

NOTICE OF APPEAL FROM COMMON PLEAS REGARDING A
POST CONVICTION RELIEF

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

Feb 21 2024

S.C. SUPREME COURT

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

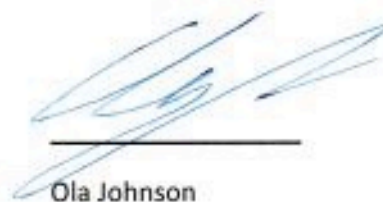
Case No. 2019-CP-32-04424

The State,.....Respondent,

Jonathan C. Hughes,.....Appellant,

Notice of Appeal

Jonathan C. Hughes appeals the order of the Honorable Jocelyn Newman, dated December 5, 2023, which denied his application for Post-Conviction Relief with prejudice. Appellant received written notice of the order on January 27, 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)
))
Jonathan C. Hughes, SCDC #367815,)
))
Applicant,)
))
v.)
))
State of South Carolina,)
))
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Case No. 2019-CP-32-4424

ORDER OF DISMISSAL

2023 DEC 18 PM 2:52
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

FILED

I. INTRODUCTION

This matter comes before the Court by way of post-conviction relief (PCR) action commenced by Jonathan C. Hughes (Applicant) on November 1, 2019, alleging he is entitled to post-conviction relief based on multiple allegations of ineffective assistance of counsel, conflict of interest, and involuntary guilty plea. The State requested an evidentiary hearing through its return and motion for a more definite statement on March 3, 2020. A hearing into the matter convened before the undersigned on June 6, 2022, at the Lexington County Courthouse. Applicant was present at the hearing and represented by Ola A. Johnson. Assistant Attorney General Lillian L. Meadows appeared on behalf of the State. Both Applicant and his trial counsel, Jason S. Chehoski, testified at the hearing.

In addition to testimony from those individuals, this Court had before it: (1) the records from Applicant’s direct appeal, including a complete copy of the April 14, 2016 plea transcript, the briefs filed by each party, and the opinion issued by the Court of Appeals affirming Applicant’s convictions; (2) the records from the Lexington County Clerk of Court regarding the subject convictions, including the indictments and arrest warrants; (3) Applicant’s inmate records from the

South Carolina Department of Corrections; and (4) the pleadings filed in the instant post-conviction relief action.

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant failed to meet the high burden required for a grant of post-conviction relief pursuant to Rule 71.1, SCRPC, and the Uniform Post-Conviction Procedure Act¹ (the Act). For the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

II. 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 February 15, 2015, following an investigation into an armed robbery and burglary of a residence involving Applicant and two co-defendants, Jahmand McNeill and Antonio Johnson. During its April 2015 term, the Lexington County Grand Jury indicted Applicant for first-degree burglary (2015-GS-32-0897); armed robbery (2015-GS-32-0898); two counts of kidnapping (2015-GS-32-0895, -0896); and possession of a weapon during the commission of a violent crime (2015-GS-32-0894). Senior Assistant Public Defender Jason S. Chehoski represented Applicant on these charges and Assistant Solicitor Angela G. Martin of the Eleventh Circuit Solicitor's Office prosecuted the case.

On April 14, 2016, Applicant appeared before the Honorable William H. Seals, and pleaded guilty as indicted to first-degree burglary and armed robbery. The State dismissed the remaining charges as part of the plea agreement; however, no formal negotiations or recommendations were made from the State as to sentencing. Judge Seals accepted Applicant's plea and sentenced him to

¹ S.C. Code Ann. §§ 17-27-10 to -160.

concurrent terms of forty years' imprisonment for first-degree burglary and thirty years for armed robbery.

Mr. Chehoski filed a timely motion to reconsider sentence and memorandum in support, citing the disparity between the sentence Applicant received compared with Antonio Johnson, who pled before Applicant and was sentenced to twenty years' imprisonment. The State filed a memorandum in opposition to Applicant's motion on April 29, 2016. On May 3, 2016, Judge Seals issued an order denying Applicant's motion to reconsider.

Following Judge Seals' denial of Applicant's post-plea motion, Mr. Chehoski filed a notice of appeal on Applicant's behalf. Appellate Defender Susan B. Hackett represented Applicant on appeal, raising the following issue:

Whether the plea court erred in denying plea counsel's motion to reconsider the sentence when his sentence was disparate to that of a co-defendant?

Following briefing, our Court of Appeals issued an unpublished opinion affirming Applicant's convictions and sentences on October 17, 2018. *Hughes v. State*, 2018-UP-382 (S.C. Ct. App. filed Oct. 17, 2018). The case was remitted back to the circuit court on November 2, 2018.

III. SUMMARY OF FACTS

On February 14, 2015, David Quintana, Alva Valdez, and their three children were asleep in their home. (Plea Tr. 6; R. 6). Mr. Quintana, hearing a noise, went into the den and discovered an armed gunman at approximately 1:00 am. (Plea Tr. 6; R. 6). The gunman, later identified as McNeill, first forced Mr. Quintana and Ms. Valdez back into their bedroom. (Plea Tr. 6-7; R. 6-7). He then forced the couple into their bathroom. (Plea Tr. 6; R. 6).

It was at that time that the couple heard commotion and other people coming into the home and walking down the hall. (Plea Tr. 6; R. 6). McNeill told them if they did not be quiet and

cooperate, the men would kill their children. (Plea Tr. 6; R. 6). Meanwhile, Applicant and Johnson entered the home and stole several items, including: (1) X-box video game consoles; (2) a Wii video game console; (3) Valdez's pocketbook, containing her credit cards; and (4) an old Bible, considered a family heirloom. (Plea Tr. 7; R. 7). The three co-defendants then fled on foot while Mr. Quintana called law enforcement. (Plea Tr. 7-8; R. 7-8).

Shortly after arriving at the scene, officers found Applicant and Johnson walking through the neighborhood. (Plea Tr. 8; R. 8). Officers, not in possession of evidence implicating the two men in the robbery, allowed Applicant and Johnson to head home after obtaining their identification information. (Plea Tr. 8; R. 8). The two men returned home and hid some of the stolen items, buried the clothes they were wearing, and tried to dispose of their shoes after observing the officers' interest in their footwear.² (Plea Tr. 8-9; R. 8-9).

Meanwhile, McNeill attempted a second home invasion a few hours later in that same general area. (Plea Tr. 8; R. 8). However, the homeowner caught McNeill and held him there until police arrived. (Plea Tr. 8-9; R. 8-9). When McNeill was arrested, officers found Ms. Valdez's credit cards and other stolen items on his person. (Plea Tr. 9; R. 9). Applicant and Johnson were ultimately implicated as McNeill's accomplices in the earlier robbery. (Plea Tr. 9; R. 9). Officers eventually recovered the buried clothes and other stolen items from Applicant and Johnson. (Plea Tr. 9; R. 9).

IV. ISSUES BEFORE THIS COURT

In his original application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following (verbatim):

² The record indicates officers were interested in the men's shoes because they knew the door to the home was kicked in during the burglary. (Plea Tr. 8; R. 8).

1. Ineffective assistance of counsel: "didn't object to solicitor bringing up another case during plea"
2. Ineffective assistance of counsel: "didn't ensure I agreed with factual basis of guilty plea"
3. Involuntary guilty plea: "lawyer didn't tell me solicitor would ask for the maximum sentence"
4. Conflict of interest: "public defender's office represented by codefendants"

The State requested an evidentiary hearing through its return and motion for a definite statement on March 3, 2020. On May 26, 2020, PCR counsel filed an amended application pursuant to Rule 71.1, SCRCPC, to conform to the evidence presented at the PCR hearing in the event that any new issues arise during the court of the hearing. PCR counsel further amended the application to include the following claims:

5. Applicant's counsel, Jason Chehoski, failed to discuss the evidence with applicant.
6. Applicant's counsel, Jason Chehoski, failed to inform the solicitor that he would accept a 15 year sentence as part of a plea.
7. Applicant's counsel Jason Chehoski failed to object to the solicitor presenting information to the court regarding the co-defendant Jahmand McNeill's second Burglary committed the same day as this incident. (Transcript p.8, Lines 19-23).
8. Applicant's counsel Jason Chehoski failed to object to the solicitor presenting a witness that requested the maximum possible sentence. (Transcript p. 11, Lines 15-16) and failed to advise applicant that this would be presented by the state.
9. Applicant's counsel, Jason Chehoski, coerced the applicant into entering a guilty plea by informing the applicant he would receive a sentence of 20 years like his co-defendant Antonio Johnson
10. Applicant's counsel, Jason Chehoski had a conflict of interest in representing Applicant. Applicant has learned that another Lexington Public Defender, David Mauldin, represented co-defendant Jahmand McNeill in this case. Applicant believes that this prevented counsel from being effective in his representation of applicant and applicants counsel should have made a motion

to have an attorney outside of the public defender's office appointed to represent him.

11. During the plea the court did not find that the applicant was entering the plea voluntarily (Transcript p. 11, Lines 19-21).
12. [T]he court did not make a finding that there was a factual basis for the plea and it did not inquire if the applicant agreed to the facts as presented by the state.

On November 28, 2020, PCR counsel filed a second amended application to include the following claims:³

13. Counsel failed to meet with applicant a sufficient number of time to review the evidence.
14. Prior to the guilty plea, Applicant's counsel failed to explain the details of the Applicants guilty plea and sentencing.
15. Applicant's counsel failed to interview the victims David Quintana and Alva Valdez regarding these charges.
16. Applicant's counsel failed to interview the witnesses Diamond McLamb and Derrick McNeil regarding these charges.
17. Applicant's counsel failed to interview the co-defendants Antonio Johnson and Jahmand McNeill regarding these charges.
18. Following the plea Applicants counsel failed to file a motion to reconsider the sentence.⁴

V. STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act⁵ (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based upon the following types of allegations:

³ PCR counsel additionally amended the application on Applicant's behalf to conform to the evidence presented at the PCR hearing in the event that any new issues arise during the course of the hearing. *See Simpson v. Moore*, 367 S.C. 587, 599, 627 S.E.2d 701, 708 (2006), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018); Rule 15(b), SCRCP (pleadings may be amended, even after judgment, to conform to issues tried by express or implied consent but not raised in the original pleadings).

⁴ Because this claim is directly refuted by the record, this Court will not address it further. (R. 17-22).

⁵ S.C. Code Ann. §§ 17-27-10 to -160.

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee all criminal defendants the right to “assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.” *Strickland v. Washington*, 466 U.S. 668, 685 (1984). Ordinarily, PCR 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 sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

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. 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) there is a reasonable probability the outcome of the

proceeding would have been different but for counsel's deficient performance. *Williams v. State*, 363 S.C. 341, 343, 611 S.E.2d 232, 233 (2005) (citing *Strickland*, 466 U.S. 668). 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)).

The applicant bears the heavy burden of establishing both prongs of the *Strickland* standard by a preponderance of the evidence. *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 "fell below an objective standard of reasonableness" as measured by "prevailing professional norms." *Strickland*, 466 U.S. at 688. Reviewing courts should be deferential in this inquiry, and apply "a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id.* at 689. With respect to prejudice, the applicant must demonstrate "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.* When evaluating this probability, the reviewing court "should consider the specific impact counsel's error had on the outcome of the trial" coupled with "the strength of the State's case in light of . . . the [totality of the] evidence presented to the jury." *Smalls*, 422 S.C. at 188, 810 S.E.2d at 843. Significantly, "the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." *Strickland*, 466 U.S. at 696.

Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonably professional assistance.” *Butler v. State*, 286 S.C. 441, 445, 334 S.E.2d 813, 816 (1985). “The burden of rebutting this presumption ‘rests squarely on the defendant,’ and ‘[i]t should go without saying that the absence of evidence cannot overcome [i]t.’ ” *Dunn v. Reeves*, 594 U.S. ___, ___, 141 S. Ct. 2405, 2410 (2021) (alteration in original) (quoting *Burt v. Titlow*, 571 U.S. 12, 22–23 (2013)). In fact, “even if there is reason to think that counsel’s conduct ‘was far from exemplary,’ a court still may not grant relief if ‘[t]he record does not reveal’ that counsel took an approach that *no competent lawyer would have chosen.*” *Id.* (alteration in original) (emphasis added) (quoting *Titlow*, 571 U.S. at 23–24). Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686; *see Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the “benchmark” of the right to counsel is the “fairness of the adversary proceeding”).

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 [applicant]'s decisionmaking" and does not turn on the outcome of the applicant's actual criminal proceeding or potential outcome had the applicant chosen to proceed to trial. *Lee v. United States*, 582 U.S. ___, ___, 137 S. Ct. 1958, 1966 (2017). However, the 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 post-conviction relief judge must therefore "look to contemporaneous evidence to substantiate a defendant's expressed preferences." *Lee*, 582 U.S. at ___, 137 S. Ct. at 1967. Accordingly, in determining whether a guilty plea was taken in accordance with constitutional standards, the post-conviction relief 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).

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. at ___, 137 S. Ct. at 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. at ____, 137 S. Ct. at 1967. 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).

VI. FINDINGS OF FACT & CONCLUSIONS OF LAW

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

Upon conducting and completing its analysis, this Court finds Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. *See* Rule 71.1(e), SCRCF (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); *Lucero v. State*, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

Set forth below are the relevant findings of facts and conclusions of law pursuant to S.C. Code Ann. § 17-27-80.

A. Failure to adequately review evidence with Applicant⁶

Regarding Applicant's claim that plea counsel did not sufficiently review discovery with him, this Court finds Applicant failed to establish counsel provided constitutionally ineffective assistance under either prong of *Hill*. This Court finds applicable the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment" at all stages of Applicant's proceedings. *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland*, 466 U.S. 668). Mr. Chehoski credibly testified at the PCR hearing that he met with Applicant six times over the course of his representation and provided specific dates of these meetings. During these meetings, Mr. Chehoski stated he explained to Applicant the elements of the offenses, discussed Applicant's version of events, and extensively reviewed all evidence and discovery with him. Applicant's own testimony, although predominantly incredible, establishes he met with Mr. Chehoski several times to review discovery and discuss his case.

This Court further finds credible and persuasive Mr. Chehoski's demonstrated recollection of the evidence produced by the State and his explanations to Applicant about how each piece of evidence would be used against him at trial. Specifically, Mr. Chehoski recalled explaining to Applicant that the most damaging evidence against him were his inconsistent statements to law enforcement. Counsel's recollection is consistent with the record. Specifically, the solicitor advised the plea court that Applicant "gave different statements and each time [officer's] confronted] him" with different pieces of evidence, (Plea Tr. 9-10; R. 9-10), and that his "story evolved from participating in the crime as a lookout to an eventual admission he had entered the home and stolen one of the video game consoles." (Plea Tr. 10; R. 10). Additionally, Applicant's

⁶ Claims 5 and 13

ability to direct law enforcement to the area where some of the buried items were located and eventually recovered is certainly probative of guilt. (Plea Tr. 12–13; R. 12–13).

This Court does not find credible Applicant’s testimony that Mr. Chehoski “did not really” discuss the evidence with him, particularly in light of his admission at the PCR hearing that Mr. Chehoski gave him a copy of the discovery and met with him approximately four times to review this evidence. Additionally, Applicant advised Judge Seals during the plea colloquy that he had enough time to speak with Mr. Chehoski about his case; that Mr. Chehoski had answered all his questions; that Mr. Chehoski had done everything he asked him to do; and that he was completely satisfied with Mr. Chehoski’s services. (Plea Tr. 5; R. 5). *See United States v. Lott*, 630 F. Supp. 611, 613–14 (E.D. Va.) (rejecting the defendant’s claim of ineffective assistance of counsel for failure to investigate, interview witness, and meet with her a sufficient number of times where she testified under oath at the plea hearing “that she had had sufficient opportunity to discuss the plea agreement with her attorney” and “that [her attorney] had explained the agreement to her and that the decision to plead guilty was voluntarily made after full consultation with her attorney”), *aff’d*, 795 F.2d 82 (4th Cir. 1986); *see also Dalton v. State*, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (Ct. App. 2007) (“[S]tatements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements.”).

Applicant otherwise failed to identify precisely what Mr. Chehoski did not explain or disclose to him from the materials provided in discovery, or what, if anything, could have been achieved had Mr. Chehoski spent more time with him in consultation regarding the contents of the evidence. *See Smith v. State*, 404 S.C. 493, 500–01, 745 S.E.2d 378, 382 (Ct. App. 2012) (noting that an applicant must present evidence to show how additional time spent in consultation

regarding discovery would have resulted in a different outcome; mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief); *Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009) (noting that to establish prejudice based on failure to investigate or prepare for trial when the applicant enters a guilty plea, he must ordinarily present some evidence “that would have affected counsel’s advice to [him] to accept the plea bargain offered or that would have caused [him] to decline to accept it”); *cf. 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*, 422 S.C. 174, 810 S.E.2d 836.

Based on the foregoing, this Court finds no deficiency in counsel’s consultation with Applicant regarding the evidence in discovery, nor any resulting prejudice. Accordingly, Applicant’s ineffective assistance claims pertaining to this allegation are **DENIED**.

B. Failure to explain terms of plea agreement and plea process to Applicant⁷

Regarding Applicant’s claim that plea counsel failed to adequately explain the terms of the plea agreement and plea process, this Court finds Applicant failed to meet his burden under *Hill* based on Applicant’s representations to the plea court as well as plea counsel’s credible testimony he thoroughly explained to Applicant prior to his plea the details of the plea agreement, including the charges he would be pleading to; the charges the State would be dismissing; the potential sentence he was facing; that the State would not be making a recommendation as to sentencing; the constitutional rights Applicant would forfeit by pleading guilty; and all the options available to him for resolving the charges against him. Mr. Chehoski further testified that Applicant never

⁷ Claim 14

indicated to him either before or during the plea that he did not understand the terms of the plea agreement. If he had any doubt regarding Applicant's understanding of the plea proceedings, Mr. Chehoski explained, he would not have allowed Applicant to plead guilty that day. Applicant's own testimony, although predominantly incredible, establishes he met with Mr. Chehoski to discuss his case and options for resolving the charges several times prior to the plea.

At the PCR hearing, Applicant was asked if counsel explained the details of the plea and sentencing. Applicant responded, "not really, just said I could get fifteen to life." However, Applicant's testimony regarding the sentencing range is consistent with the terms of the plea agreement as demonstrated by the record from the plea hearing and Mr. Chehoski's testimony at the PCR hearing. Applicant additionally failed to identify anything specific that Mr. Chehoski did not sufficiently explain to him, that he did not understand, or otherwise demonstrate a reasonable probability that Applicant "would not have pleaded guilty and would have insisted on going to trial" but for Mr. Chehoski's purported failure to sufficiently explain the plea agreement or process. *Hill*, 474 U.S. at 59.

Nevertheless, this Court finds any possible deficiency or error by counsel was cured by the information conveyed by Judge Seals at the plea hearing. *See Rayford v. State*, 314 S.C. 46, 48, 443 S.E.2d 805, 806 (1994) (holding that the record of the plea proceeding, including applicant's answers to the plea judge's questions, clearly established that applicant understood the possible sentences and refuted applicant's claim on PCR that he did not understand the terms of a plea agreement). The plea colloquy indicates that the full plea agreement consisted of the State dismissing the kidnapping and weapons charges in exchange for Applicant pleading "straight up" to burglary and armed robbery. Applicant confirmed he understood the charges he was pleading guilty to, the charges that were dismissed as part of the plea agreement, and the maximum sentence

he could receive. (Plea Tr 4–5; R. 4–5). The record therefore contradicts Applicant’s assertion he was under a misapprehension or misunderstood the terms of the plea agreement. *See Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997) (finding the guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge).

Based on the foregoing, this Court finds no deficiency in counsel’s consultation with Applicant regarding the terms of the plea agreement and plea process, nor any resulting prejudice. Accordingly, Applicant’s request for relief by way of this allegation is **DENIED**.

C. Failure to inform solicitor that Applicant would accept a fifteen-year plea⁸

Regarding Applicant’s claim plea counsel failed to negotiate a plea agreement or otherwise inform the State that he would accept a plea offer with a fifteen-year sentence, this Court again finds Applicant failed to satisfy the *Hill* requirements based on the combined record of the plea hearing and PCR hearing.

Before deciding whether to plead guilty, a defendant is entitled to the effective assistance of competent counsel.” *Padilla*, 559 U.S. at 364 (citations omitted); *see, e.g., Lafler v. Cooper*, 566 U.S. 156, 170 (2012) (recognizing that “the right to adequate assistance of counsel cannot be defined or enforced without taking account of the central role plea bargaining plays in securing convictions and determining sentences”); *Missouri v. Frye*, 566 U.S. 134 (2012) (finding that in the context of plea negotiations, an attorney’s failure to communicate a formal plea offer to a criminal defendant falls below an objective standard of reasonableness under *Strickland*); *see also Strickland*, 466 U.S. at 688 (explaining that counsel has a duty “to consult with the defendant on important decisions and to keep the defendant informed of important developments in the course

⁸ Claim 6

of the prosecution.”); *but see United States v. Horne*, 987 F.2d 833, 836 (D.C. Cir. 1993) (noting that the constitutional requirement of effective assistance of counsel is intended “to guarantee a fair disposition of defendant’s case, not to ensure that he is able to drive the hardest possible plea bargain . . .” (citing *Fields v. Att’y Gen. of State of Md.*, 956 F.2d 1290, 1298 (4th Cir. 1992))).

However, a defendant has no constitutional right to plea bargain. *Weatherford v. Bursey*, 429 U.S. 545, 561 (1977); *Frye*, 566 U.S. at 148 (“[A] defendant has no right to be offered a plea . . .”); *accord. State v. Chisolm*, 312 S.C. 235, 237–38, 439 S.E.2d 850, 852 (1994). Rather, “[t]he decision whether to offer a plea bargain is within the solicitor’s discretion.” *State v. Whipple*, 324 S.C. 43, 49, 476 S.E.2d 683, 686 (1996); *see State v. Thrift*, 312 S.C. 282, 291–92, 440 S.E.2d 341, 346–47 (1994) (“Prosecutors may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they can simply decide not to prosecute the offense in its entirety.”); *State v. Langford*, 400 S.C. 421, 436 n.6, 735 S.E.2d 471, 479 n.6 (2012) (stating “[u]ndoubtedly, the solicitor has discretion in choosing how to proceed with a case, including whether to prosecute in the first place and whether he brings it to trial or offers a plea bargain”). Accordingly, counsel cannot be constitutionally ineffective for failing to obtain a particular plea offer. *See State v. Chisolm*, 312 S.C. 235, 237–38, 439 S.E.2d 850, 851–52 (1994) (rejecting the appellant’s contention he was “denied fair and even handed treatment by the solicitor’s office . . . as evidenced by the absence of plea negotiations by the prosecutor” because there is no constitutional right to plea bargain)

Here, this Court finds credible and persuasive the testimony of Mr. Chehoski, who presented well-recalled testimony of his negotiations with the solicitor and is consistent with the record from the plea hearing. Specifically, Mr. Chehoski testified at the PCR hearing that he asked Assistant Solicitor Martin about a fifteen-year plea deal, and she told him “there would not

be *any* offers.” Applicant even admitted that Mr. Chehoski communicated to him the State’s rejection of his request for a fifteen-year sentence. Moreover, Mr. Chehoski acknowledged Applicant’s request for a negotiated sentence on the record during his mitigation presentation. See *Suber v. State*, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007) (noting that “[i]n determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing” (citation omitted)); He stated Assistant Solicitor Martin’s “hands have been tied” because she was “given a directive from her superiors not to make an offer as to a negotiated sentence.” (Plea Tr. 14; R. 14). Mr. Chehoski nonetheless gave an extensive mitigation presentation and concluded his remarks by asking the plea court to consider a fifteen-year sentence. (Plea Tr. 10–15; R. 10–15).

Because plea counsel informed the solicitor Applicant would plead guilty in exchange for a fifteen-year sentence, Applicant’s ineffective assistance claim pertaining to this allegation is **DENIED**.

D. Failure to interview witnesses⁹

As to Applicant’s claim plea counsel provided constitutionally ineffective assistance by failing to interview the victims, alleged witnesses, and co-defendants, this Court finds Applicant failed to overcome the “strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment” in this regard. *Ard*, 372 S.C. at 331, 642 S.E.2d at 596 (citing *Strickland*, 466 U.S. 668). “A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). “[W]hile the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview

⁹ Claims 15–17

potential witnesses and to make an independent investigation of the facts and circumstances of the case.” *Ard*, 372 S.C. at 331–32, 642 S.E.2d at 597 (internal quotation marks omitted) (emphasis omitted).

However, counsel need only interview potential witnesses “when it is reasonable to do so.” *Edwards v. State*, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011); *see id.* at 457, 710 S.E.2d at 64–65 (“While our case law does provide that defense counsel must, at a minimum, interview potential witnesses, a strict adherence to that rule loses sight of the controlling standard for counsel’s duty to investigate: reasonableness. Indeed, it would be an absurdity to require criminal defense lawyers to interview *every* potential witness when they can articulate reasonable grounds not to. When counsel makes such a reasonable decision, he will have fulfilled the duty he owes to his client.”). “In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” *Strickland*, 466 U.S. at 691; *cf. Green v. French*, 143 F.3d 865, 892 (4th Cir. 1998) (“Although counsel should conduct a reasonable investigation into potential defenses, *Strickland* does not impose a constitutional requirement that counsel uncover every scrap of evidence that could conceivably help their client.”), *abrogated on other grounds by Williams v. Taylor*, 529 U.S. 362 (2000).

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel’s duty to investigate. *See Ard*, 372 S.C. at 331, 642 S.E.2d at 597 (“Without a doubt, [a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation.”). “[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation.” *Strickland*, 466 U.S. at 690–91; *see id.* (“In

other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.”). Thus, in applying the *Strickland* standard to a claim of failure to investigate, counsel’s decision not to undertake a particular investigation must be evaluated with heavy deference to counsel’s judgment. *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 63 (Ct. App. 2014).

Applicant contends Mr. Chehoski failed to interview the following individuals: (1) the victims, David Quintana and Alva Valdez; (2) alleged witnesses, Diamond McLamb and Derrick McNeill; (3) and Applicant’s co-defendants, Antonio Johnson and Jahmand McNeill. At the PCR hearing, Mr. Chehoski testified he did not interview any of these individuals. Regarding the co-defendants, he noted that he would not normally attempt to speak with his clients’ co-defendants because they would be represented by counsel, and he would have to get special permission to do so. The only testimony Applicant presented on this claim is that Mr. Chehoski did not interview these witnesses.

This Court finds Applicant failed to meet his burden under *Hill* because he did not present any evidence or testimony from any of these witnesses at the PCR hearing. Our Supreme Court has “repeatedly held a PCR applicant *must produce the testimony* of a favorable witness or *otherwise offer the testimony in accordance with the rules of evidence* at the PCR hearing” in order to prevail on this type of claim. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998); *see, e.g., Clark v. State*, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (holding that “pure conjecture” as to what a witness’s testimony would have been is not sufficient to show a reasonable probability the result at trial would have been different); *Glover v. State*, 318 S.C. 496, 498–99, 458 S.E.2d 538, 540 (1995) (mere speculation as to un-presented witness’ testimony does not satisfy PCR applicant’s burden); *see generally Premo v. Moore*, 562 U.S. 115, 132 (2011) (noting

that “[h]indsight and second guesses are also inappropriate, and often more so, where a plea has been entered without a full trial” because “[t]he plea process brings to the criminal justice system a stability and a certainty that must not be undermined by the prospect of collateral challenges in cases not only where witnesses and evidence have disappeared, but also in cases where witnesses and evidence were not presented in the first place”).

Likewise, this Court will not credit Applicant’s present claim he would have gone to trial absent plea counsel’s allegedly deficient performance when he failed to identify an issue plea counsel missed in preparation of the case or any meritorious defense pertaining to these witnesses that would have helped Applicant’s case or affected his decision to plead guilty. See *Davis v. State*, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997) (“To establish applicant was prejudiced as a result of counsel’s failure to prepare for trial, the applicant must present evidence to show how the discoverable matters or defenses would have resulted in a different outcome.”); *Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009) (noting that to establish prejudice based on failure to investigate or prepare for trial when the applicant enters a guilty plea, he must ordinarily present some evidence “that would have affected counsel’s advice to [him] to accept the plea bargain offered or that would have caused [him] to decline to accept it”).

Based on the foregoing, this Court finds no deficiency in counsel’s failure to interview these witnesses, nor any resulting prejudice. Accordingly, Applicant’s request for relief by way of these allegations is **DENIED**.

E. Failure to object to information presented about co-defendant’s unrelated crime¹⁰

Applicant next contends plea counsel provided constitutionally ineffective assistance by failing to object to the solicitor presenting information to the plea court regarding McNeill

¹⁰ Claims 1 and 7

committing a second burglary the same day as the burglary giving rise to Applicant's charges. This Court disagrees, and finds Applicant failed to meet his burden under *Hill*.

At the PCR hearing, Mr. Chehoski testified that he could not recall the solicitor bringing up McNeill's second burglary; however, he testified the information was irrelevant and could not have prejudiced Applicant because he was not involved in that burglary. The record from the plea hearing supports Mr. Chehoski's conclusion and shows that (1) McNeill's second burglary was discussed in the context of the investigation and events that led to Applicant's arrest, and (2) that it was made abundantly clear Applicant was not involved. (Plea Tr. 8-9; R. 8-9).

Additionally, Applicant neither provided a basis upon which plea counsel could have objected to this information nor demonstrated how he was prejudiced from the solicitor including it in her factual presentation. *See, e.g., Basham v. United States*, 109 F. Supp. 3d 753, 776 (D.S.C. 2013) (noting that "[i]t is axiomatic that if the claim or claims that counsel failed to raise are devoid of legal merit, a defendant suffers no prejudice and cannot establish a claim of ineffective assistance of counsel"), *aff'd*, 789 F.3d 358 (4th Cir. 2015), and *aff'd*, 789 F.3d 358 (4th Cir. 2015); *Carter v. Douma*, 796 F.3d 726, 735 (7th Cir. 2015) (reiterating that counsel's "performance is not deficient[, as element of claim for ineffective assistance,] by failing to make a futile objection"); *see generally Kimmelman v. Morrison*, 477 U.S. 365, 386 (1986) (explaining that only if counsel's acts or omissions, examined within the context of all the surrounding circumstances, were outside the "wide range" of professionally competent assistance, will the petitioner meet this initial burden).

Because the solicitor presenting information to the plea court regarding the co-defendant's second burglary was not improper, this Court finds no deficiency on the part of plea counsel for

failing to object, nor any resulting prejudice. Accordingly, Applicant's request for relief by way of these allegations is **DENIED**.

F. Facts¹¹

Applicant next makes two analogous claims regarding the facts presented at the plea hearing. Specifically, he alleges (1) plea counsel was ineffective for failing to ensure Applicant agreed with the factual basis for the plea as set forth by the solicitor, and (2) his plea was involuntary because the plea court did not make a finding that there was a factual basis for the plea nor did it inquire with Applicant as to whether he agreed with the facts presented by the State. This Court disagrees.

At the PCR hearing, when asked about the solicitor's recitation of the facts at the plea hearing, Mr. Chehoski testified there were no apparent inaccuracies in the solicitor's recitation of the facts, and it appeared that Applicant fully understood the facts. He further stated that Applicant did not indicate to him at any point during the plea proceeding that he disagreed with the facts as presented. Even Applicant failed to identify anything in the factual basis for the plea as set forth by the solicitor that he believed to be inaccurate or insufficient.

Applicant therefore failed to specify how Mr. Chehoski's failing to ensure Applicant agreed with the solicitor's recitation of facts constitutes deficient performance. *See Strickland*, 466 U.S. at 690 (To prove deficient performance, the applicant must "identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment" and 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.). Applicant further failed to demonstrate that, had Mr. Chehoski stopped the plea proceeding to ensure Applicant agreed

¹¹ Claims 2 and 12

with the facts presented, he “would not have pleaded guilty and would have insisted on going to trial.” *Hill*, 474 U.S. at 59.

This Court would further note that Applicant waived his right to challenge the State’s version of facts and sufficiency of the evidence against him when he pleaded guilty and waived his right to a jury trial. *See Whetsell v. State*, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981) (explaining that a plea waives all non-jurisdictional defects and defenses, including challenges to the sufficiency of the evidence and claims of a violation of a constitutional right prior to the plea); *see also United States v. Willis*, 992 F.2d 489, 490 (4th Cir. 1993) (explaining that “a guilty plea constitutes a waiver of all nonjurisdictional defects, including ‘the right to contest the factual merits of the charges’ ” (quoting *United States v. Freed*, 688 F.2d 24, 25 (6th Cir. 1982))); *see Freed*, 688 F.2d at 25 (noting that a guilty plea constitutes “a waiver of all so-called ‘non-jurisdictional defects’ or, more accurately, any claims not logically inconsistent with the issue of factual guilt, as well as the right to contest the factual merits of the charges against him”)

Even though Applicant did not specifically acknowledge the accuracy of the State’s factual presentation, the record demonstrates Applicant did not voice any concerns regarding the accuracy of the facts and plea counsel’s credible testimony establishes that Applicant never indicated to him at any point during the plea proceeding that he disagreed with the facts as presented. *See State v. Rikard*, 371 S.C. 295, 300–01, 638 S.E.2d 72, 75 (Ct. App. 2006) (rejecting the defendant’s argument that the plea “court erred in accepting her plea or refusing to allow her to withdraw her plea” on the grounds that “she did not admit to the facts presented by the State” where she did not raise any objection to the solicitor’s recitation of facts; where she admitted she was guilty of the charged offenses for which she had been apprised of the elements; and because the solicitor provided a sufficient factual basis in the record to support each of the charges even though the

defendant did not specifically acknowledge the accuracy of the State's factual presentation); *LoPiano v. State*, 270 S.C. 563, 569, 243 S.E.2d 448, 451 (1978) ("We are not here concerned with the weight or sufficiency of the evidence to sustain a conviction. By entering a plea of guilty, LoPiano waived his right to attack his conviction on this ground. Since we have determined that LoPiano's plea was entered voluntarily and understandingly, he does not now have the right, in post-conviction proceedings, to attack the plea upon the ground that the facts were insufficient to establish the offense to which he pled.").

Further, Judge Seals' acceptance of Applicant's plea as entered "freely, intelligently, and with the advice of competent counsel," (Plea Tr. 11; R. 11), constitutes a finding that "there is a sufficient factual basis for a conclusion that the defendant committed all of the elements of the offenses." *United States v. Morrow*, 914 F.2d 608, 611 (4th Cir. 1990); *see id.* (finding the district court judge "did not abuse his [wide] discretion in accepting the plea as being supported by sufficient facts" because "the district court need only be subjectively satisfied that there was a factual basis for acceptance of the plea" (citations omitted)); *see also United States v. Mitchell*, 104 F.3d 649, 652 (4th Cir. 1997) (noting that the plea court "need only be subjectively satisfied that there is a sufficient factual basis for a conclusion that the defendant committed all of the elements of the offense" to accept the plea); *Ramey v. State*, 257 S.C. 127, 130, 184 S.E.2d 544, 546 (1971) (rejecting the applicant's attempt on post-conviction relief to attack her plea on ground that the facts were insufficient to establish degree of offense to which she pled because the guilty plea was voluntarily and understandingly entered).

Based on the foregoing, this Court finds no deficiency in counsel's failure to ensure Applicant agreed with the solicitor's recitation of facts, nor any resulting prejudice. This Court further finds the plea court's acceptance of Applicant's plea as knowingly and voluntarily entered

conclusively establishes the elements of the offense and the material facts necessary to support the conviction. Accordingly, Applicant's request for relief by way of these allegations is **DENIED**.

G. Maximum sentence¹²

Applicant next makes two analogous claims pertaining to the lead detective's request following the solicitor's recitation of facts that Applicant receive the maximum sentence allowable. (Plea Tr. 11; R. 11). Specifically, he alleges (1) his plea was involuntary because plea counsel did not tell him the solicitor would ask for the maximum sentence, and (2) that plea counsel should have objected or attempted to withdraw the plea after the detective made the statement. This Court disagrees.

The plea record reflects that Detective Spivey, one of the investigating officers from the Lexington County Sheriff's Department, spoke at the hearing on behalf of the victims and law enforcement. (Plea Tr. 10–11; R. 10–11). He reiterated that the victims were extremely traumatized by the crime, stating Quintana and Valdez recalled one or more of the burglars threatening to harm their children and reminding the plea judge the children were also harmed by the burglars' actions. (Plea Tr. 10–11; R. 10–11). He concluded his remarks by requesting the plea judge give Applicant the maximum possible sentence. (Plea Tr. 11; R. 11).

At the PCR hearing, Applicant testified Mr. Chehoski failed to advise him the State was going to be recommending the maximum sentence, and that it was his understanding the State would not be making a recommendation at all. He further testified that he wanted Mr. Chehoski to object to Detective Spivey's request and ultimately withdraw his plea. However, nothing was presented at the PCR hearing nor is there any indication in the plea record that Applicant attempted to pause the plea proceeding and ask counsel to withdraw his plea. Mr. Chehoski explained that

¹² Claims 3 and 8

Detective Spivey spoke at the hearing only for purposes of providing a victim impact statement.¹³ He therefore did not think to object nor did he see any basis upon which he could have objected because individuals giving victim impact statements are free to say whatever they think is appropriate as long as it is not derogatory. *Cf. Winkler v. State*, 418 S.C. 643, 653, 795 S.E.2d 686, 692 (2016) (explaining that “[o]ne of the key circumstances a court must consider in its examination of counsel’s decision not to make a particular objection is whether there was any law to support the objection”).

When asked whether he advised Applicant that a victim or representative could request the maximum sentence, Mr. Chehoski testified he could not recall exactly what he told Applicant regarding victim impact but that his general practice in serious cases is to advise clients serious victims can generally ask for whatever they want. It further appears from the record that Mr. Chehoski did not know the detective would request the maximum sentence and therefore could not have warned Applicant. Nonetheless, Applicant failed to provide any basis upon which plea counsel could have objected or withdrawn the plea, and the record indicates the State complied with the plea agreement. Specifically, the record is devoid of any statements from Assistant Solicitor Martin regarding sentencing. *Cf. State v. Rikard*, 371 S.C. 295, 302, 638 S.E.2d 72, 76 (Ct. App. 2006) (holding that the plea court did not err in denying the defendant’s request to

¹³ As Mr. Chehoski mentioned, this Court would further note that a victim of any crime committed in South Carolina is guaranteed certain constitutional and statutory rights to justice and due process that “are honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protections afforded criminal defendants[.]” S.C. Code Ann. § 16-3-1505; *see id.* (“[T]he General Assembly declares its intent, in this article, to ensure that all victims of and witnesses to a crime are treated with dignity, respect, courtesy, and sensitivity . . .”). Specifically, Article I, § 24(A)(5) of the South Carolina Constitution provides that “victims of crime have the right to . . . be heard at any proceeding involving a post-arrest release decision, a plea, or sentencing.” Victim impact evidence is “simply another form or method of informing the sentencing authority about the specific harm caused by the crime in question . . .” *Payne v. Tennessee*, 501 U.S. 808, 824–25 (1991).

withdraw her guilty plea where the defendant was pleading “straight up” without any negotiations or recommendations and the State indicated on the sentencing sheet that it would make no recommendation regarding sentencing but then requested that the court impose the maximum sentence).

Moreover, even if plea counsel was somehow deficient in this regard, Applicant failed to demonstrate any resulting prejudice because the plea judge did not acquiesce to the detective’s request. Rather, the plea judge sentenced Applicant within the parameters of the plea agreement and Applicant failed to show that his sentence would have differed if plea counsel had objected to the detective’s statement. Additionally, as discussed in section B, *supra*, Mr. Chehoski gave an extensive mitigation presentation on Applicant’s behalf, noting his lack of criminal history and the fact that he was not armed during the burglary. (Plea Tr. 10–15). He further informed the plea court that Johnson—who Mr. Chehoski asserted was more culpable than Applicant—had already pled and received twenty years. (Plea Tr. 13; R. 13). He then asked the plea court to consider a fifteen-year sentence. (Plea Tr. 15; R. 15).

Based on the foregoing Applicant failed to demonstrate ineffective assistance of counsel pertaining to the detective’s statement. Having failed to show ineffective assistance, Applicant cannot show an involuntary plea attributable to ineffective assistance. Accordingly, Applicant’s request for relief by way of these allegations is **DENIED**.

H. Involuntary guilty plea and coercion¹⁴

Applicant next contends his guilty plea was involuntary because (1) plea counsel coerced him into pleading guilty by informing him he would receive a twenty-year sentence; (2) plea

¹⁴ Claims 9 and 11

counsel failed to properly advise him of the constitutional rights he waived by pleading guilty;¹⁵ and (3) the plea court did not make a specific finding that his guilty plea was voluntarily entered. This Court disagrees and finds the combined record from the plea hearing and the PCR hearing establishes Applicant freely, knowingly, and voluntarily pleaded guilty. *See Harden v. State*, 360 S.C. 405, 409, 602 S.E.2d 48, 50 (2004) (highlighting that “[w]hen examining issues related to a guilty plea, it is appropriate to consider the entire record, including the transcript of the guilty plea, and the evidence presented at the PCR hearing”); *see also Hill*, 474 U.S. at 56 (holding that where “a defendant is represented by counsel during the plea process and enters his plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel’s advice ‘was within the range of competence demanded of attorneys in criminal cases’ ” (quoting *McMann v. Richardson*, 397 U.S. 759, 771 (1970))).

“[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced.” *Reed v. Becka*, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). Because a criminal defendant waives several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Pittman v. State*, 337 S.C. 597, 524 S.E.2d 623 (1999). To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. *Brady v. United States*, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free

¹⁵ Although this claim was not specifically pled, this Court grants Applicant’s request to conform to the evidence presented at the PCR hearing as set forth in his first and second amended applications and finds there was sufficient testimony and evidence presented on this issue that it was implicitly raised. *See Simpson v. Moore*, 367 S.C. 587, 599, 627 S.E.2d 701, 708 (2006), *abrogated on other grounds by Smalls*, 422 S.C. 174, 810 S.E.2d 836; Rule 15(b), SCRPC (pleadings may be amended, even after judgment, to conform to issues tried by express or implied consent but not raised in the original pleadings).

of threats or other coercion that would impermissibly distort the defendant's choice. *Id.* at 755; *see also United States v. Smith*, 440 F.2d 521, 528–529 (7th Cir. 1971) (Stevens, J., dissenting) (explaining that voluntariness relates to the trustworthiness of the admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. *Boykin*, 395 U.S. at 243. Additionally, the defendant "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman*, 337 S.C. at 599, 524 S.E.2d at 624. The defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993). To ensure the defendant understands the consequences of his guilty plea, the plea judge "usually questions the defendant about the facts surrounding the crime and punishment that could be imposed." *Dover v. State*, 304 S.C. 433, 434–35, 405 S.E.2d 391, 392 (1991). However, the plea judge "does not have to direct the defendant's attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea." *Carter v. State*, 329 S.C. 355, 362, 495 S.E.2d 773, 776 (1998).

Moreover, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." *McMann*, 397 U.S. at 770. 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 v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). 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, 458 S.E.2d at 370. 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*, 282 S.C. at 133, 318 S.E.2d at 361.

Nonetheless, 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*, 376 S.C. at 137, 654 S.E.2d at 874 (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977)); see *McMann*, 397 U.S. at 774 (noting the compelling interests in maintaining the finality of guilty-plea convictions validly obtained). Indeed, 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.” *Dalton*, 376 S.C. at 137–38, 654 S.E.2d at 874 (internal citations and quotation marks omitted); cf. *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”).

Here, Applicant testified at the PCR hearing that neither the plea court nor Mr. Chehoski advised him of his constitutional rights. Specifically, he recalled Mr. Chehoski telling him he could go to trial but “that was about it.” He further stated that neither Mr. Chehoski nor the plea court advised him of his right to confront and question witnesses against him at trial. Applicant additionally testified that he was advised of his right to remain silent when he got arrested but not at his plea. He stated that the plea judge asked him if he was guilty but that Applicant “didn’t really give an answer.” Finally, Applicant testified that the plea court did not make a finding that he waived those rights or that his guilty plea was knowingly and voluntarily entered.

This Court finds that Applicant knew the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty in accordance with the requirements of *Boykin* and *Pittman*. Here, the record indicates that all defendants pleading guilty that day were brought before the plea court as a group and advised of their rights. (Plea Tr. 4; R. 4). Judge Seals additionally asked Applicant about his understanding of those rights at the outset of his individual plea proceeding. (Plea Tr. 5; R. 5). Applicant confirmed—under oath—that he understood and wished to these rights and plead guilty. (Plea Tr. 5; R. 5). Applicant additionally told Judge Seals he understood the charges he was pleading guilty to, the charges that were dismissed as part of the plea agreement, and the maximum sentence he could receive. (Plea Tr 4–5; R. 4–5).

In addition to Applicant’s representations to the plea court, this Court finds credible plea counsel’s testimony that he explained to Applicant the constitutional rights he would have at trial, including the ability to confront and cross-examine witnesses against him and call witnesses on his own behalf at trial. As discussed in section B, *supra*, Mr. Chehoski testified that his general practice is to discuss with his clients their constitutional rights several times, especially in a case as serious as Applicant’s. Specifically, his general practice when a client pleads guilty is to go over

as serious as Applicant's. Specifically, his general practice when a client pleads guilty is to go over each constitutional right a final time right before they appear before the plea judge. He additionally testified he would not have allowed Applicant to appear before the plea court that day and plead guilty if he had any doubt regarding Applicant's understanding of these rights.

Further, Applicant's claim that the plea court did not make a specific finding that his guilty plea was knowingly voluntarily entered is directly refuted by the record. When Judge Seals accepted the plea, he expressly found Applicant was "doing so freely, intelligently, and with the advice of competent counsel." (Plea Tr. 11; R. 11). *See United States v. Terry*, 606 F. App'x 712, 713 (4th Cir. 2015) (rejecting the defendant's attempt to "challenge[] his plea on the ground that the district court did not take special care to assure that his plea was knowing and voluntary" where the district court conducted a sufficient colloquy and reiterating that "[a] guilty plea is valid where the defendant voluntarily, knowingly, and intelligently pleads guilty 'with sufficient awareness of the relevant circumstances and likely consequences' " (quoting *Brady*, 397 U.S. at 748)).

Applicant next claims his plea was involuntary and coerced due to plea counsel allegedly promising him he would receive a twenty-year sentence if he pleaded guilty because Johnson was sentenced to twenty years. This Court disagrees, and finds Applicant failed to present any valid reasons why he should be allowed to depart from the truth of the statements he made during the plea proceeding, particularly in light of his contradictory testimony at the PCR hearing regarding his understanding of the plea agreement and what Mr. Chehoski told him about sentencing. *See Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975) (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), *overruled on other grounds by United States v. Whitley*, 759 F.2d 327 (4th Cir. 1985).

Applicant additionally did not allege any facts at the PCR hearing tending to prove he was prevented from informing the plea court that it was his understanding he would receive twenty-year sentence. *See Dalton v. State*, 376 S.C. at 137–38, 654 S.E.2d at 874 (holding that “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” (quotation marks and citations omitted); *Fields*, 956 at 1299 (“Fields presents no evidence that suggests his representations during his plea were untruthful or involuntary, and he is therefore rightly bound by his sworn statements.”).

At the PCR hearing Applicant first testified that Mr. Chehoski promised him he would receive a sentence between twenty and twenty-five years right before his plea. Specifically, he testified that Mr. Chehoski came to see him at the jail a few days before he appeared in court, where he informed him that Johnson had just pleaded guilty and received twenty years. He stated Mr. Chehoski told him he would get the same sentence. However, on cross-examination, Applicant admitted that Mr. Chehoski never promised him he would receive twenty years. Further, “[t]he colloquy establishes that [Applicant] did not have any misconceptions regarding sentencing.” *Roddy v. State*, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000); *cf. United States v. Stephens*, 427 F. Supp. 3d 680, 689 (D.S.C. 2019) “[W]hen a defendant pleads guilty, the court must be able to rely on the defendant’s self-interest and his truthful testimony in deciding to find the defendant guilty based on a guilty plea.”).

Unlike Applicant’s inconsistent testimony, this Court finds credible Mr. Chehoski’s testimony that he made no promises to Applicant regarding sentencing. Rather, he stated he thought Applicant and his co-defendant were similarly situated because neither of them were found with a gun nor had a criminal record. Mr. Chehoski advised the plea court of this information during his

mitigation presentation, which was extensive. (Plea Tr. 11–15; R. 11–15). At the end of his presentation, Mr. Chehoski asked the plea court to sentence Applicant to consider a fifteen-year sentence. (Plea Tr. 15; R. 15). He further filed a motion to reconsider sentence on Applicant’s behalf, which was denied without a hearing. (R. 17–22).

This Court further finds Applicant’s claim of coercion is wholly without merit, particularly in light of his solemn declarations on the record at the plea hearing that no one promised him anything to get him to plead guilty or threatened him in any way. (Plea Tr. 5; R. 5). While Applicant now claims he was coerced by his attorney into entering into a guilty plea, he made it clear to the plea court that the decision to plead guilty was his own. *See United States v. Morrow*, 914 F.2d 608, 613 (4th Cir. 1990) (rejecting Morrow’s post-plea claims that his plea was involuntary and coerced where he affirmed to the plea court under oath that no one “had threatened, persuaded, or induced Morrow into pleading guilty” because “[w]hile not . . . an insurmountable barrier to a defendant who claims that his plea was coerced, such declarations made in open court carry a strong presumption of veracity” (citing *Blackledge*, 431 U.S. at 74–75); *see generally North Carolina v. Alford*, 400 U.S. 25, 31 (1970) (explaining that 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”); *cf. Brady*, 397 U.S. at 751 (declining to hold a guilty plea compelled and invalid “whenever motivated by the defendant’s desire to accept the certainty or probability of a lesser penalty rather than face a wider range of possibilities extending from acquittal to conviction and a higher penalty authorized by law for the crime charged”).

“Courts naturally look with a jaundiced eye upon any defendant who seeks to withdraw a guilty plea after sentencing on the ground that he expected a lighter sentence.” *United States v. Crusco*, 536 F.2d 21, 24 (3d Cir. 1976); *see Daniel v. Cockrell*, 283 F.3d 697, 703 (5th Cir. 2002)

(absent a showing of force of threat by some other actor, the “guilty plea is not rendered involuntary by the defendant’s mere subjective understanding that [he] would receive a lesser sentence . . .”); *McMann*, 397 U.S. at 774 (noting the compelling interests in maintaining the finality of guilty plea convictions validly obtained). In *Brady*, the United States Supreme Court explained:

Often the decision to plead guilty is heavily influenced by the defendant’s appraisal of the prosecution’s case against him and by the apparent likelihood of securing leniency should a guilty plea be offered and accepted. Considerations like these frequently present imponderable questions for which there are no certain answers; judgments may be made that in the light of later events seem improvident, although they were perfectly sensible at the time. The rule that a plea must be intelligently made to be valid does not require that a plea be vulnerable to later attack if the defendant did not correctly assess every relevant factor entering into his decision. A defendant is not entitled to withdraw his plea merely because he discovers long after the plea has been accepted that his calculus misapprehended the quality of the State’s case or the likely penalties attached to alternative courses of action.

Id. at 756–57.

The fact that Mr. Chehoski advised Applicant there was a *possibility* he would receive a twenty-year sentence does not render Applicant’s guilty plea invalid, especially given Applicant’s acknowledgment on the record that he knew the sentencing range and that no recommendations were being made by the State. *See generally Wolfe*, 326 S.C. 158, 485 S.E.2d 367 (holding the guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge).

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*, 137 S. Ct. at 1967; *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.’”). Based on the foregoing, this Court finds Applicant’s plea was freely, knowingly, and voluntarily entered. Accordingly, Applicant’s requests for relief on the grounds that his plea was involuntary are **DENIED**.

I. Conflict of interest¹⁶

Finally, Applicant contends he was denied effective assistance of counsel due to an alleged conflict of interest based on Applicant’s counsel and his co-defendant’s counsel working in the same public defender’s office. Although Applicant admitted at the PCR hearing that he never asked Mr. Chehoski about this alleged conflict, he stated he believes it prevented plea counsel from providing effective assistance. He claims Mr. Chehoski should have asked the court to appoint a private attorney to represent him. This Court disagrees.

A “criminal defendant’s Sixth Amendment right to effective assistance of counsel includes a right to counsel “unhindered by a conflict of interest.” *Gonzales v. State*, 419 S.C. 2, 9, 795 S.E.2d 835, 839 (2017) (citation omitted)), *abrogated on other grounds by Smalls*, 422 S.C. 174, 810 S.E.2d 836. “An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendant’s.” *Staggs v. State*, 372 S.C. 549, 551, 643 S.E.2d 690, 692 (2007). In order to demonstrate a violation of his Sixth Amendment rights, “the defendant [must] demonstrate[] that counsel ‘actively represented conflicting interests’ and that ‘an actual conflict of interest adversely affected his lawyer’s performance.’ ” *Strickland*, 466 U.S. at 692 (quoting *Cuyler v. Sullivan*, 446 U.S. 335, 348–50 (1980)).

The United States Supreme Court reiterated in *Mickens v. Taylor* that an “actual conflict,” for Sixth Amendment purposes, is a “conflict that [adversely] *affected counsel’s performance*—as opposed to a mere theoretical division of loyalties.” 535 U.S. 162, 171 (2002). In other words,

¹⁶ Claims 4 and 10

“[t]he mere possibility defense counsel may have a conflict of interest is insufficient to impugn a criminal conviction,” *State v. Gregory*, 364 S.C. 150, 152–53, 612 S.E.2d 449, 450 (2005), and an actual conflict of interest does not arise from an irrelevant or “hypothetical conflict having no effect on trial counsel’s representation . . .” *United States v. Taylor*, 139 F.3d 924, 931 (D.C. Cir. 1998). This Court would further note that “the fact that counsel does not advise a defendant of the potential conflict of interest does not affect the constitutionality of the conviction,” *Jackson v. State*, 329 S.C. 345, 355, 495 S.E.2d 768, 773 (1998), and the “Rules of Professional Conduct have no bearing on the constitutionality of a criminal conviction.” *Langford v. State*, 310 S.C. 357, 360, 426 S.E.2d 793, 795 (1993).

This Court finds Applicant failed to establish any actual conflict of interest arose from plea counsel’s representation of him while Assistant Public Defender David Mauldin represented McNeill. *See Jordan v. State*, 406 S.C. 443, 449, 752 S.E.2d 538, 541 (2013) (reiterating that “until a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for his claim of ineffective assistance” (internal quotations marks and citations omitted))). Mr. Chehoski testified at the PCR hearing that attorneys in their office routinely represent co-defendants. He nonetheless brought the potential conflict of interest to the attention of Robert Madsen, the Chief Public Defender for the Eleventh Judicial Circuit. Mr. Madsen told him it would not be an issue as long as Mr. Chehoski and Mr. Mauldin were assigned different support staff. Mr. Chehoski confirmed that was the general office policy when attorneys in their office represent co-defendants, although the office has a new policy in place where, if multiple co-defendants are facing a sentence of twenty years or more, the office will take on the representation of the most culpable co-defendant and the rest are assigned out to attorneys on the contract list. However, this policy was not in place at the time he represented Applicant.

While a potential conflict of interest may have existed based on Mr. Chehoski and Mr. Mauldin working in the same public defender's office, this Court finds it never ripened into an actual conflict. *See United States v. Gantt*, 140 F.3d 249, 254 (D.C. Cir. 1998) (explaining that the "adverse effect" element of the *Cuyler* test requires the defendant "to demonstrate that the conflict had some negative effect upon his defense (defined as an actual lapse in representation)" (internal quotations marks and citations omitted)). Mr. Chehoski credibly testified that, although he could not specifically recall having a conversation with Mr. Mauldin, they would not have discussed the case in depth. Mr. Chehoski further reiterated that Mr. Mauldin's representation of McNeill did not influence his representation of Applicant, and Applicant could not point to an actual conflict. Additionally, nothing in the record suggests the potential conflict caused Mr. Chehoski to treat Applicant's case in such a manner as to obtain more favorable consideration for McNeill or that it otherwise negatively affected his representation of Applicant.

Based on the foregoing, this Court finds the fact that Applicant's counsel and his co-defendant's counsel worked in the same public defender's office did not create an actual conflict of interest. Accordingly, Applicant's ineffective assistance claims pertaining to this allegation is **DENIED**.

VII. CONCLUSION

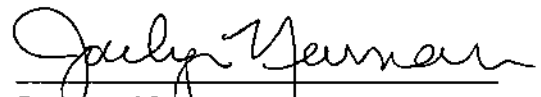
For all the foregoing reasons, this Court finds Applicant has failed to meet his burden of proof as to any of the allegations advanced in this post-conviction relief action and has not established any constitutional violations or deprivations entitling him to post-conviction relief. Therefore, this Court denies relief on all grounds and dismisses this post-conviction relief action with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 5th day of December, 2023.



JOCELYN NEWMAN
Presiding Circuit Court Judge
Eleventh Judicial Circuit

Columbia, South Carolina