NOTICE OF APPEAL FROM COMMON PLEAS REGARDING A

POST CONVICTION RELIEF

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Feb 21 2024

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM LEXINGTON COUNTY

Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

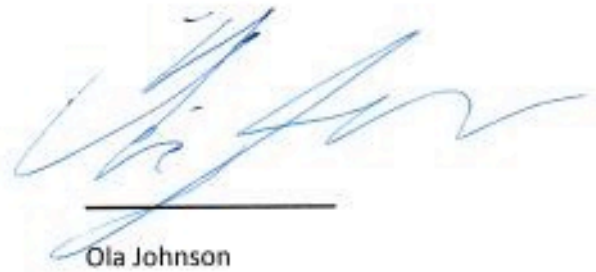
Case No. 2020-CP-32-03091

The State,.....Respondent,

Kevin L. Pearson,.....Appellant,

Notice of Appeal

Kevin L. Pearson appeals the order of the Honorable Jocelyn Newman, dated October 24, 2022, which denied his application for Post-Conviction Relief with prejudice. Appellant received written notice of the order on January 31, 2024.



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STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)	IN THE COURT OF COMMON PLEAS FOR THE ELVENTH JUDICIAL CIRCUIT
Kevin Lawrence Pearson, SCDC #344570,	)	Case No. 2020-CP-32-3091
Applicant,	)	
v.	)	**ORDER OF DISMISSAL**
State of South Carolina,	)	
Respondent.	)	

I. INTRODUCTION

This matter comes before this Court by way of a post-conviction relief (PCR) action commenced by Kevin Lawrence Pearson (Applicant) on November 20, 2020, alleging he is entitled to post-conviction relief based on constitutionally ineffective assistance of counsel and involuntary guilty plea. A hearing into the matter convened before the undersigned on June 8, 2022, at the Lexington County Judicial Center. Applicant was present at the hearing and represented by Ola A. Johnson. Assistant Attorney General Lillian L. Meadows represented the State. Applicant testified on his own behalf at the hearing, as did his plea counsel, David M. Mauldin.

In addition to the pleadings in this action, this Court had before it a copy of the Lexington County Clerk of Court records regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the plea transcript.

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to post-conviction relief. 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 June 22, 2018, following an investigation into the shooting death of Rodney Isaac, which occurred approximately sixteen months prior. During its August 2019 term, the Lexington County Grand Jury indicted Applicant for murder (2019-GS-32-2886).

On November 21–22, 2019, Applicant appeared before the Honorable Frank R. Addy, Jr., and pleaded guilty to lesser-included offense of voluntary manslaughter. David Mauldin (Counsel) represented Applicant and Assistant Solicitor Sutania Fuller prosecuted the case. Pursuant to negotiations entered into between Applicant and the State, Judge Addy sentenced Applicant to twenty-five years' imprisonment. Applicant did not appeal his plea or sentence.

III. SUMMARY OF FACTS

On February 8, 2017, at approximately 11:17 AM, law enforcement received a 911 call regarding a shooting. (Plea Tr. 13). The caller reported that the suspect was driving a Honda Accord and provided the tag number. (Plea Tr. 13–14). The caller also reported that a dog was in the vehicle. The tag came back registered to Applicant's sister. (Plea Tr. 14).

When law enforcement questioned the sister, she indicated her brother had just dropped off the dog and car. (Plea Tr. 14, 24). She stated that Applicant told her he "had done something bad." (Plea Tr. 14). Applicant's mother also told law enforcement that he left that morning with the dog in her daughter's car. (Plea Tr. 14, 24). An eyewitness later identified Applicant as the individual who shot Rodney Isaac at 3020 Princeton Road in West Columbia. (Plea Tr. 14).

Review of Applicant's cell phone and Facebook records indicate that Applicant believed Rodney was involved in a drive-by shooting where Applicant was shot in the throat. (Plea Tr. 24).

Because Applicant was unable to talk at the time, he sent messages while he was in the hospital putting hits out on Rodney. (Plea Tr. 24). Some of the text messages had Rodney's name listed and his grandmother's address. (Plea Tr. 24). Rodney stayed at his grandmother's house the night before he died. (Plea Tr. 24). Applicant is a validated gang member. (Plea Tr. 25). Law enforcement recovered multiple incriminating text messages. (Plea Tr. 25–26). Applicant was also on the run for approximately sixteen months after the shooting. (Plea Tr. 26).

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):

1. "Violation of 6th amendment"
    a. "Strickland vs. Washington"
2. "Violation of 14th amendment"
    a. "Strickland vs. Washington"
3. "Involuntary guilty plea"
    a. "Boykin v. Alabama"

The State requested an evidentiary hearing through its return on June 16, 2021. On March 25, 2022, PCR counsel amended the application pursuant to Rule 71.1, SCRCP, to include the following allegations:

1. "Applicant's counsel, David Mauldin, failed to meet with applicant a sufficient number of times to properly review the evidence, discuss the case with Applicant, and gave Applicant part of discovery one week before the plea."
2. "Applicant's counsel, David Mauldin, failed to properly investigate the case and did not have a private investigator work on the case."
3. "Applicant's counsel, David Mauldin, failed to file an appeal after the Applicant requested this during a conversation with Counsel the day of the plea"
4. "Applicant was coerced into entering a guilty plea after the presiding judge informed Applicant he couldn't get a better off if he retained somebody else to represent him (P. 19, Line 8-11), after Applicant requested a hearing to have counsel relieved (P. 5).

5. Judge Addy informed Applicant he could not get a better offer if he retained somebody else to represent him (Plea Tr. 19) after Applicant requested a hearing to have counsel relieved (Plea Tr. 5).

V. STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act[1] (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based upon the following types of allegations:

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

S.C. Code Ann. § 17-27-20(A).

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

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

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 v. State*, 422 S.C. 174, 188, 810 S.E.2d 836, 843 (2018). 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 defendant's decisionmaking" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. *Lee v. United States*, 582 U.S. ___, ___, 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. Judges must "look to contemporaneous evidence to substantiate a defendant's expressed preferences." *Lee*, 582 U.S. at ___, 137 S. Ct. at 1967. 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).

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

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in this action incorporated by way of the State's return, this Court proceeds to the claims of ineffective assistance of counsel and involuntary guilty plea and finds each to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

A. Failure to Review Discovery

Applicant first contends Counsel was constitutionally ineffective for failing to meet with him a sufficient number of times to review the evidence and discuss his case. Applicant further claims Counsel gave Applicant part of his discovery one week prior to his guilty plea. At the PCR hearing, Applicant testified Counsel met with him approximately five times to review discovery. Applicant further testified Counsel gave him copies of the paper discovery twice—once a few months prior to the plea and once approximately a week before the plea. However, Applicant stated Counsel never reviewed the audio or video recordings with him.

Counsel testified he was appointed to represent Applicant in late August or early September of 2018, and he met with Applicant at least eleven times between then and November 2019.[2] During these meetings, Counsel testified he extensively reviewed all evidence and discovery with Applicant as he received it. He further stated that his general practice is to send his clients copies of all paper discovery. Specifically, Counsel testified his paralegal sent Applicant between five hundred and six hundred pages of discovery on September 27, 2018. He further explained that most of the evidence was summarized in the police report, but that discovery was otherwise slowly "tricking in." Regarding the discovery Applicant stated Counsel gave him only a week before his plea, Counsel testified that Applicant was referring to a PowerPoint presentation he received from the solicitor with the text messages and other evidence recovered from Applicant's phone. He explained that all of the information in the PowerPoint had already been provided in discovery and

[2] Specifically, Counsel's notes indicate he met with Applicant on the following dates: September 10, 2018; October 24, 2018; November 21, 2018; November 26, 2018; May 17, 2019; June 6, 2019; October 30, 2019; November 1, 2019; November 7, 2019; November 14, 2019; and November 21, 2019.

that Counsel gave written summaries of these records to Applicant and went over them during their meetings.

Regarding Applicant's claim that Counsel failed to sufficiently review the discovery with him, this Court finds Applicant failed to establish counsel provided constitutionally ineffective assistance under either prong of *Hill*. This Court finds credible and persuasive Counsel's demonstrated recollection of the evidence produced by the State and the dates he met with Applicant. Applicant's own testimony, although predominantly incredible, establishes Counsel gave him copies of his discovery and reviewed it with him at least five times prior to plea. Although Applicant believes Counsel did not spend enough time discussing the discovery with him, "[t]he brevity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation." *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012).

Counsel credibly testified that the only piece of discovery Applicant received several days before his plea was a PowerPoint that consisted of information Counsel already provided to Applicant and discussed with him. Applicant otherwise failed to identify precisely what Counsel did not explain or disclose to him from materials provided in discovery, or what, if anything, could have been achieved had Counsel spent more time with him in consultation regarding the contents of his discovery. *See id.* at 500–01, 745 S.E.2d at 382 (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).

Further, Judge Addy specifically advised Applicant that by pleading guilty, he would waive his ability to challenge the State's evidence against him. (Plea Tr. 17). Applicant indicated he understood and wished to waive that right in order to plead guilty. (Plea Tr. 17–18). *See Dalton v.*

State, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (Ct. App. 2007) ("[S]tatements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements.").

Accordingly, Applicant's allegation pertaining to Counsel's failure to adequately meet with Applicant to review discovery is **DENIED.**

B. Failure to Investigate

Applicant next contends Counsel was constitutionally ineffective for failing to properly investigate the facts and circumstances of his case. Specifically, Applicant claims Counsel should have hired a private investigator. At the PCR hearing, Applicant testified Counsel never had a private investigator interview him nor any witnesses. Applicant stated he asked Counsel to interview a witness named John. Counsel testified that John was the name of the witness who identified Applicant in the photo lineup. However, he could not recall Applicant providing him with the names of any witnesses to interview. Counsel further testified he did not have an investigator meet with Applicant because he did not believe it would be helpful in this case.

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland*, 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 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). Essentially, trial "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).

This Court finds Applicant failed to present any evidence demonstrating how a more thorough investigation would have helped Applicant's case. While Applicant stated he believes Counsel should have interviewed the witness who identified him in the photo lineup, Applicant cannot meet his burden because he did not present any evidence or testimony from that witness or

any other favorable witness at the PCR hearing. *See Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (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 establish prejudice from the witness' failure to testify at trial); *see also 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); *Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993) (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).

Likewise, this Court will not credit Applicant's present claim he would have gone to trial absent Counsel's allegedly deficient performance when he failed to present evidence of any defense strategy or investigatory matter which would have helped Applicant's case or affected his decision to plead guilty. *See Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (holding trial counsel's failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); *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"). Counsel credibly testified that he did not believe an investigator would be helpful in this case in light of his conversations with Applicant and review of the evidence. Applicant failed to demonstrate an investigator was needed or that further investigation would have produced additional evidence that would have had a favorable impact on the outcome of the case.

Accordingly, Applicant's claim pertaining to Counsel's failure to adequately investigate his case is **DENIED.**

C. Failure to File an Appeal

Applicant next contends Counsel was constitutionally ineffective for failing to file a notice of appeal on his behalf. At the PCR hearing, Applicant testified he spoke with Counsel about filing an appeal before his plea hearing. He stated that he asked Counsel to file an appeal, and Counsel agreed. However, Applicant testified Counsel did not follow his instructions to file an appeal.

Counsel testified he only files a notice of appeal when asked to do so by his client, particularly when the client enters a negotiated guilty plea. However, when a client does ask him to file an appeal, he always notes the client's request by conspicuously marking the front of the file and giving it to his paralegal to ensure the appeal is timely filed. During the hearing, Counsel held up his file to show that it was not marked. Counsel was adamant that Applicant did not request an appeal. Counsel further testified he saw no factual or legal basis to appeal the plea.

In light of Counsel's credible testimony and detailed notes regarding his discussions with Applicant, coupled with his established practice for clients who request an appeal, this Court finds no deficiency in Counsel's failure to file a notice of appeal on Applicant's behalf. Applicant further failed to identify any factual or legal issue that could have been successfully raised on appeal. This Court finds Counsel's assessment that nothing occurred during the plea hearing that would give him any reason to think Applicant wished to appeal is consistent with the record. Accordingly, Applicant's claim pertaining to Counsel's alleged failure to file an appeal is **DENIED.**

D. Coerced Plea

Finally, Applicant contends he was coerced into entering a guilty plea after Judge Addy informed Applicant he would not receive a more favorable plea offer if he retained another attorney

to represent him. This Court disagrees, and finds the combined record from the plea hearing and the PCR hearing establishes Applicant freely, knowingly, and voluntarily pleaded guilty.

At the PCR hearing, Applicant testified he asked Counsel Mauldin before the plea hearing about a twenty-two to thirty-year offer that was made several months prior to the plea. Counsel testified Assistant Solicitor Fuller never made such an offer. Rather, she made a twenty-five to thirty-year offer originally. At that time, Applicant recognized the evidence against him was strong; however, he would not accept the offer. He told Counsel he would accept a fifteen to twenty-year offer. Counsel testified he made the counteroffer at Applicant's request but Assistant Solicitor Fuller rejected it. However, she made a twenty-five-year offer at that time. When Counsel informed Applicant of that offer a week prior to the November 21, 2019 hearing, he told Counsel he needed time to think about it. Assistant Solicitor Fuller gave Applicant an additional day to decide. Counsel then dropped off a letter at the jail informing Applicant that he would be brought to the courthouse on the 21st to either accept or reject the offer. (Plea Tr. 5).

Counsel testified that he spoke with Applicant when he arrived at the courthouse on the day of the plea. At that time, Counsel testified Applicant wanted to relieve him because Applicant was not happy with the plea offer. Applicant believed the sentence was too long. However, Counsel stated that Applicant understood that the only alternative was to go to trial on the murder charge. Counsel therefore believed it was in Applicant's best interest to accept the twenty-five-year offer. *See Tollett v. Henderson,* 411 U.S. 258, 268 (1973) (explaining that the prospect of plea bargaining, the expectation or hope of a lesser sentence, or the convincing nature of the evidence against the accused are considerations that might well suggest the advisability of a guilty plea).

At the outset of the November 21, 2019, hearing, Assistant Solicitor Sutania Fuller stated:

> MS. FULLER: Kevin Pearson. Your Honor, we had come before you previously to place an offer and revocation on the record. After

> that moment, you indicated we weren't too far away. Defense counsel and I engaged in further conversations and we agreed on a negotiated plea to 25 years on voluntary manslaughter. That was slated for schedule today at 3:00. The victims were present. At that point I was told that the defendant has changed his mind again and is now rejecting that plea offer and wishes to fire his attorney. So we are here to, at his request to put this on the record and he wishes to be heard. I'm not sure if there's any valid grounds for relief of counsel at this point.

(Plea Tr. 3). She then advised Judge Addy that she had been working with Counsel to come to a resolution. She further stated:

> MS. FULLER: And at this point there's nothing more I can do. I can tell him now whoever he hires, there is no offer less than murder so it was good through today. I don't like wasting victims' time. I don't like wasting court time. And I don't like defendants who play with the system. So that is where we are and I know he wishes to be heard.

(Plea Tr. 4). Judge Addy then questioned Counsel about the situation. (Plea Tr. 4–5). Counsel stated at that time that he had discussed the plea offers with Applicant the week prior. (Plea Tr. 5). Applicant told Counsel he did not wish to accept the offer and wished to have Counsel relieved. (Plea Tr. 5). Judge Addy then asked Applicant about his understanding of the plea offer, whether he wished to reject it, and advised him that his only other option would be a jury trial. (Plea Tr. 5–7). Counsel further confirmed that he had discussed these matters with Applicant, including the risks and benefits of accepting the plea offer and going to trial. (Plea Tr. 7). At that point, Applicant advised Judge Addy that he wished to accept the twenty-five-year negotiated plea offer. (Plea Tr. 7). Judge Addy then conducted a thorough plea colloquy with both Counsel and Applicant.[3]

[3] Counsel confirmed that he explained to Applicant the charge against him, possible sentences, his constitutional rights, and the terms of the plea offer. (Plea Tr. 9–11). After Applicant confirmed his intention to plead guilty, Judge Addy explained several concepts to Applicant. He first explained that voluntary manslaughter is classified as a "no parole offense," meaning Applicant would be required to serve at least eighty-five percent of the twenty-five-year sentence and that he would not be eligible for parole. (Plea Tr. 11–12). He then noted that Applicant was pleading to a "most serious" offense under South Carolina law and that the State could seek a life without parole sentence should Applicant be convicted of a second most serious offense. (Plea Tr. 12). Finally,

At the PCR hearing, Applicant testified he felt coerced into pleading guilty when Judge Addy made the following statement at the end of the plea colloquy:

> THE COURT: I understand that we started this off with maybe some discord between you and Mr. Mauldin and you were looking to have him fired. I'll tell you that typically I do not relieve counsel if they've been appointed. If you wanted to retain somebody else, that might be your business, but it would not delay the resolution of this case and obviously wouldn't result in a better offer from what the Solicitor is telling us so I realize that maybe you and Mr. Mauldin may have disagreed at times about this case, but are you satisfied with the way he's represented you?
>
> KEVIN PEARSON: Yes, sir.

(Plea Tr. 19).

Applicant testified he was not satisfied with Counsel even though he told Judge Addy he was. He stated he felt coerced when Judge Addy told him he would not get a better plea offer because he wanted a new attorney and believes Judge Addy denied him his right to have an attorney that would represent him properly. He further testified that he did not have a choice because Judge Addy told him he could take the twenty-five-year sentence or he would get thirty years. Applicant then stated Counsel should have attempted to withdraw the plea after Judge Addy said he would not receive a better offer.

Counsel testified he did not move to withdraw the plea at that time because Applicant did not express any concern or indicate he wanted to withdraw the plea after Judge Addy made the

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Judge Addy advised Applicant that voluntary manslaughter is classified as a "violent" offense. (Plea Tr. 13). Applicant confirmed that he understood all of these concepts, that he was not under the influence of any medications or alcohol, that he did not suffer from any mental illness, and that he was guilty of voluntary manslaughter. (Plea Tr. 11–13). After a factual recitation from the solicitor, Applicant admitted he committed the conduct alleged. (Plea Tr. 13–14). Judge Addy next thoroughly explained to Applicant the constitutional rights he would be waiving by pleading guilty. (Plea Tr. 14–18). He advised Applicant that he was entitled to a jury trial, at which time it would be the State's burden to convince a jury of his guilt beyond a reasonable doubt and he could challenge the State's evidence, put up evidence of his own, and testify in his defense if he so desired. (Plea Tr. 15–18). Applicant confirmed that he understood and wished to waive these rights and plead guilty. (Plea Tr. 19).

above statement. Counsel further stated that Judge Addy was merely repeating what the solicitor advised the Court at the beginning of the hearing. This Court agrees with Counsel's assessment based in part on Counsel's credible testimony and experience working with Assistant Solicitor Fuller. He testified that she sticks with her offers and is not afraid to take cases to trial. Counsel therefore had no reason to think she would make a better offer. This Court again agrees with Counsel's assessment, particularly in light of Assistant Solicitor Fuller's statement on the record at the beginning of the hearing that the twenty-five-year voluntary manslaughter offer would expire if Applicant did not accept it that day. (Plea Tr. 3–4). In fact, she stated there would be "no offer less than murder" on the table after that time regardless of who Applicant retained to represent him. (Plea Tr. 4).

This Court further finds Applicant's claim of coercion is wholly without merit, particularly in light of the following exchange between Applicant and Judge Addy that occurred immediately after the allegedly coercive statement:

> THE COURT: [Counsel has] talked to you enough? You understood all your conversations with him?
>
> KEVIN PEARSON: Yes, sir.
>
> THE COURT: Do you have any other complaints to make against Mr. Mauldin other than you couldn't get a better deal?
>
> KEVIN PEARSON: No, sir.
>
> THE COURT: And do you have any complaints to make against the Solicitor's Office, law enforcement, court personnel or anyone involved in this case?
>
> KEVIN PEARSON: No, sir.
>
> THE COURT: Aside from the 25 year sentence has anyone promised you anything else or held out any other hope of reward to get you to plead guilty?
>
> KEVIN PEARSON: No, sir.
>
> THE COURT: Anyone try to threaten you, force you, coerce you in any way to get you to plead guilty?
>
> KEVIN PEARSON: No, sir.

THE COURT: You're pleading guilty of your own free will then?

KEVIN PEARSON: Yes, sir.

THE COURT: Have you understood all of my questions?

KEVIN PEARSON: Yes, sir.

THE COURT: Is there anything that you want to ask me about anything that we have gone over?

KEVIN PEARSON: No, sir.

THE COURT: You have understood everything we have talked about?

KEVIN PEARSON: Yes, sir.

THE COURT: You're sure you want to do this, correct?

KEVIN PEARSON: Yes, sir.

(Plea Tr. 19–20). Although Applicant testified at the PCR hearing that he only answered those questions the way he did because he "felt defeated" and "did not think [he] had any other choice," he made it clear to the plea court that the decision to plead guilty was his own. *See 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"); *but see United States v. Cox*, 464 F.2d 937, 942 (6th Cir. 1972) (noting that 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." (citing *Brady v. United States*, 397 U.S. 742, 748 (1970)).

This Court finds the plea transcript reflects Applicant understood the proceedings, interacted intelligently with the plea court, and entered his guilty plea knowingly and voluntarily. *Cf. Wolfe v. State*, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997) (noting that counsel's statement to defendant that the plea court's "questions are 'routine' is not an invitation to answer them untruthfully, nor does it constitute a reason to believe the questions and statements of the judge during a guilty plea proceeding mean nothing"); *Fields v. Gibson*, 277 F.3d 1203, 1214 (10th Cir.

2002) (In the course of emphasizing the importance of plea colloquies, the Court stated that "[t]his colloquy between a judge and a defendant before accepting a guilty plea is not *pro forma* and without legal significance. Rather, it is an important safeguard that protects defendants from incompetent counsel or misunderstandings").

. Applicant failed to present any valid reason why he should be allowed to depart from the truth of the above statements made during his plea proceeding. *See Dalton v. State*, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (Ct. App. 2007) (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." (internal citations and quotation marks omitted)); *accord. 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); *cf. Blackledge v. Allison*, 431 U.S. 63, 73–74 (1977) (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"); *McMann v. Richardson*, 397 U.S. 759, 774 (1970) (noting the compelling interests in maintaining the finality of guilty-plea convictions validly obtained).

Based on the evidence presented at the PCR hearing and the record of the plea proceeding, this Court finds Applicant's plea was freely, knowingly, and voluntarily entered. Accordingly, Applicant's request for relief by way of this allegation is **DENIED.**

VII. ALL OTHER ALLEGATIONS

As to any and all allegations raised in the application or at the hearing in this matter and not specifically addressed in this order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds those claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice. S.C. Code Ann. § 17-27-90.

VIII. CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. This Court finds Applicant freely, knowingly, and voluntarily pleaded guilty and further failed to present any justification as to why the statements he made during the guilty plea hearing should not be considered conclusive. Therefore, this Court denies relief on all allegations and dismisses this PCR 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 post-conviction relief. Rule 71.1(g), SCRCP, 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 24th day of October, 2022.

Jocelyn Newman

JOCELYN NEWMAN
Presiding Circuit Court Judge
Eleventh Judicial Circuit

Columbia, South Carolina