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**MAR 28 2024**

**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas  
Post Conviction Relief

George McFaddin, Circuit Court Judge

Lower Court Case No.: 2020-CP-32-4043

Bobby George Sightler #360696,..... Petitioner

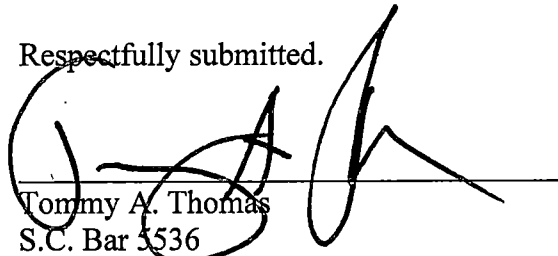
vs.

State of South Carolina, .....Respondent.

NOTICE OF APPEAL

The Petitioner, Bobby George Sightler #360696, appeals the Order of Dismissal signed by the Honorable George McFaddin on March 6, 2024 and filed on March 14, 2024. Appellant received written notice of this order on March 14, 2024.

Respectfully submitted.



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March 27, 2024

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

IN THE COURT OF COMMON PLEAS  
FOR THE ELEVENTH JUDICIAL CIRCUIT

**RECEIVED**

Bobby George Sightler, SCDC #360696, )  
Applicant, )  
v. )  
State of South Carolina, )  
Respondent. )

Case No. 2020-CP-32-4043

MAR 28 2024

S.C. SUPREME COURT

ORDER OF DISMISSAL

LISA M. COOPER  
CLERK OF COURT  
LEXINGTON SC

MAR 14 AM 9:06

FILED

This matter comes before this Court by way of Applicant Bobby George Sightler's Application for Post-Conviction Relief and Amendment to Application for Post-Conviction Relief filed December 7, 2020 and September 29, 2022, challenging his decision to plead guilty to attempted armed robbery and failure to stop for an officer in Lexington County, South Carolina. Applicant's Application and Amended Application allege "involuntary guilty plea" and "ineffective assistance of counsel" as the grounds for the Applications. An evidentiary hearing on this action was convened October 12, 2022 before this Court. Applicant appeared at the proceeding with his counsel, Tommy A. Thomas. Respondent State of South Carolina was represented by Taylor Smith of the South Carolina Attorney General's Office. Applicant proceeded forward on the claims raised in his Application and Amended Application. This Court heard testimony from Applicant and his former trial counsel, Derrick Mobley ("Counsel").

Following a review of the record, including the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice. Specific findings of fact and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 are set forth below:

## I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Lexington County Clerk of Court. Applicant was arrested on August 3, 2018, following an investigation into an armed robbery involving Applicant and two co-defendants, Laklyn Register and Joseph Lyons. On July 24, 2019, Applicant appeared before the Honorable Walton J. McLeod, IV, waived presentment to the grand jury, and pleaded guilty to attempted armed robbery (2019-GS-32-2713) and failure to stop for a blue light (2019-GS-32-2714).<sup>1</sup> Derek Mobley, Esquire (“Counsel”) represented Applicant and Assistant Solicitor Sutania Fuller prosecuted the case. In accordance with the negotiated sentencing range of seven to fifteen years, Judge McLeod sentenced Applicant to concurrent terms of fifteen years’ imprisonment for armed robbery and three years for failure to stop for a blue light. Applicant did not appeal his plea or sentences.

## II. FACTUAL HISTORY

On August 9, 2018, David Maples (“Victim”) called 911 to report he had been robbed at America’s Best Value Inn in West Columbia. (Plea Transcript (hereafter “Tr.”), pp. 10–11). He stated that his cousin’s ex-girlfriend, Laklyn Register, contacted him about getting a hotel room. (Tr. p. 11). He told her he could get a room and that he already had some drugs with him. (Tr. p. 12). At some point, the Victim had to leave the motel to withdraw funds for a construction job. (Tr. p. 11). When he returned to the room, a man who was later identified as Applicant came around the corner and put a gun to the back of his head. (Tr. pp. 11–12). Applicant demanded the

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<sup>1</sup> Applicant was originally charged with armed robbery, kidnapping, criminal conspiracy, grand larceny, first-degree assault and battery, possession of a stolen vehicle, possession of a weapon during the commission of a violent crime, receiving stolen goods, and failure to stop for a blue light. (Tr. pp. 4–5). The companion charges were *nolle prossed* in exchange for Applicant’s plea. (Tr. p. 5).

Victim give him his keys, phone, and wallet, or he would blow his brains out. (Tr. p. 12). Applicant ended up only taking the Victim's keys before fleeing. (Tr. p. 12).

Applicant was apprehended several days later after engaging in a high-speed police chase with law enforcement, where speeds reached were in excess of 110 miles per hour. (Tr. pp. 12-13). The chase ended when Applicant wrecked the Victim's vehicle at the intersection of Pooles Mill Road and Wofford Road. (Tr. p. 13).

At the time of his arrest, Applicant was on parole for accessory after the fact and distribution of methamphetamine charges out of Orangeburg County. (Tr. pp. 13, 18). Shortly after being released on bond for the Lexington charges, Applicant fled to Texas. (Tr. pp. 13-14). While in Texas, he picked up new felony charges. (Tr. p. 13). Defendant's prior record includes a 2011 DUS and a 2014 plea to accessory after the fact of an attempted murder. Applicant was released from custody in June of 2017, and the incident he was charged with in this proceeding occurred 14 months later. (Tr. p. 14.)

### **III. ALLEGATIONS BEFORE THE COURT**

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

1. Ineffective assistance of counsel
2. Involuntary guilty plea

Applicant requests relief in the form of a new trial. On June 14, 2021, Respondent filed a return and motion for a more definite statement. Subsequently, an "Amendment to Application for Post Conviction Relief" was filed on Applicant's behalf. The Amendment adopted the grounds of Applicant's original filing and further alleged as additional grounds regarding his claim of ineffective assistance of counsel that:

- (1) The plea was involuntary;

- (2) Counsel failed to adequately investigate the facts of the crime, which prejudiced Applicant at the plea; and
- (3) Counsel failed to adequately address the issue of culpability, resulting in Applicant getting a larger sentence than a co-defendant.

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

An evidentiary hearing was held on October 12, 2022, before this Court. Findings have been made on each of the points argued at the hearing.

#### **IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

##### **Standard of Review:**

##### **Ineffective Assistance of Counsel and Guilty Pleas generally**

The grounds for relief upon which Applicant proceeded at the evidentiary hearing pertain to alleged ineffective assistance of counsel and involuntary guilty plea. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). It is common that post-conviction relief allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief hearing, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction.

Strickland, 466 U.S. at 687. To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687-88; Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

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

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart, 474 U.S. 52 (1985), extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel. See Padilla v. Kentucky, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). When reviewing a guilty plea, the analysis



of counsel's performance under the first prong of Strickland remains unchanged—the applicant must show that counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not “within the competence demanded of attorneys in criminal cases.” Hill, 474 U.S. at 56. The second, or “prejudice” prong, however, “focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process.” Id. at 58–59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” Id. at 59.

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

#### Involuntary Guilty Plea

“[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). Accordingly, 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 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); see generally Wolfe, 326 S.C. 158, 485 S.E.2d 367 (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). 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).

The test for determining the validity of a guilty plea is “whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” North Carolina v. Alford, 400 U.S. 25, 31 (1970). It is “well established that a guilty plea is not rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment.” United States v. Cox, 464 F.2d 937, 942 (6th Cir. 1972) (citing Brady, 397 U.S. 742). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, Brady, 397 U.S. at 750–53, or by increasing the risks of punishment on those who do not. Alford, 400 U.S. at 37.

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 v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977); see also Jamison v. State, 410 S.C. 456, 469–71, 765 S.E.2d 123, 129–30 (2014) (observing that “guilty plea[s] must be treated as final in the vast majority of cases” and instructing that caution must be exercised so as not to “undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea”). 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”).

The voluntariness of a guilty plea, however, “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.” Harris v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). An applicant who enters a plea on the advice of counsel may “only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel’s errors, the [applicant] would not have pled guilty, but would have insisted on going to trial.” Roscoe, 345 S.C. at 20, 546 S.E.2d at 419. In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. Wolfe, 326 S.C. at 165, 458 S.E.2d at 370; cf. Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that, where the transcript of the guilty plea proceeding refuted applicant’s claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant’s claim his lawyer misadvised him).

Surmounting Strickland’s high bar is never an easy task, and the strong societal interest in finality has “special force with respect to convictions based on guilty pleas.” Lee, 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, 137 S. Ct. at 1967. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences." Id. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the guilty plea and the evidence presented at the PCR hearing. Harres v. Leeke, 282 S.C. at 134, 318 S.E.2d at 361.

#### V. FINDINGS AS TO CLAIMS RAISED

Applicant has alleged specific claims of ineffective assistance of trial counsel and involuntary plea and asserts that as a result of Counsel's purported errors, he is entitled to have his sentence vacated. (PCR, p. 6, l. 12-20.) This Court finds Applicant has failed to meet his requisite burden of proof to the allegations, each of which is addressed below:

##### *Allegation #1: The Plea was Involuntary.*

Applicant first asserts Counsel was constitutionally ineffective because Applicant was not properly advised in connection with his plea. Specifically, Applicant alleges he thought he would receive eight to ten years based on representations of counsel. (See Amendment to PCR Application.) At the PCR hearing, Applicant gave no testimony to support that he had ever been told this and, instead, alleged he thought that is what he should get based on the facts of his case. (PCR, p. 17, l. 5-10.) He testified he felt like he was over-sentenced for his crime. Id.

I find the evidence and proceedings, as contained in the plea transcript, the PCR hearing and Counsel's testimony, do not support any allegation that Applicant was unaware of the amount of time he faced or that he was coerced into pleading by being told he would receive an eight to ten year sentence. At the plea, the crimes Applicant was accused of committing were laid out by the Solicitor, who then indicated what charges would be dismissed as a result of the plea, and who indicated on the



record "There is a negotiated range of seven to fifteen years on this." (Tr. p. 4, l. 18 – p. 5, l. 3.) Applicant was asked by the Court, "you understand that if you go through with the plea today, you'll be facing a range anywhere from seven to fifteen years?", to which Applicant responded "Yes, sir." (Tr. p. 6, l. 17.) Twice more Applicant was asked if he understood the range was seven to fifteen years, and each time he responded affirmatively. (*Id.*) Even during the PCR proceeding, the Applicant acknowledged that the plea offer that was made to him was seven to fifteen years. PCR Tr.p. 10, l. 6-16. His suggestion in the amended application that it was an 8-10 year expectation is without factual support, other than as a hope. See Holland v. State, 322 S.C. 111, 470 S.E.2d 378 (1996) (holding that where Respondent testified he knew judge was not required to accept recommendation, Respondent could not complain that his guilty pleas were not knowingly and voluntarily made). Cf, Mabry v. Johnson, 467 U.S. 504, 104 S. Ct. 2543, 81 L. Ed. 2d 437 (1984), disapproved of by Puckett v. United States, 556 U.S. 129, 129 S. Ct. 1423, 173 L. Ed. 2d 266 (2009). His additional complaint, in hindsight, is that he did not get equality of sentencing with his co-defendant. PCR Tr.p. 29. His sentence was within the limits of the negotiation and punishment for the crime. His requests for resentencing within the claims must be denied. <sup>2</sup>

Next, the Court covered the voluntariness of the plea, and that Applicant was pleading guilty freely and voluntarily, knowingly and intelligently, and because he was guilty. (Tr. pp. 7-10.) Applicant indicated each of these statements was correct. (*Id.*) Applicant further indicated he had not

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<sup>2</sup> Applicant seeks to have his sentence set aside and be resentenced to a lesser term. "His contentions in this respect require little comment. It has long been settled that this Court has no jurisdiction on appeal to correct an allegedly excessive sentence, which is within the limits prescribed by law for the discretion of the trial judge and which is not proved to be the result of partiality, prejudice, oppression or corrupt motive. We deem it unnecessary to cite or refer to the many authorities for this well settled proposition. The record here contains no suggestion, let alone evidence, of any partiality, prejudice, oppression or corrupt motive influencing or affecting the sentence." Clark v. State, 259 S.C. 378, 382-83, 192 S.E.2d 209, 210-11 (1972).

been threatened or coerced to plead guilty. (Id.) Applicant indicated he was fully satisfied with Counsel, had had enough time to meet with Counsel, had had enough time to discuss his case properly with Counsel, had no complaint with his attorney or anyone else that dealt with the case, and was pleading because of a decision made of his own free will. (Tr. pp. 6-10.)

Counsel testified that he met with Applicant multiple times and reviewed the evidence in the case, and that he both believed there was a factual basis for the plea and that it was in Applicant's best interest to accept the plea. (Tr. pp. 5-6; PCR, pp. 38-48.) Counsel believed if Applicant went to trial, there was sufficient evidence to convict him of the crimes. (Id.) Upon conviction, the armed robbery charge alone carried a ten-year minimum, and Applicant was charged with "a plethora" of other crimes as well. (Tr. pp. 4-5; PCR pp. 47-48.) In an effort to lower Applicant's exposure, Counsel testified he had engaged in multiple negotiations with the Solicitor and had, ultimately, gotten what could have been 90 years, had Applicant been convicted on all charges, down to a negotiated seven to fifteen years. (PCR p. 47, l. 4 – p. 49, l. 21; PCR, p. 56, l.7- p. 57, l. 3.) At the PCR hearing, Counsel testified that he felt that was a good resolution given the possibility of Applicant getting ninety years if he had gone to trial on all charges. (Id.; see also PCR, p. 62, l. 6-8 ("I'll be very candid, I think if we had not had that cap on this incident, he would have gotten more than fifteen years. I think the cap negotiated stopped the judge from going further.")) Counsel's strategy was to lock the State into seven to fifteen, then argue acceptance of responsibility and sympathy in mitigation, in an effort to get the lowest possible sentence in the range. (Tr. pp. 16-18; PCR, p. 61, l. 21-24.)

Ultimately the choice and the decision to plea were Applicant's. He was informed of the sentences he faced and freely, voluntarily, knowingly, and intelligently chose to plead guilty. This Court finds Applicant has not established any deficiency of Counsel regarding his recommendation

to plea, nor any coercion. Applicant also has not shown Counsel's advice to plead guilty was not within the competence demanded of attorneys in criminal cases. Further, I find the Applicant was advised of the potential sentences he could receive. Applicant has not established either an error by Counsel or that, but for the error, there is a reasonable probability that he would not have pled guilty and, instead, would have insisted on going to trial. Accordingly, this Court denies and dismisses this allegation with prejudice.

***Allegation #2: Applicant's Counsel was ineffective for failing to adequately or completely investigate the facts of the crime, which prejudiced Applicant at the plea.***

Next, Applicant asserts that Counsel was ineffective for allegedly failing to adequately investigate the case. Specifically, Applicant asserted multiple times at the hearing "they say I robbed a guy at gunpoint," but that he didn't have a gun. (PCR, p. 8, l. 21-24; PCR, p. 12, l. 9-17.) On this point Counsel testified knowledgeably about the evidence against Applicant, including Facebook messages between Applicant and a co-conspirator before the event; messages establishing a time, date and location; surveillance and still photos; the victim's testimony; the clothing worn; statements from both co-conspirators implicating Applicant; and the truck that was stolen being found in Applicant's possession following a wreck after a high-speed chase. (PCR, pp. 44-45.) This paints a very different picture from Applicant's recollection, which was "they didn't have anything." (PCR p. 33, l. 1-2.) Counsel also testified he considered the evidence expected to be put up at trial, and the witnesses expected to take the stand, but acknowledged that his client indicated that this would be an issue if they went to trial with the co-defendants versions. (PCR, pp. 38-39; PCR, pp. 41-46.)<sup>3</sup> Counsel testified as to his thought process on how the evidence would

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<sup>3</sup> Counsel testified that he was aware that both the victim and Register would testify at trial, as in their detailed statements, that Applicant had a gun. PCR Tr.p. 54-55. Counsel feared that since he was facing 90 years and the offer presented was gracious, that he the Applicant stated that he did



have affected his strategy had the case gone to trial, and even how it affected his decision to suggest Applicant plead guilty. (PCR, p. 45, l.10- p. 47, l. 3.) Counsel testified Applicant was aware of the evidence against him as they met a number of times and Applicant received his own copy of discovery, which they went through together. (PCR, p. 41, l. 7- p. 43, l. 11.) Following this, at the plea, Applicant indicated he was satisfied with Counsel, and that there was nothing he had asked Counsel to do that he had not done. (Tr. p. 9, l. 3-14.)

Counsel's testimony on this point is credible. Additionally, the Solicitor, in her statement of the facts, noted multiple times the use of a gun during commission of the crime Applicant pled to and clearly put the gun in Applicant's hands. (Tr. pp. 10-15; see also Tr. p. 11, l. 12-13 (“[Applicant] is the one that actually held the gun and robbed him”)) Applicant heard the Solicitor's recitation of the facts and indicated he understood them. (Tr. p. 15, l. 2-10.) He did not take issue with either the Solicitor's statements regarding a gun being present or Applicant being the one holding the gun.

This Court finds Applicant has not shown Counsel's behavior in meeting with Applicant, reviewing discovery, or otherwise adequately reviewing or investigating the facts was not within the competence demanded of attorneys in criminal cases. Applicant has not established an error by Counsel. Applicant, further, has not established any prejudice that would indicate that “there is a reasonable probability that [but for this alleged error of counsel], the result of the proceeding would have been different.” Strickland, 466 U.S. at 688. Accordingly, this Court denies and dismisses this allegation with prejudice.

*Allegation #3: Applicant's Counsel was ineffective for failing to object to the Solicitor saying Applicant was the most culpable/the mastermind.*

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not have a gun, as he had been saying all along and tht he was set up, that the court would stand down the plea. PCR Tr.p. 58.



Next, Applicant asserts that Counsel was ineffective for failing to object to the Solicitor saying Applicant was the most culpable/the mastermind. Applicant's support for this statement is given as page 14, lines 22-23 of the plea transcript where, referencing Applicant, the Solicitor noted "And he is the – in my mind, the primary, most culpable individual in this group." (PCR, p. 27, l. 1-6; see also Tr. p. 14, l. 22-24.) The Applicant contends that there was not a gun in his possession at the PCR hearing and asserts this is what he told counsel. PCR 27. Counsel was asked at the PCR hearing why he did not object to this statement. He responded it was his opinion that it would not serve a purpose—that that was the State's opinion, how they would have presented the case if it were to go to trial—and that, after hearing the Solicitor's recitation of the facts, which had Applicant holding the gun and Applicant's agreement that the facts were generally correct, he chose not to. He further testified "I didn't see where it would help us. ... [I] wanted to concentrate on getting sympathy from the Court and try to help the judge understand, how did we get here?" (Tr. p. 50, l. 6 - p. 51, l. 12.)

This Court finds Counsel's testimony on this point credible. This Court further finds Counsel's performance, including in terms of not objecting to the Solicitor's characterization of Applicant, was within an objective standard of reasonableness. Applicant has not established an error by Counsel. Applicant, further, has not established any prejudice that would indicate that "there is a reasonable probability that [but for this alleged error of counsel], the result of the proceeding would have been different." Strickland, 466 U.S. at 688. Accordingly, this Court denies and dismisses this allegation with prejudice.

## VI. CONCLUSION

After careful consideration of Applicant's Application and Amended Application for Post-Conviction Relief, the Record of the case, the arguments of Attorneys Thomas and Smith, and the



testimony of witnesses, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief.<sup>4</sup> To satisfy the two prongs of Strickland, Applicant must show that Counsel was deficient and also show the deficiency resulted in prejudice. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984). Applicant's Counsel was not deficient, but rather, offered "reasonably effective assistance" under "prevailing professional norms." Cherry v. State, 300 S.C. at 317 (1989). Further, I do not find any presumptions of prejudice. See Cronic v. U.S., 446 U.S. 648 (1984); Nance v. Ozmint, 367 S.C. 547 (2006). This case was "fact heavy" and I find Counsel's actions and decisions were based upon strategic decision. See Roseboro v. State, 317 S.C. 292 (1996); see also Solomon v. State, 347 S.C. 635 (2001) regarding strategic trial management. The Applicant has not met this burden on any of the allegations made. Therefore, the Court denies Applicant's requested relief in this matter.

This Court notes if Applicant desires to appeal this Order, he must file and serve a notice of appeal within thirty days from the receipt of this Order through his counsel of record. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the Applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

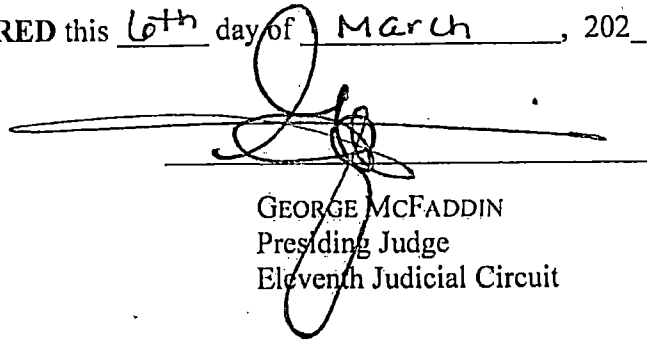
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<sup>4</sup> This record includes (and I am incorporating herein by reference), Applicant's records from the South Carolina Department of Corrections, the indictments and records of the proceedings below, including the plea transcript, and all records of the current PCR action.



1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 6<sup>th</sup> day of March, 2021.



A handwritten signature in black ink, appearing to read 'G. McFaddin', is written over a horizontal line. The signature is stylized and somewhat illegible.

GEORGE MCFADDIN  
Presiding Judge  
Eleventh Judicial Circuit

Sumter, South Carolina

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

MAR 28 2024

S.C. SUPREME COURT

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas  
Post Conviction Relief  
George McFaddin, Circuit Court Judge

Lower Court Case No.: 2020-CP-32-4043

Bobby George Sightler #360696,..... Petitioner

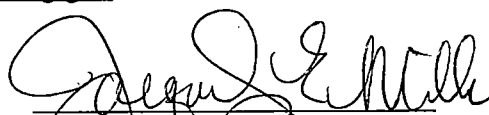
vs.

State of South Carolina, .....Respondent.

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, paralegal to Tommy A. Thomas, Attorney for the Applicant hereby certify that I placed in the United States Mail and emailed, a copy of a Notice of Appeal with postage prepaid and the return address clearly shown on said envelope to Donald J. Zelenka, Esq. of the Attorney General's Office, at:

Donald J. Zelenka, Esq.  
Attorney General's Office  
P.O. Box 11549  
Columbia, SC 29211-1549  
[dzelenka@scag.gov](mailto:dzelenka@scag.gov)



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Irmo, SC  
March 27, 2024