STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Tony T. Williams, #384153, Applicant, v. State of South Carolina, Respondent.	)	CASE NO. 2021–CP–40–0985 **ORDER OF DISMISSAL WITH PREJUDICE**

Presiding Judge:	Hon. Daniel Coble
Applicant's Attorney:	Timothy L. Griffith, Esq.
Respondent's Attorney:	D. Russell Barlow, II, Esq.
Plea Counsel:	Robert S. Forney, Esq.
Date of Hearing:	September 11, 2023
Court Reporter:	Elizabeth B. Harris

This matter comes before the Court by way of Tony T. William's (Applicant) application for post-conviction relief (PCR) filed on March 3, 2021. Respondent, the State of South Carolina, filed its Return, Motion for a More Definite Statement, and Partial Motion to Dismiss on June 1, 2021. On September 2, 2023, Respondent received Applicant's amended allegations by email from Timothy L. Griffith, Esquire (PCR Counsel).

On September 11, 2023, an evidentiary hearing was held at the Richland County Courthouse before the Honorable Daniel Coble. Assistant Attorney General D. Russell Barlow, II, represented Respondent. Applicant was present and represented by PCR Counsel. At the hearing, Applicant proceeded on the claims in his original and amended application. In support of these claims, Applicant testified on his own behalf, and Respondent presented testimony from Assistant Public Defender Robert S. Forney (Plea Counsel).

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 relief and, accordingly, denies and dismisses this action with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections (SCDC). During the May 2018 term, the Richland County Grand Jury indicted Applicant for Murder (2018–GS–40–1465), Attempted Murder (2018–GS–40–1464), and Carjacking/Take or Attempt a Vehicle by Force from Person, Great Bodily Injury (2018–GS–40–1463). Richland County Assistant Public Defenders Robert S. Forney and Tracy E. Pinnock represented Applicant. Assistant Solicitor Lamar J. Fyall of the Fifth Circuit Solicitor's Office prosecuted the case.

On October 13, 2020, Applicant pled guilty pursuant to a negotiated plea agreement[1] before the Honorable DeAndrea G. Benjamin. Judge Benjamin sentenced Applicant, as negotiated, to concurrent terms of thirty years each for Murder, Attempted Murder, and Carjacking.

Applicant did not appeal his convictions and sentences.

FACTS GIVING RISE TO THE CONVICTION

The facts giving rise to the convictions were articulated by the Solicitor at Applicant's plea hearing as follows:

> This incident occurred on December 16, 2017. Both victims were at the Circle K gas station on Parklane Road. They met the Defendant and his Co-Defendants, Tafarae Pelzer and Javian Lessington, and the victims agreed to give them a ride. They all got into the car, Your Honor, with the Defendant seated in the back on

[1] As part of the negotiations, the State dismissed the Possession of a Weapon During the Commission of a Violent Crime.

the driver's side nearest the driver's side window. They drove to near the Meadow Lakes subdivision.

When they got there, Your Honor, the victim, Mr. Ross, was shot in the neck, and Mr. Baxley was shot in the face. As they were taken out of the car and left there, the defendants got into the car and drove away.

Two days later, Your Honor, the case sort of broke open because the Defendant's mother was stopped by the City of Columbia Police Department driving the car. They got consent from her to search the house and they found a firearm in the house. That firearm later came back to match the bullets that were used in this case, Your Honor.

After that, Mr. Williams was initially arrested for possession of a stolen vehicle. After the firearm match occurred, subsequently a family member of his reached out to Richland County Sheriff's Department. He came in to give a statement. And, additionally, the two Co-Defendants gave a statement, Mr. Lessington and Mr. Pelzer. Both Mr. Lessington and Mr. Pelzer identified Mr. Williams as being the shooter in that case, and he was subsequently arrested and charged with murder and attempted murder and carjacking. While this occurred, he was on bond for purse snatching.

(Plea Tr. pp. 4-5)

CURRENT ACTION BEFORE THIS COURT

In his application for post-conviction relief, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Plea Counsel
   a. Plea Counsel failed to investigate.
   b. Plea Counsel failed to object to the solicitor's statement about prior time conviction, but for the error of counsel, the outcome would be different.

On September 2, 2023, PCR Counsel emailed Respondent amendments to Applicant's PCR application alleging the additional claims for relief:

2. Ineffective Assistance of Plea Counsel
   a. "Counsel told him he would get a deal for 20 years, according to Mr. Williams, a plea to manslaughter rather than murder. For this reason, he refused to sign his plea sheets."

b. "On the failure to object – he understands the Solicitor just said he was out on bond – he thought it meant he had been convicted (which he hadn't been)."
c. "He was on medication for mental illness, and his attorney, knowing that, told him to just say yes to whatever the Judge asked."

Before this Court is the Richland County Clerk of Court records regarding the subject's convictions and sentences, Applicant's records from the South Carolina Department of Corrections, Applicant's guilty plea transcript, and the records of the current PCR action.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act[2] (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based on 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).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C.

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

Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). 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).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). 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 v. Washington, 466 U.S. 668 at 687 (1984). 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 "[without 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)).

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). 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 range of 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. 357, 367 (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) (emphasis added).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel 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 witnesses, which allowed the Court to evaluate and scrutinize their credibility.

Upon conducting and completing its analysis, this Court finds that 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), SCRCP (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.").

Accordingly, set forth below are the relevant findings of facts and conclusions of law as required by § 17-27-80 of the South Carolina Code:

INITIAL FINDINGS

As a matter of general impression, this Court finds Plea Counsel's testimony at the evidentiary hearing **credible** and **persuasive**, where he presented well-recollected testimony of relevant background, facts, and discussions leading up to and during the plea hearing. This Court finds Applicant's testimony at the evidentiary hearing generally **not credible or persuasive**. This Court further finds applicable the strong presumption that at all stages of Plea Counsel's representation of Applicant, he rendered adequate assistance and exercised reasonable professional judgment in his representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be

made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

This Court makes the following findings from the record: 1. Applicant understood the charges and sentences he faced at his plea hearing (Plea Tr. pp. 6-7); 2. Applicant understood the details and circumstances of a straight-up plea (Plea Tr. pp. 7-8); 3. Applicant clearly indicated he was satisfied with his attorneys (Plea Tr. pp. 9-10); 4. Applicant understood his right to a jury trial and that he waived those rights by pleading guilty (Plea Tr. pp. 8-9); 5. Applicant indicated he had enough time with his attorneys (Plea Tr. p. 9); 6. Applicant indicated his attorneys answered all of his questions, and he had no more questions for them (Plea Tr. pp. 9-10); 7. Applicant indicated no promises were made to him, and his decision to plead guilty was voluntary (Plea Tr. pp. 9-10); 8. Applicant was not under the influence of drugs or alcohol, which may affect his ability to understand the plea proceedings (Plea Tr. p. 4); 9. Applicant understood the sentencing range (Plea Tr. pp. 6-7); 10. Applicant was clearly advised of his right to appeal (Plea Tr. pp. 11-12); 11. Applicant did not disagree with the facts surrounding the State's case against him (Plea Tr. p. 6); 12. Applicant's plea was qualified as freely, knowingly, and voluntarily entered into (Plea Tr. p.12).

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS ON THE MERITS

Allegation: Plea Counsel Failed to Investigate

Applicant alleges Plea Counsel was constitutionally ineffective for failing to investigate. This Court finds this allegation is without merit.

"[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. "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Id. at 691. "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Id. "The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Id. "Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant." Id. "In particular, what investigation decisions are reasonable depends critically on such information." Id.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

At the evidentiary hearing on direct examination, Applicant testified that Plea Counsel represented him about two weeks before his plea hearing. (PCR Tr. p. 7). Applicant testified that Plea Counsel never met with him face-to-face, no telephone calls, but did admit Plea Counsel

visited him one time. (PCR Tr. p. 7). Applicant testified he thought he was pleading for twenty years, but Plea Counsel signed the sentencing sheet for him, and it was for thirty years. (PCR Tr. p. 8).

On cross-examination, Applicant testified he recalled telling the court he was satisfied with Plea Counsel and his representation. (PCR Tr. p. 11).

On direct examination, Plea Counsel testified he was appointed in late February 2020, and by the time Applicant pleaded, he had been involved in the case for roughly three years. (PCR Tr. p. 14). Plea Counsel testified he represented Applicant "much longer than two weeks," and "COVID quarantine" happened not long after. (PCR Tr. p. 15). Plea Counsel testified that he reviewed discovery with Applicant and that he mainly "[met] with [Applicant] to prepare for trial." (PCR Tr. p. 14). Plea Counsel testified that he had a defense strategy and discussed that strategy with Applicant. (PCR Tr. p. 15). At their first meeting on February 24, 2020, Plea Counsel testified that Applicant wanted twenty years; however, he informed Applicant the Solicitor was not offering him twenty years. (PCR Tr. p. 15).

Plea Counsel testified that prior to the trial, Applicant wanted a new attorney, so he filed a motion to be relieved as counsel, and that hearing was held on September 16th before the Honorable Debra R. McCaslin. (PCR TR. p. 16). Plea Counsel testified it was then "for the first time, [he] heard [Applicant] wanted to plead guilty to thirty years." (PCR Tr. p. 16).

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). This Court will not credit Applicant's present claim that he would have gone to trial absent Plea Counsel's alleged failure to investigate, as Applicant has failed to present evidence of

any discoverable matters or defenses Plea Counsel would have discovered had he been more prepared. This Court further finds Applicant has offered little more than mere speculation, and speculation does not meet Applicant's burden. Therefore, the Court finds Applicant failed to adequately show that he would have opted to go to trial but for Plea Counsel's lack of investigation.

Moreover, to whatever extent Applicant was not entirely satisfied with Plea Counsel's investigation, he was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to proceed with his guilty plea.

Accordingly, this Court finds Plea Counsel's representation of Applicant was not deficient, nor did Applicant demonstrate any prejudice flowing from Plea Counsel's performance in this matter. Therefore, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED**.

Allegation: Involuntary Guilty Plea

Applicant alleges Plea Counsel was constitutionally ineffective and that his guilty plea was involuntary. Specifically, Applicant alleges Plea Counsel told him he would get twenty years and would be pleading to manslaughter and not murder, that Plea Counsel told him to just answer yes to the plea judge's questions, and that he was on medication when he pled guilty.[3] This Court finds these allegations are without merit.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a complete understanding of the consequences of the plea and the charges against

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[3] Applicant also alleged Plea Counsel was deficient for not objecting to the Solicitor when the Solicitor informed the plea court that Applicant was on bond. No evidence, testimony, or legal authority was presented at the evidentiary hearing regarding this allegation. Therefore, the Court deems it abandoned. "When a party provides no legal authority regarding a particular argument, the argument is abandoned and the court will not address the merits of the issue." Palmer v. State, 427 S.C. 36, 47, 829 S.E.2d 255, 261 (Ct. App. 2019) (citing State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011)).

him or her. Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991); see also Boykin v. Alabama, 395 U.S. 238, 244 (1969) (Courts must make sure defendants have "a full understanding of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought and forestalls the spin-off of collateral proceedings that seek to probe murky memories."). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984) (finding 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.").

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001); Richardson v. State, 310 S.C. 360, 363, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

As an initial matter, this Court finds the record refutes Applicant's allegations and reflects that Applicant's guilty plea was knowingly and voluntarily entered with a complete understanding of the charges and consequences of the plea. This Court further finds Applicant was fully aware of the negotiated sentence of thirty years and not twenty years. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to

contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985)).

At the evidentiary hearing on direct examination, Applicant testified he had been incarcerated for six years, and his sentence was for thirty years. (PCR Tr. p. 5). Applicant testified, "I ain't sign it. That ain't my signature." (PCR Tr. p. 5). Applicant further testified that the coronavirus had just "hit," and he thought he was going to court "to get twenty years" and "ain't know nothing about thirty years." (PCR Tr. p. 5).[4]

At the evidentiary hearing on cross examination, Applicant testified that he did not recall telling the Plea Court that no one forced him to plead guilty, nor that he was pleading guilty at his own free will. (PCR Tr. p. 12).[5] Applicant testified Plea Counsel told him to "agree so everything will go smoothly." (PCR Tr. p. 11). Applicant testified he did not know that he was pleading to a negotiated sentence, nor does he recall the Plea Court explaining that the plea was a thirty-year negotiated sentence. (PCR Tr. p. 11). [6]

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[4] Contrary to Applicant's testimony, at the plea hearing, the record provides Applicant was apprised that murder carried 30 years to life in prison, carjacking up to 30 years, and attempted murder carried up to 30 years too. Also, the record provides Applicant was apprised that the Plea Court could run those charges all consecutively and faced a maximum sentence of 90 years to life in prison. (Plea Tr. p. 6). Further, the record provides Applicant was apprised of the negotiations and Applicant answered in the affirmative that he understood and agreed with the negotiated sentence of 30 years imprisonment. (Plea Tr. p. 10).

[5] Contrary to Applicant's testimony, at the plea hearing, the record provides Applicant testified that no one was forcing him to plead guilty and he was pleading guilty of his own free will. (Plea Tr. p. 10).

[6]The record provides Applicant admitted guilt when he answered "Yes, Ma'am" to plead guilty because he was guilty of those three charges. (Plea Tr. p. 11). This Court notes Applicant's assertions are wholly refuted by the plea transcript.

On direct examination, Plea Counsel **credibly** testified in the following colloquy:

> Q. When did he -- when did the Applicant decide that he wanted to plead and not go to trial?
> A. So, in August of 2020, as we -- as Ms. Pinnock and I were preparing for trial, he told me he wanted a new attorney and that he wanted me to file a motion to be relieved as counsel. At this point, we were about a month from the trial date, or a little over six weeks from the trial date, and I warned him that might not work, but he still wanted me to do so. So, I filed that motion. And then it was scheduled for September 16th of 2020 before Judge McCaslin over WebEx. And for the first time -- that was where I heard for the first time that he now wanted to plead guilty to thirty years.
>
> Q. Okay, and did you explain to him the, the consequences of plea?
> A. I was not able because that plea was – or because that procedure was done over WebEx, I was not able to speak to him in a private setting. So, I went to the jail and met with him the next day, at, at which point we did discuss fully that he was going to plead guilty for thirty years.
> Q. And did you -- did you agree with his inclination to plead?
> A. Yes
> Q. Do you stand by your representation?
> A. I do.

(PCR Tr. pp. 16-17).

On cross-examination, Plea Counsel testified that he signed on behalf of Applicant via a PDF form fill as this was the procedure during COVID—"without any unnecessary physical contact." (PCR Tr. p. 18). Plea Counsel further stated, "It was less of a policy, more of a practice born of necessity during that time." (PCR Tr. p. 19). Plea Counsel also testified he never conveyed to Applicant that he had worked out a twenty-year plea deal. (Plea Tr. p. 20).

Also, Applicant alleges Plea Counsel was constitutionally ineffective in coercing him into pleading guilty because he was on medication. Applicant testified at the evidentiary hearing that he was on medication while in the county jail and that he had documentation he was on medication.

However, Applicant provided no further proof to this Court that he was on any medication that affected his ability to enter his plea freely, voluntarily, and intelligently. What is before this Court is the guilty plea transcript, which provides that Applicant was asked if he was on or had taken any medications within the last twenty-four hours, to which he responded, "No, ma'am."

This Court finds Applicant has failed to show that Plea Counsel's representation fell below an objective standard of reasonableness, and that but for Plea Counsel's alleged errors, Applicant would not have pled guilty and proceeded to trial. See Roscoe v. State, 345 S.C.16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362 426 S.E.2d 795, 797 (1993).

Furthermore, this Court finds the combination of the record and Plea Counsel's **credible** testimony at the evidentiary hearing provides Applicant knew the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty pursuant to the requirements of Boykin v. Alabama, 395 U.S. 238 (1969) and Roddy v. State, 339 S.C. 29 (2000). Moreover, the plea colloquy cured any alleged deficiency regarding Plea Counsel's advice. The plea transcript reflects that Applicant entered his plea knowingly and voluntarily, engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the plea court's questions. Applicant has presented no valid reason why he should be able to depart from the statements made during his guilty plea as provided *supra*. See Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975), overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir. 1985) (finding that the accuracy and truth of an accused's statements at a guilty plea proceeding are "conclusively" established unless he makes some reasonable allegation why this should not be so).

Applicant did not allege any facts tending to prove he was prevented from informing the plea court that Plea Counsel told him he would only get twenty years, that he was on medication,

and that Plea Counsel told him to just answer yes to all the judge's questions. In fact, the record refutes Applicant's allegations. Thus, based on the records before this Court, Plea Counsel's **credible** testimony, and the evidence presented at the evidentiary hearing, this Court finds Applicant freely, knowingly, and voluntarily pled guilty.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

ALLEGATIONS RAISED AT THE EVIDENTIARY HEARING AND NOT IN THE ORIGINAL APPLICATION

Allegation: Failure To Meet a Sufficient Number Of Times.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to meet with him a sufficient number of times to properly review the evidence and discuss the case. This Court finds this allegation is without merit.

Federal case law holds that there is no constitutional minimum number of meetings between attorneys and their clients to satisfy competency. Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) (no constitutional minimum number of meetings to satisfy competency); United States v. Olson, 846 F.2d 1103, 1108 (7th Cir. 1988) (reciting that there is no constitutional minimum number of meetings between attorney and client and observing that an experienced attorney may get more out of a single meeting than a neophyte). "Brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980) (holding it is not enough to merely show that counsel only met with his client twice before trial as long as counsel devoted sufficient time to insure an adequate defense and to become thoroughly familiar with the facts of the case and the law applicable to the case, and holding the record revealed that counsel was so prepared.).

South Carolina case law has established that even if counsel only met with his client very briefly, that alone does not establish that he was unprepared or ineffective at trial. See Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing Easter) ("First, there is no question that counsel met with [Applicant] on several occasions prior to the first trial. Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation."). Mere speculation and conjecture are not insufficient to substantiate an allegation that counsel's deficient performance was prejudicial. See Harris v. State, 377 S.C. 66, 659 S.E.2d 140 (2008), abrogated by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

At the evidentiary hearing on direct examination, Applicant testified that there were no "face-to-face visits, no telephone visits," however, Applicant testified Plea Counsel went to see him "one time." (PCR Tr. p. 7).

At the evidentiary hearing on cross-examination, Applicant testified that he "needed more time" to speak with Plea Counsel. (PCR Tr. p. 12). Applicant testified he was "agreeing with them" when asked about Plea Counsel's representation. (PCR Tr. p. 12). Applicant did not recall being asked about whether he met with Plea Counsel as necessary to properly represent him. (PCR Tr. p. 12).

On direct examination, Plea Counsel testified that he met with Applicant between seven and eight times. (PCR Tr. p. 15). Plea Counsel further explained the only in-person meeting was in late February because the lockdown occurred shortly after. (PCR Tr. p. 16). Plea Counsel emphasized the jail changed their visitation policy and communicated with Applicant mostly through "video and phone visits" up until the plea hearing. (PCR Tr. p. 16). Overall, Plea Counsel testified he stood by his representation. (PCR Tr. p. 17).

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, *supra*. Plea Counsel's **credible** testimony indicates he met with Applicant several times. Applicant failed to present "any evidence of how additional preparation or communication would have resulted in a different outcome." Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012); see Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998) (explaining that, where an applicant failed to present any evidence of what counsel could have discovered or what other defenses he would have requested counsel pursue had counsel more fully prepared for the trial, applicant failed to show his counsel's lack of preparation prejudiced him); Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (finding that, when there is evidence counsel met with a defendant in preparation for trial and there is no evidence additional preparation on the part of counsel would have affected the outcome at trial, counsel cannot be said to have been ineffective), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

Moreover, to whatever extent Applicant was not entirely satisfied with the amount of time spent in consultation with Plea Counsel, he was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to proceed with his guilty plea. This Court further finds Applicant has failed to meet his burden of showing Plea Counsel was constitutionally ineffective for failing to meet with Applicant a sufficient number of times. See Campbell, Olson, and Easter, *supra*.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post–conviction relief must be **DENIED and DISMISSED WITH PREJUDICE**.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf if the Applicant wishes to seek appellate review. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

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

AND IT IS SO ORDERED this 4 **day of** March **, 2024.**

THE HONORABLE DANIEL COBLE
Presiding Judge
Fifth Judicial Circuit

Richland, South Carolina