of kidnapping, and possession of a firearm during commission of a violent crime for activities he engaged in in Lexington County and criminal conspiracy and unlawful carrying of a pistol for activities he engaged in in Richland County, South Carolina.

Applicant's Application and Amended Application allege "ineffective assistance of counsel" as the grounds for the Applications. An evidentiary hearing on this action was convened October 12, 2022 before this Court and a Supplemental Hearing was convened on March 16, 2023, also before this Court, by means of video and telephone. Applicant appeared at both proceedings with his counsel, Ola A. Johnson. Respondent State of South Carolina was represented by Taylor Smith of the South Carolina Attorney General's Office. Applicant proceeded forward on the claims raised in his Application and Amended Application. This Court heard testimony from Applicant;

his former trial counsel, Stanley L. Myers ("Counsel"); and Sutiana Fuller, the Assistant Solicitor involved in the case.

Following a review of the record and the testimony and evidence presented at the evidentiary hearings, 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. Specific findings of fact and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 are set forth below:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Lexington County Clerk of Court. Applicant was arrested on January 8, 2018, following an investigation into a string of armed robberies and related offenses that occurred in Lexington County while Applicant was out on bond for other charges.

On May 22, 2019, Applicant appeared before the Honorable William P. Keesley, waived presentment to the Lexington County Grand Jury, and pleaded guilty to armed robbery (2019-GS-32-0705); criminal conspiracy (2019-GS-32-0706); two counts of kidnapping (2019-GS-32-0707 and 2019-GS-32-0709); and possession of a weapon during the commission of a violent crime (2019-GS-32-0710). Applicant also waived his rights relating to jurisdiction, venue and attestation and pleaded guilty to two charges based on events occurring in Richland County, South Carolina. These two charges were criminal conspiracy (2019-GS-40-0458) and unlawful carrying of a pistol (2019-GS-40-0462).

At the time of his plea, Applicant had a number of outstanding charges in multiple counties across the State. Certain (but not most or all) of Applicant's charges had already been set for trial. Multiple of the outstanding charges, including at least four counts of armed robbery, one count of

unlawful carrying of a firearm, kidnapping, criminal conspiracy, some other weapons charges, an attempted murder charge from Calhoun County, and some armed robbery charges from Richland County, were dropped in exchange for Applicant's plea. (Plea, p. 12, l. 5-23.)

No formal negotiations or recommendations regarding sentencing were made regarding the plea. (Plea, p. 12, l. 17-19; see also Sentencing, p. 3, l. 6- p. 4, l. 6; see also Sentencing, p. 11, l. 21 – p. 12, l. 2). Further, before the plea was accepted, the Court specifically covered with Applicant the maximum sentence on each charge and asked if he understood what he could receive. Regarding the kidnapping charges, the Judge clearly and specifically told Applicant that "the charge of kidnapping is a felony, each count of which carries up to thirty years in prison" and asked if the Applicant understood. Applicant responded "Yes, sir." (Plea, p. 18, l. 3-7.) After continuing to be sure Applicant was clear on penalties and lack of parole eligibility and other things (Plea, p. 18, l. 8 – p. 20, l. 4), the Judge then indicated "So you've got two kidnappings that you're pleading to; is that right?" (Plea, p. 20, l. 5-6.) After Applicant responded "Yes, sir", the Court continued "So that's sixty years you're facing?" Applicant responded "Yes, sir." The Court then continued "Now armed robbery is also a felony, that carries not less than ten years and up to thirty years in prison. Do you understand that?" Again, Applicant responded "Yes, sir." (Plea, p. 20, l. 5-13). Sentence possibilities for each of the other charges Applicant pled to were covered with him as well. (Plea, p. 20, l. 14- p. 22, l. 18).

After covering the possible sentences, the Court asked "Have you understood everything I've been over with you?" After getting the response "Yes, sir", the Court asked, "Do you have any questions at all?" To this, Applicant responded "No, sir." (Plea, p. 22, l. 19-25.) At the plea, Applicant clearly indicated both that he understood the potential sentences for the crimes he was pleading guilty to and that no one forced him, threatened him, or coerced him in any way to plead

against his will. (Plea, p. 15, l. 17-23.) After asking again "Do you want me to go ahead and accept these pleas?" and receiving the answer "Yes, sir", Judge Keesley accepted Applicant's plea and deferred sentencing to a later date. (Plea, p. 23, l. 21 – p. 24, l. 10.)

Approximately one month later, on June 19, 2019, Applicant reiterated in a signed "Guilty Plea Acknowledgement and Waiver of Rights," that (1) he understood the Solicitor's office was not making any recommendation as to sentencing; (2) that the trial judge has the sole discretion in sentencing; (3) that he had not been promised anything not in the record in exchange for pleading guilty; (4) that he had not been threatened or coerced into entering the guilty plea; and (5) that he was satisfied with his attorney, Stanley L. Myers and the law firm Myers was with and that they had done everything he had asked of them. (State's Exhibit 1, PCR hearing 10/12/2022.)

On that same day, June 19, 2019, Applicant appeared before Judge Keesley for sentencing. Following presentations from both the State and Counsel, Judge Keesley sentenced Applicant to concurrent terms of twenty-five years' imprisonment for armed robbery, twenty-five years for each kidnapping charge, five years for each criminal conspiracy charge, five years for possession of a weapon during the commission of a violent crime, and one year for unlawful carrying of a pistol. (Sentencing, p. 27, l. 1 – p. 28, l. 12.)

On June 28, 2019, Applicant, through Counsel, moved the Court to reconsider his sentence. Judge Keesley subsequently informed both parties he would decide the motions based on written submissions pursuant to Rule 29(a), SCRCrimP, and would not hold a hearing. Both parties submitted briefs. By Order dated July 25, 2019, Judge Keesley denied Applicant's motion to reconsider his sentence.

Applicant filed a timely notice of appeal. On October 8, 2020, Counsel filed a letter with the Court of Appeals indicating Applicant wished to withdraw his appeal. The Court then requested

Counsel provide written consent from Applicant regarding the withdrawal. Counsel failed to provide the Court with this consent. The appeal was dismissed on March 25, 2021 and the case was remitted back to the circuit court. Applicant was notified of the dismissal and this PCR followed.

II. FACTUAL HISTORY

On December 30, 2017, Applicant and two co-defendants, Freddie Mitchell and Anthony Nelson, went on a robbery spree. Two of the four robberies they committed that night occurred in Lexington County and the other two in Richland County. The same stolen Honda was used in all four armed robberies. The first robbery, which was captured on surveillance video, occurred at the Dollar General on Charleston Highway at approximately 9:50 PM. Mitchell was driving; Nelson and Applicant were passengers. The men pulled up to the Dollar General, and backed the Honda into the parking lot outside of the door. They sat there for several moments before Nelson and Applicant exited the vehicle and entered the Dollar General. Applicant was carrying a firearm, and threatened and held two Dollar General employees at gunpoint while Nelson filled Ziploc bags with money from the cash register. The three men then ran out of the store and fled in the Honda to commit the subsequent robberies. (Plea, p. 12, l. 24 – p. 14, l. 2; see also Sentencing, p. 7, l. 6 - 18; Sentencing, p. 11, l. 3 -18.)

The second armed robbery occurred at an Exxon station on Elmwood in Richland County, South Carolina at approximately 10:37 PM. The third armed robbery occurred at a Waffle House in West Columbia (Lexington County), and the fourth of the night at a McDonald's on Garner's Ferry, back in Richland County, at approximately 11:35 PM. (Plea, p. 13, l. 4 - p. 15, l. 19).

Law enforcement from multiple agencies determined later that night that they were dealing with the same group of people because the car and tag number was consistent in all of the robberies.

At that point, law enforcement positioned themselves at Exit 119 off I-26. Once they spotted the stolen Honda, law enforcement activated their lights and sirens, and a high-speed pursuit followed. The vehicle eventually came to a stop close to the residences of all three defendants. Nelson and Mitchell fled the vehicle, and officers pursued them on foot. K9's were able to track Nelson at his grandmother's house. Law enforcement recovered the shoes and clothing worn by Nelson in the robberies, which matched what was captured on the video in the Dollar General. He and Mitchell ultimately confessed, both implicating Applicant as a co-defendant. (Id.; see also Sentencing, p. 4, l. 9 – p. 7, l. 23.)

During the investigation, law enforcement recovered all three of the mens' cell phones and performed cell phone extractions. They also received the mens' cell phone records from service providers. Cell phone records put all three individuals together the entire night and in the general area of the robberies. Their routes were also consistent with traveling to and from the robbery locations. Text messages from their phones also revealed discussions about the armed robberies that night. (Sentencing, p. 6, l. 23 - p. 8, l. 1.)

III. ALLEGATIONS BEFORE THE COURT

On May 4, 2020, while his direct appeal was still pending with the Court of Appeals, Applicant filed a post-conviction relief application, alleging he is being held in custody unlawfully based on the following (verbatim):

> (10) State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
>
> (a) "Ineffective assistance of counsel"
>
> (b) "Wrong due process"
>
> (11) State concisely and in the same order the facts which support each of the grounds set out in (10):
>
> (a) "My lawyer gave me in accurate[*sic*] advise[*sic*] towards my case & sentence"

(b) "Sentencing judge considered dismissed charges to enhance sentence"

(PCR Application, 5/4/2020 at p. 3.)

On October 22, 2020, the State filed a return and motion to dismiss without prejudice because Applicant's direct appeal was still pending. *See* Rule 71.1(b), SCRCP ("An application for post-conviction relief cannot be made while an appeal from the conviction or sentence is pending or during the time in which an appeal may be perfected."); *Al-Shabazz v. State*, 338 S.C. 354, 363–64, 527 S.E.2d 742, 747 (2000) ("The applicant may not bring a PCR action while a direct appeal is pending.").

Subsequently, Applicant's appeal was dismissed and, on September 29, 2022, an "Amendment to Application for Post Conviction Relief" was filed on Applicant's behalf. The Amendment adopted the grounds of Applicant's original filing and further alleged as additional grounds regarding his claim of ineffective assistance of counsel that:

(1) Counsel Myers failed to meet with Applicant a sufficient number of times to review the evidence;
(2) Counsel Myers failed to provide discovery to Applicant;
(3) Counsel Myers failed to properly investigate Applicant's cases to provide a defense for Applicant; and
(4) Counsel Myers coerced Applicant into entering a guilty plea by stating he would receive no more than 15 years' incarceration.

(Amendment to Application for Post Conviction Relief, 9/29/2022.)

At the PCR Hearing on October 12, 2022, both the grounds in Applicant's original Application and the four grounds stated in the Amendment to Application for Post Conviction

Relief were argued by Applicant's PCR Counsel.[1] Findings have been made on each of the points argued at the hearing.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Standard of Review

The grounds for relief upon which Applicant proceeded at the evidentiary hearing pertain to alleged ineffective assistance of counsel. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). It is common that post-conviction relief allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation 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 hearing, 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). 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, 466 U.S. at 687. To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687–88; Cherry v. State, 300 S.C.

[1] The second ground in the first application and the fourth ground in the Amended Application were acknowledged by PCR Counsel to be duplicative and were argued together. This resulted in 5, rather than 6, assertions being argued at the PCR hearing. (PCR Hearing, 10/12/2022, p. 6, l. 7 - p. 8, l. 7.)

115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

As aforementioned, the Applicant has the burden of establishing both deficiency and prejudice in order to be entitled to relief. Hughes v. State, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); Rule 71.1(e), SCRCP. To prove deficient performance, the applicant must establish that, in light of all the circumstances, the acts or omissions complained of "were outside the wide range of competence" demanded of attorneys in criminal cases. Strickland, 466 U.S. at 688. To prove prejudice, the applicant must establish that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Id. Significantly, "the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." Id. at 696.

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). When reviewing a guilty plea, the analysis of counsel's performance under the first prong of Strickland remains unchanged—the applicant must show that counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59; accord Thompson v. State, 340

S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56. The second, or "prejudice" prong, however, "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Id. at 58–59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59.

This inquiry "focuses on a defendant's decision-making" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. 357, 364-365, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—*not* whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

The test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." North Carolina v. Alford, 400 U.S. 25, 31 (1970). It is "well established that a guilty plea is not rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment." United States v. Cox, 464 F.2d 937, 942 (6th Cir. 1972) (citing Brady, 397 U.S. 742).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual . . ., a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977); see also Jamison v. State, 410 S.C. 456, 469–71, 765 S.E.2d 123, 129–30 (2014)). Admissions made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements. Id. at 137–38, 654 S.E.2d at 874; see also Blackledge, 431 U.S. at 73–74 (pointing out that representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a "formidable barrier in any subsequent collateral proceedings").

An applicant who enters a plea on the advice of counsel may "only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the [applicant] would not have pled guilty, but would have insisted on going to trial." Roscoe, 345 S.C. at 20, 546 S.E.2d at 419.

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, 326 S.C. at 165, 485 S.E.2d at 370; 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).

Surmounting Strickland's high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." Lee, 582 U.S. 356, 371, 66, 137 S. Ct. 1958, 1967 (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 58 ("[R]equiring a 'prejudice' showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.'"). Reviewing "[c]ourts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies." Lee, 582 U.S. 356, 371, 137 S. Ct. 1958, 1967. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences." Id. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the guilty plea and the evidence presented at the PCR hearing. Harres v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

V. FINDINGS AS TO CLAIMS RAISED

Applicant has alleged five specific claims of ineffective assistance of trial counsel and asserts that as a result of Counsel's purported errors, he is entitled to have his plea vacated or his sentence reduced. This Court finds Applicant has failed to meet his requisite burden of proof as to each allegation. Each allegation is addressed below:

Allegation #1: Applicant was not properly advised by Counsel about the potential sentences that he could have received on his pleas; and, further, was promised a different sentence than he received to coerce the pleas.

Applicant first asserts Counsel was constitutionally ineffective because Applicant was not properly advised that in connection with his pleas, he could have received "close to 100 years" and,

further, that on the sentencing sheet it says "without negotiations or recommendations" when Applicant "felt promised by [Counsel] that he would receive a 15-year sentence, and that was something that he had told him was going to happen." As a result of these alleged statements, Applicant claims he was coerced into pleading. (PCR, p. 6, l. 7 – p. 7, l. 9). As evidence of harm, Applicant asserted at the PCR hearing that he was completely innocent and only pled guilty because Counsel told him to. (PCR, p. 17, l. 17-20.)

At the PCR hearing, regarding sentencing, Applicant testified "I had no indication of what I was being exposed to…" (PCR, p. 19, l. 23-24.) At the same hearing, on redirect, Applicant was asked "Didn't the court go through the sentencing range for everything you were pleading to and you told him you understood it, right?" To this, Applicant answered "Right." (PCR, p. 26, l. 2–7.) Applicant also identified his signature on Exhibit 1, a document specifically indicating he understood the trial judge has sole discretion in sentencing and that he could receive thirty years.

I find the evidence and proceedings, as contained in the plea and sentencing transcripts; the PCR hearing and Exhibit 1 to the PCR hearing; and Counsel's testimony, refute Applicant's claims on direct. Neither any of these items nor the rest of the record support Applicant's assertions regarding his not being told about the amount of time he faced or that he was coerced into pleading by being told he would receive a 15-year sentence. First, at the Plea, the crimes Applicant was accused of committing were laid out by the Assistant Solicitor and Applicant admitted committing the crimes. (Plea, p. 12, l. 2 – p. 15, l. 19) . Next, the Court covered the voluntariness of the Plea and that Applicant had received no promises that were not already on the record. (Plea, p. 15, l. 20 – p. 16, l. 13.) Applicant indicated he was fully satisfied with Counsel, had had enough time to meet with Counsel; had had enough time to discuss his case properly with Counsel, had no complaint with his attorney or

anyone else that dealt with the case, and was pleading because of a decision made of his own free will. (Plea, p. 16, l. 14 – p. 17, l. 23.)

The Court also covered the maximum possible sentence for each of the crimes and Applicant indicated he understood. (Plea, p. 19, l. 3 – p. 22, l. 18; see also pages 3 to 4 of this Order where the Court's exchanges with Applicant on this point are described in detail.) During the proceedings, it was clearly stated, more than once, in Applicant's presence that the sentence was "without recommendation or negotiation." (Plea, p. 12, l. 17-19; Sentencing, p. 11, l. 23 – p. 12, l. 2.) Applicant was also told if any plea bargain had been made or there was an any external agreement regarding a sentence, it needed to be on the record, or he would lose whatever may have been promised and he indicated all the plea agreements were on the record. (Plea p. 15, l. 24 – p. 16, l. 13.) The above activities occurred at Applicant's plea.

Approximately a month after the plea and prior to sentencing, Applicant again indicated that he understood the Judge had sole discretion in his sentencing, that he had not been promised anything not on the record for pleading, and that he had not been threatened or coerced into pleading. (See State's Exhibit 1, PCR hearing 10/12/2022 (Statements from this Exhibit are covered in detail on page 4 of this Order.)) At Applicant's sentencing, it was again put on the record that Applicant elected to plea straight up to all the charges on the trial list, that in exchange for that, the State was dismissing the remaining charges, and that "In terms of an actual sentence, there is no negotiation in the terms." (Sentencing, p. 11, l. 23 – p. 12, l. 2.)

At the PCR hearing on October 12, 2022, Counsel testified that he met with Applicant multiple times and reviewed the evidence in the case, and that he felt if Applicant had gone to trial, there was sufficient evidence to convict him of the crimes. (PCR, p. 39, l. 6 – p. 43, l. 23.) Counsel further testified that he was willing to try all of Applicant's cases if Applicant so desired, that "we

will do what you [Applicant] want to do." (PCR, p. 44, l. 16 – 20; Id. at p. 46, l. 11-14; see also p. 49, l. 19-23 ("I only have the authority that the client gives to me. So before I even engage in any sort of discussions with the prosecutor, I wanted to make sure [Applicant] authorized me to have those discussions.")) Lastly, I found credible Counsel's testimony that he did not promise Applicant a 15-year sentence. (PCR, p. 51, l. 2-6 ("I always tell my clients, and that's even on State's Exhibit No. 1. I always tell them I cannot promise you any sort of time."); see also PCR at p. 51, l. 23- p. 52, l. 9 ("I never at one time told [Applicant] that, look, I promise you or I guarantee that you're going to get 10 or 15 years. … I was hoping and praying that I could have him get less time, but I never guaranteed or promised him that that's what [the Court] would do."))

Ultimately the choice and the decision to plead were Applicant's. He was informed of the sentences he faced and freely, voluntarily, knowingly, and intelligently chose to plead guilty. This Court finds Applicant has not established any deficiency of Counsel regarding his recommendation to plea, nor any coercion. He also has not shown Counsel's advice to plead guilty was not within the competence demanded of attorneys in criminal cases. Further, I find the Applicant was advised of the potential sentences he could receive. Moreover, Applicant has not established either an error by Counsel or that, but for the error, there is a reasonable probability that he would not have pled guilty and, instead, would have insisted on going to trial.

Accordingly, this Court denies and dismisses this allegation with prejudice.

Allegation #2: Applicant's Counsel was ineffective for failing to meet a sufficient number of times to review the case, which affected Applicant's understanding of the case.

Next, Applicant asserts that Counsel was ineffective for allegedly failing to meet with Applicant a sufficient number of times and review the case to ensure Applicant's understanding of it. On this point Counsel testified he, another attorney in his firm, and an investigator all worked on

Applicant's case and that all three would meet with Applicant. Counsel further testified "I know I probably saw him no less than ten (times). And then I sent Gil over a number of times and then were times when my investigator, Keith Johnson, also went on his own." (PCR, p. 39, l. 4-10.) Counsel was clear that it was sufficient time that he and his partners were familiar with the case and for all three to go over the case with Applicant. (PCR, p. 39, l. 15–20.) Counsel's testimony was closely corroborated by Applicant's own testimony that Counsel met with him "a number of times ranging about seven, maybe eight" and that "I actually felt like the talks we had were continuously over the same things, as far as, you know, what was proven as far as evidence... We would continuously speak on that." (PCR, p. 9, l. 5–21.)

There is no established "minimum number of meetings between counsel and client prior to trial necessary to prepare an attorney to provide effective assistance of counsel." United States v. Olson, 846 F.2d 1103, 1108 (7th Cir.1988) (there is no constitutional minimum number of meetings between attorney and client and observes that an experienced attorney may get more out of a single meeting than a neophyte); Moody v. Polk, 408 F.3d 141, 148 (4th Cir. 2005); Campbell v. Polk, 447 F.3d 270, 279, n.2 (4th Cir. 2006) ("we cannot conclude that the fact that Campbell's counsel only met with him five times before trial made them ineffective."). "'[B]revity of consultation time between a defendant and his counsel, alone,' 'cannot support a claim of ineffective assistance of counsel.'" Davis v. State, 44 So. 3d 1118, 1130 (Ala. Crim. App. 2009) (*quoting* Murray v. Maggio, 736 F.2d 279, 282 (5th Cir. 1984)); White v. Godinez, 301 F.3d 796, 800 (7th Cir. 2002) ("A brief consultation does not by itself establish that counsel's performance was inadequate."); Chavez v. Pulley, 623 F. Supp. 672, 685 (E.D. Cal. 1985) ("brevity of consultation time between a defendant and his counsel alone cannot support a claim of ineffective assistance of counsel," especially where the defendant "fails to allege what purpose further consultation with his attorney would have

served and fails to demonstrate how further consultation with his attorney would have produced a different result").

This Court finds Counsel's testimony on this point credible. This Court further finds Counsel's performance, including in terms of meeting with Applicant a sufficient number of times and explaining the issues, was within an objective standard of reasonableness. This Court finds Applicant has not shown Counsel's behavior was not within the competence demanded of attorneys in criminal cases. Moreover, Applicant has not established either an error by Counsel or that, but for the error, there is a reasonable probability that he would not have pled guilty and, instead, would have insisted on going to trial.

Accordingly, this Court denies and dismisses this allegation with prejudice.

Allegation #3: Applicant's Counsel was ineffective for failing to provide discovery.

Next, Applicant asserts that Counsel was ineffective for allegedly failing to provide discovery to Applicant. On this point Counsel testified that he met with Applicant multiple times and was familiar with Applicant's case and had sufficient time to go over the evidence and discuss it with him. (PCR, p. 39, l. 7–17.) Counsel acknowledged giving Applicant the discovery and also indicated why it was left in Applicant's possession for a limited time. (PCR, p. 39, l. 12 – p. 41, l. 22; see also p. 42, l. 9–20.) On this point, Applicant also spoke intelligently about the discovery, refuting his own claims he did not receive the discovery. (PCR, p. 12, l. 1 – p. 13, l. 3.)

This Court finds Counsel's testimony on this point credible. This Court further finds Counsel's performance, including in terms of providing discovery to and discussing discovery with Applicant, was within an objective standard of reasonableness. Moreover, Applicant has not

established either an error by Counsel or that, but for the error, there is a reasonable probability that he would not have pled guilty and, instead, would have insisted on going to trial.

Accordingly, this Court denies and dismisses this allegation with prejudice.

Allegation #4: Applicant's Counsel was ineffective for failing to properly investigate the case and provide an adequate defense for Applicant.

Next, Applicant asserts that trial counsel was ineffective for failing to properly investigate the case and provide an adequate defense for Applicant. On this point, Counsel testified he and another attorney in his office that was a former prosecutor both worked the case. Also, they had an investigator who investigated the facts, interviewed witnesses, reviewed video surveillance, and, on occasion, talked to the Applicant for the attorneys. (PCR, p. 37, l. 9 – p. 38, l. 24.) Counsel also testified regarding investigation done outside of reviewing discovery, and what kind of defense Counsel thought Applicant would have if he went to trial. (PCR, p. 47, l. 1–16; p. 48, l. 6–21.) These defenses were discussed with Applicant. (PCR, p. 48, l. 22–24.)

"[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Strickland v. Washington, 466 U.S. 668, 691, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). A 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.* Strickland notes that there are "countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way." 466 U.S. at 689. Rare are the situations in which the "wide latitude counsel must have in making tactical decisions" will be limited to any one technique or approach. Harrington v. Richter, 562 U.S. 86, 106 (2011).

This Court finds Counsel's testimony on this point credible. This Court further finds Counsel's performance, including in terms of investigating Applicant's case and considering various defenses, was within an objective standard of reasonableness. Moreover, Applicant has not established either an error by Counsel or that, but for the error, there is a reasonable probability that Applicant would not have pled guilty and, instead, would have insisted on going to trial.

Accordingly, this Court denies and dismisses this allegation with prejudice.

Allegation #5: Applicant's Counsel coerced him to plea by telling him he would receive no more than fifteen years.

Next, Applicant asserts that Counsel was ineffective because Counsel coerced Applicant to enter a guilty plea by stating he'd receive no more than 15 years' incarceration. As explained on pages 14 and 15 of this Order in detail, Counsel testified he did not tell Applicant that he would receive no more than 15 years' incarceration. (See also PCR, p. 71, l. 7 – 9 ("I never promised 15 or less.")) Counsel also testified he had Applicant sign a document prior to sentencing regarding whether anyone promised Applicant anything other than what was expressly set forth in the guilty plea, and Applicant initialed "No." Counsel was satisfied "nobody has threatened or coerced him into pleading guilty." (PCR, p. 55, l. 5 – 9.)

This Court finds Counsel's testimony on this point credible. Further, at the plea, the trial court asked Applicant if anyone had coerced him into pleading guilty and Applicant responded "No, sir." (Plea, p. 15, l. 20-23; see also PCR, p. 20, l. 8 – 12.) This Court finds Counsel did not give Applicant the assurances regarding a maximum sentence that Applicant claims, nor did he coerce him into pleading guilty. Applicant has not established an error by Counsel and also has not established that, but for an error, there is a reasonable probability that he would not have pled guilty and, instead, would have insisted on going to trial.

Accordingly, this Court denies and dismisses this allegation with prejudice.

VI. CONCLUSION

After careful consideration of Applicant's Application and Amended Application for Post-Conviction Relief, the Record of the case,[2] the arguments of Attorneys Taylor and Johnson, and the testimony of witnesses, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. To satisfy the two prongs of Strickland, Applicant must show that Counsel was deficient and also show the deficiency resulted in prejudice. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984). Applicant's Counsel was not deficient, but rather, offered "reasonably effective assistance" under "prevailing professional norms." Cherry v. State, 300 S.C. at 317 (1989). Further, I do not find any presumptions of prejudice. See Cronic v. U.S., 446 U.S. 648 (1984); Nance v. Ozmint, 367 S.C. 547 (2006). This case was "fact heavy" and I find Counsel's actions and decisions were based upon strategic decision. See Roseboro v. State, 317 S.C. 292 (1996); see also Solomon v. State, 347 S.C. 635 (2001) regarding strategic trial management. The Applicant has not met this burden on any of the allegations made. Therefore, the Court denies Applicant's requested relief in this matter.

This Court notes if Applicant desires to appeal this Order, he must file and serve a notice of appeal within thirty days from the receipt of this Order through his counsel of record. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule

[2] This record includes (and I am incorporating herein by reference), the Lexington County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, the sentencing transcript (including Exhibit 1), the records regarding Applicant's direct appeal and the withdrawal of that appeal, and all of the records and proceedings of the current PCR action.

71.1(g), SCRCP, provides if the Applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and

2. Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 2nd day of January, 2024.

GEORGE MCFADDIN
Presiding Judge
Eleventh Judicial Circuit

Smith, South Carolina