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May 14 2024

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

The Honorable William A. McKinnon, Circuit Court Judge

Case No. 2022-CP-21-1826

Zachary D. McClain,Petitioner,

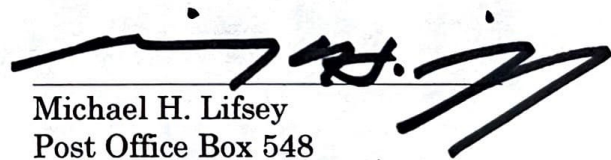
v.

State of South Carolina,Respondent.

NOTICE OF APPEAL

Petitioner, Zachary D. McClain, appeals the order of the Honorable William A. McKinnon, dated May 6, 2024, and filed May 9, 2024. Petitioner received written notice of entry of this order on May 13, 2024.

5/14, 2024



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STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Zachary D. McClain, #388467,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE TWELFTH JUDICIAL CIRCUIT
)

) CASE NO. 2022-CP-21-1826
)

**ORDER OF DISMISSAL
WITH PREJUDICE**

2024 MAY -9 PM 1:03
DORIS E. SMITH, CLERK
FLORENCE COUNTY, SC

FILED

Presiding Judge: Hon. William A. McKinnon
Applicant's Attorney: Michael H. Lifsey, Esq.
Respondent's Attorney: D. Russell Barlow, II, Esq.
Plea Counsel: Scott P. Floyd, Esq.
Date of Hearing: October 31, 2023
Court Reporter: DCRP

This matter comes before the Court by way of Zachary D. McClain's (Applicant) application for post-conviction relief (PCR) filed on September 2, 2022. Respondent, the State of South Carolina, filed its Return and Motion for a More Definite Statement on November 23, 2022. On October 31, 2023, Applicant, through counsel, filed its amended PCR application.

On October 31, 2023, an evidentiary hearing was held at the Florence County Courthouse before the Honorable William A. McKinnon. Assistant Attorney General D. Russell Barlow, II, represented Respondent. Applicant was present and represented by Michael H. Lifsey, Esquire (PCR Counsel). At the hearing, Applicant proceeded on the claims in his amended application. In support of these claims, Applicant testified on his own behalf, and Respondent presented testimony from Assistant Public Defender Scott P. Floyd (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 incarcerated according to an order of commitment of the Florence County Clerk of Court. In August 2019, the Florence County Grand Jury indicted Applicant for Armed Robbery and Possession of a Weapon During the Commission of a Violent Crime (2019-GS-21-1001).

On July 18, 2022, Applicant appeared before the Honorable D. Craig Brown and pled guilty as indicted. Assistant Solicitor David A. Richardson, Jr., represented the State. Judge Brown sentenced Applicant concurrently to seventeen years' imprisonment for Armed Robbery and five years' imprisonment for the weapon charge.

On August 1, 2022, Applicant filed a Notice of Appeal (App. Case No. 2022-001071). On September 29, 2022, the Court of Appeals dismissed the appeal for failure to provide an explanation for appealing a guilty plea. The Remittitur was returned on October 18, 2022.

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:

On March 11th, 2019, at 10:35 p.m., the Breakers gas station on West Evans Street, which is kind of -- kind of across the street from Holt Brothers Barbecue, was robbed at gunpoint, and I have the video cued up here for you because we were going to play it today for the jury.

Anyway, you'll see an armed individual comes in, and he's wearing a black hoodie, a red bandana, wearing white striped Adidas pants and a distinctive pair of Air Jordans. He's carrying a .40 caliber handgun. He comes around the counter. The victim there being robbed is Tarun Patel, who's on the witness list.

There are two cash registers that you'll see these folks standing at. At each one of the registers, the armed robber grabs the

cash till, and he's covered head to toe except for his hands, and he has no gloves on. That becomes important here during the investigation.

After he exits the store, the victim contacts law enforcement. Kevin Buxton, who's in the courtroom, amongst others, responded and was at the store within minutes. They met with the owner of the store, who is seated behind me, Ankit Kumar Patel. He provided this surveillance video to law enforcement.

Subsequently, I think within a day or so, Mr. Patel contacted law enforcement again, and he had gone back himself and watched a week's worth of video leading up to this robbery to see if he could see anybody in the store that looked like they were casing it or see any similarities or anything like that. He came across a video from two nights prior that shows the defendant unmasked, wearing the exact same pants and shoes, come into the store and purchase gas.

On the surveillance footage from that night is – his vehicle is parked at a gas pump on camera. This vehicle is a white Honda Accord. It had distinctive paint chip damage above the driver's side passenger door. Law enforcement saw that, and Investigator Jimmy Cantey began canvassing neighborhoods around that gas station. He came upon that vehicle at 1619 Gregg Avenue, which is back behind the store, and ran the plate. That came back to the defendant's mother. His name was listed as being associated with her, and under his name and photo was the address of 1619 Gregg Avenue.

Based on that information, law enforcement got a search warrant for that car and the apartment. They executed the search warrant. The defendant was inside. He was the only person there. Inside the trunk of the car, they found a gun case for the .40 caliber handgun. On the inside, he had multiple receipts for cash purchases, over \$100 worth for a few hours after the robbery took place from Walmart. Also, the .40 caliber handgun was found by Andron Brown, who is seated in the courtroom, in a laundry basket covered up with clothing.

The clothing items, including the shoes, were located tied off in plastic bags in the attic. In one bag was the pair of Air Jordans, which he was wearing in both videos. In the other bag, which was - - excuse me. The shoes were in a Walmart bag. The clothing items that he's wearing in the robbery were tied off in the Breakers gas station bag that Mr. Patel identified as being a bag they used in the store at that time. So strong evidence taking all those things into consideration.

Meanwhile, while Investigator -- Investigator Cantey is working this case the hard, good old-fashioned ways, Tim Matthews

with the City -- he's a crime scene technician. He also reported to the store that night. He -- he noticed on video the no gloves and that the defendant was picking up the cash tills looking under the drawers.

So they got a fingerprint off of one of the cash register drawers, sent that to SLED, and it was an exact match to the defendant with eight points of similarity. And we had the fingerprint analyst coming in.

We knew that the fingerprint card that was used in comparison was correct because we had the lieutenant out at Florence County Detention Center who actually booked him in on a prior charge. That fingerprint card with that lieutenant's name on it, Raheem -- I've lost his name. But anyway, he was coming tomorrow to testify about doing the fingerprints originally on that old pistol charge in 2017 or '18. In any event, basically he was, from our perspective, proven guilty two different -- two different avenues.

In terms of prior history, he was in Florence County General Sessions in 2018. He had a unlawful carrying of a pistol conviction and, as part of that plea, I think a possession of stolen firearm was dropped.

Since he's been out on bond on this case, he's had a conviction in Darlington for PWID marijuana, I think. It was a Schedule I to III controlled substance. He's currently out on bond for a second offense of that. He's currently out on bond for a murder charge over in Darlington. And that's the extent of his criminal record as I know it.

In terms of plea offers that were made, the defendant turned down an 8-year offer earlier this year on attempted armed robbery and then turned down a 15-year offer last week, and we're here before you today without any offers. And yes, sir, the victim is present. I don't know if he'd wish to speak to you, but I think 700-and-some-odd dollars were stolen. I need to put that on the record.

(Plea Tr. pp. 11-14)

CURRENT ACTION BEFORE THIS COURT

Applicant commenced this PCR action on September 2, 2022. In his application, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. Wasn't offered a promise plea.
2. Wasn't offered YOA

On October 31, 2023, PCR Counsel amended Applicant's PCR application with the following allegations:

1. Ineffective Assistance of Plea Counsel
 - a. Plea Counsel did not meet with Applicant a sufficient number of times prior to his plea;
 - b. Plea Counsel did not fully explain the strengths and weaknesses of the State's case;
 - c. Plea Counsel did not explain the elements of the crimes of which he was charged;
 - d. Plea Counsel did not discuss potential trial strategies.
 - e. Plea Counsel did not move for a continuance as requested by Applicant in order to allow Applicant time to hire private counsel.
 - f. Plea Counsel told Applicant to answer the judge's questions during the plea colloquy in a manner that would result in the judge accepting his plea rather than answering them truthfully.
 - g. Plea Counsel did not review all the discovery, including evidence of fingerprints, and this failure by Plea Counsel caused Applicant to reject a plea offer.

Before this Court are the Florence County Clerk of Court records for the subject conviction, Applicant's records from the South Carolina Department of Corrections, the records of Applicant's current pending appeal, and the current PCR application records.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act¹ (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;

¹ S.C. Code Ann. §§ 17-27-10 to -160.

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. 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), 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 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), SCRPC (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-recalled 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. 4-8); 2. Applicant was not under the influence of drugs or alcohol, which may affect his ability to understand the plea proceedings (Plea Tr. p. 6); 3. Applicant understood the sentencing range (Plea Tr. pp. 4-8); 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 clearly indicated he was satisfied with Plea Counsel (Plea Tr. pp. 9-10); 6. Applicant indicated he had enough time with Plea Counsel (Plea Tr. pp. 9-10); 7. Applicant indicated he had enough time with Plea Counsel to decide to plea or go to trial (Plea Tr. p. 10); 8. Applicant indicated no one was forcing him to plead guilty, and his decision to plead guilty was voluntary (Plea Tr. p. 10); 9. Applicant did not disagree with the facts surrounding the State's case (Plea Tr. p. 15); 10. Applicant's plea was qualified as freely, knowingly, and voluntarily entered into (Plea Tr. p. 15).

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS ON THE MERITS

Allegation: Failure to Meet a Sufficient Number of Times

Applicant alleges Plea Counsel was constitutionally ineffective for failing to meet with his a sufficient number of times, failing to explain the strengths and weaknesses of the case, failing to discuss trial strategies, and failing to explain the elements of the charged crimes. This Court finds these allegations are 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 ensure 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 is insufficient to substantiate 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 on direct examination, Applicant testified that he only met with Plea Counsel two times.

On cross-examination, Applicant testified that he and Plea Counsel met at his court appearances but they only sat down at his office twice and at appearances.

On direct examination, the following colloquy occurred with Plea Counsel:

- Q. Let -- let's jump right in though. Let me ask you. Applicant claims that or Mr. McClain claims that you did not meet with him a sufficient number of times. Do you know how many times you met with him?
- A. You know, I'm not a, I'm not a wonderful note taker. But I can tell you the times that I did meet with him that I'm, I'm sure of. He had an initial and a docket appearance that would of been scheduled after he bonded out. The initial appearance would of been in May of '19 and then July of 2019. He came and appeared at, at both of those. So, I did speak to him at those appearances. Sometime after that, you know, we kind of went into the COVID shutdown period some time in 2020 which lasted a while. So, there was really nothing happening, you know, as, as insofar as trials for, for a good while. So, there was a, you know, period there where I didn't -- I don't recall talking to him. But he -- if he called me, I would of have spoken to him. But I don't, I don't have any specific recollection of it. He was out on bond. So, if he called me I would of spoken to him. If he didn't, I probably didn't. So, it was probably shortly after the first of the, the year in 2022 kind of when we started getting kind of back to normal and Mr. Richardson indicated that he was, you know, starting to pull some of his cases and that were -- had a little bit of age on them and trying and move on those. So, I called -- it was in March of, of '22. I called Mr. McClain and asked him to, to come to court on the -- I think the 7th of March, which we did. He came over. He and I talked out here. I asked him to come over to the, to the office so we could go over the videos and file and everything together and we did. After, after we spoke that day, I believe he, he left and then in -- let's see. I don't have any record of him coming until it was in April. I called him. He came to court on the 14th of

April. I met with him that day. Mr. Richardson had an offer he wanted to discuss and it was for -- he offered him a plea to attempted armed robbery for eight years and said that he was gonna leave that offer open until June the 13th of 2022. He did that on the record. Mr. Richardson did. So, it was done out here in the courtroom when that offer was made and then I had Mr. McClain to make an appointment to come over to my office across the street so we could sit down and, and go over that. He was suppose to, to come on Friday, April the -- I guess it would of been the 29th to go over everything. He did not make it that day. So, I called Mr. McClain and he was suppose to come the following Monday, which would of been May the 2nd to go over his file. I -- he didn't make it that day. So, I called him again that Monday and he told me he wouldn't be able to make it until the -- that coming Friday, which would have been May the 6th after he got off of work on that day. And so I let him know, you know, look, kind of important that we get together and do this. But then, on the 6th of May, I called him, I don't know, twice. He was suppose to come obviously that day and he stated he couldn't get to the office that day. But he did ask me to mail him the -- another copy of the Rule 5 material and he gave me an address in Lamar to mail it to, which was 933 West Lynches River Road, Lamar, which I did. I mailed that and --.

Q. Let me ask you this. It -- did you ever get an in-person meeting with him prior to trial?

A. I did.

Q. Okay.

A. So after the -- after I talked to him on the 6th of May and mailed him the material, he ended up -- he came, he came in on May the 27th of 2022 and I met with him in my office over there. We watched the video from the different angles. We reviewed the pictures of items that were taken from the search warrant, went over the police reports at -- I did, did have the fingerprint card at that point. We went over that. Discussed the offer of eight years again for attempted armed robbery. It was not nonviolent. It was no parole offense. So we went all -- over all of that. Although it only -- it carried up to 20. So, we went over the, you know, the parameters of that offense as opposed to the armed robbery, which is what he was indicted for and then I made -- well, I, I gave him an extra copy of the, of the video cause he said he wanted it. So, I gave -- so I had two, two copies. So I gave him one. So that was pretty much what we did on the 27th. And so we -- he told me he would, you know, kind of let me know what he

wanted to do insofar as accepting the offer or not later. So, then he had to be back here on the 13th of June of '22 cause they were gonna have him on the list to be in court cause that was the day that his, his offer expired for the attempted armed robbery. So, he came that day and he, he told me he was gonna reject the offer, that he planned on hiring another lawyer, and I, you know, asked him if he had, you know, a lawyer in mind. I think he said he had talked to somebody. But I, I don't think they'd -- obviously hadn't been retained. But, in any event, I just -- I told him if that's what he was going to do, that was fine. But, you know, they needed to know that obviously the case was gonna be up for trial very soon. And so we, we actually appeared on the record in front of Judge Seals that day, and after the offer was not accepted, Mr. Richardson revoked the offer on the record that day, on the 13th of June, and Judge Seals signed an order setting the case for trial on July the 18th of 2022. And I believe that order was filed with the court. I -- I'm pretty sure it was. I have a -- I think I had a copy of it on -- in my file.

- Q. And what was the date that he rejected the plea offer? Was that June 13th?
- A. June the 13th.
- Q. And he went to trial July 18th, correct?
- A. Correct. Yeah.

(PCR Tr. pp. 38-42).

This Court finds Plea Counsel's well recollected testimony **credible** and Applicant's testimony **not credible**. This Court further 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). Plea Counsel's **credible** testimony indicates he met with Applicant several times and reviewed Applicant's charges and the evidence against him. Notably, 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 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**.

Allegation: Plea Counsel Failed to Explain the Strengths and Weaknesses of the Case
Allegation: Plea Counsel Failed to Discuss Trial Strategies
Allegation: Plea Counsel Failed to Explain the Elements of the Charged Crimes

Applicant alleges Plea Counsel was constitutionally ineffective for failing to explain the strengths and weaknesses in his case, failing to discuss trial strategies, and failing to explain the elements of the charged crimes. This Court finds this allegation is without merit.

At the evidentiary hearing on direct examination, Applicant testified that Plea Counsel did not explain the strengths and weaknesses of the State's case. (PCR Tr. pp. 9-10). Applicant testified that Plea Counsel did not discuss trial strategies with him. (PCR Tr. p. 10). Applicant testified that Plea Counsel did explain the elements of armed robbery but then testified that Plea

Counsel did not explain the elements of armed robbery and possession of a weapon during a violent crime. (PCR Tr. pp. 9-10).

This Court finds Applicant's testimony on these matters **not credible**. Moreover, 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). Plea Counsel's **credible** testimony indicates he met with Applicant several times and thoroughly informed Applicant of his charges, reviewed the discovery, explained the outcome of a trial if he lost, and his potential trial strategy. 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. 500, 745 S.E.2d at 382; 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).

Furthermore, this Court finds Applicant has failed to meet his burden of showing Plea Counsel was constitutionally ineffective for failing to explain the strengths of the State's case, for failing to explain the elements of the crimes, and for failing to discuss a trial strategy. Plea Counsel **credibly** testified that he reviewed the videos from multiple angles and the fingerprint

identification with Applicant. (PCR Tr. pp. 34-42). Plea Counsel **credibly** testified that on May 27, 2022, he met with Applicant at his office and went over the "parameters" of the attempted armed robbery versus the armed robbery. (PCR Tr. p. 41).

Notably, this Court must recognize Plea Counsel's efforts in having Applicant come to his office to review his discovery and discuss his case. Plea Counsel credibly testified to multiple scheduled meetings that Applicant chose not to attend for whatever reason(s). Also, this Court cannot overlook Applicant's prior criminal history—as such, this was not Applicant's first trial.

Moreover, to whatever extent Applicant was not entirely satisfied 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 avail himself of the benefit of his guilty plea.

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

Allegation: Plea Counsel Failed to Review Discovery

Applicant alleges Plea Counsel was constitutionally ineffective for failing to move for a continuance so that Applicant could hire private counsel. This Court finds this allegation is without merit.

An applicant who alleges his or her defense attorney was ineffective in failing to spend more time preparing or providing a copy of the discovery materials must demonstrate prejudice by showing what evidence could have been discovered or what other defenses could have been pursued. 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)), abrogated on other grounds by Smalls, 422 S.C. 174, 810 S.E.2d 836. Furthermore, an applicant must also show how the new evidence

or defenses would have resulted in a different outcome. Id. (citing David 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 only reviewed the video with him and no other discovery items. (PCR Tr. p. 9). Applicant testified that "he heard about the fingerprints" a "couple weeks before trial." (PCR Tr. p. 14).

On cross-examination, Applicant testified that Plea Counsel did not review all of his discovery with him, but he did send him a copy of the discovery. (PCR Tr. pp. 20-21).

On redirect examination, Applicant reiterated that Plea Counsel did not review discovery with him and that he had never seen the fingerprint document until PCR Counsel provided it to him. (PCR Tr. pp. 24-25).

Plea Counsel testified that he reviewed discovery with Applicant. (PCR Tr. p. 36).

As an initial matter, this Court finds Plea Counsel's testimony **credible** and Applicant's testimony **not credible** on this issue. This Court further finds Applicant has failed to overcome the strong presumption that Plea Counsel rendered adequate assistance. See Butler, 286 S.C. at 442, 334 S.E.2d at 814. In addition, Applicant has not presented any new evidence or defenses that could have been discovered by Plea Counsel's further review of the discovery, nor has he explained how further review would have changed his decision to plead guilty and instead go to trial. See Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (where applicant failed to show ineffective assistance of counsel based on lack of preparation by neglecting to show evidence of what counsel failed to discover or what defenses counsel could have pursued had he

more fully prepared for the case); Skeen v. State, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (where applicant failed to show ineffective assistance of counsel when he did not present evidence showing how additional preparation would have impacted the trial).

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

Allegation: Plea Counsel Failed to Move for a Continuance to Allow Applicant to Hire Private Counsel

Applicant alleges Plea Counsel was constitutionally ineffective for failing to move for a continuance so that Applicant could hire private counsel. This Court finds this allegation is without merit.

At the evidentiary hearing, on direct examination, Applicant testified that he requested Plea Counsel move for a continuance so he could hire a private attorney. Applicant testified that had he been given time to hire a private attorney then he would have gone to trial. (PCR Tr. pp. 11-12).

On cross-examination, Applicant testified that at the time of trial, he had not raised sufficient funds to hire private counsel. (PCR Tr. pp. 22-23).

On direct examination, Plea Counsel testified that when the trial was set by the Honorable William H. Seals, Jr., he ordered that it could not be continued, and the Applicant's hiring a private attorney was not a sufficient reason for a continuance.

This Court finds Plea Counsel's testimony **credible**. Based on Plea Counsel's **credible** testimony, this Court finds Applicant has failed to overcome his burden of proving Plea Counsel was deficient for failing to request a continuance. Additionally, Applicant failed to show how the continuance request would not only be granted but that Applicant would have elected to go to trial

and not plead guilty. Applicant's testimony that if he had gotten a continuance and hired private counsel, then he would have gone to trial is pure conjecture. See Clark, 315 S.C. at 388, 434 S.E.2d at 267 (concluding pure conjecture fails to establish prejudice).

Moreover, to whatever extent Applicant was not entirely satisfied with Plea Counsel and indicated that he wanted to hire private counsel, Applicant was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to avail himself of the benefit of 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: Plea Counsel Told Applicant to Answer the Plea Judge's Questions in a Manner That Would Result in the Judge Accepting the Plea

Applicant alleges Plea Counsel was constitutionally ineffective for telling him how to answer the plea court's questions. This Court finds this allegation is without merit.

At the evidentiary hearing on direct examination, the following colloquy occurred with Applicant and PCR Counsel:

- Q. All right. You answered the judge in a way where you said you didn't have complaints or anything like that. Is that right?
- A. Yes, sir.
- Q. All right. Why did you answer the judge's questions the way you answered them if you're saying something different here today?
- A. To be honest, I really felt like it was the best thing for me to do cause I felt like I was in it by myself. I ain't had nobody to defend me really and I know I couldn't go to trial by myself. We never really -- I know I couldn't go to trial

by myself and, and talk by myself. So, I really feel like it was the best thing for me to do at that point in time.

- Q. All right. Let me ask you this. Did Mr. Floyd give you advice on how to answer those questions during the judge's questioning of you to plead guilty?
- A. He said just yes, yes, yes and no question -- yes. She (sic) said just say yes and --.
- Q. So you answered the way he told you?
- A. Yes, sir.
- Q. So you---
- A. Yes.
- Q. ---could get the plea done. Is that right?
- A. Yes, sir.
- Q. If he had not done that, would you have, and, and not told you how to answer, would you of had a jury trial or would you have still gone ahead and pled guilty?
- A. A jury trial.

(PCR Tr. pp. 12-13).

On direct examination, Plea Counsel testified that he went over the substance of the questions the plea court would ask him but did not tell him to answer the questions in any specific way. (PCR Tr. pp. 43).

This Court finds Applicant's testimony **not credible** and Plea Counsel's testimony **credible**. Furthermore, this Court finds Applicant has offered no valid reason to be allowed to depart from the truth of the statements made under oath during his guilty plea. See Crawford v. United States, 519 F.2d 347 (4th Cir.1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976) (Statements 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, 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**.

ALLEGATIONS NOT PLEADED BUT RAISED AT THE EVIDENTIARY HEARING

Allegation: Plea Counsel Failed to Call A Witness

Applicant alleges Plea Counsel was constitutionally ineffective for failing to discuss and call a witness. This Court finds this allegation is without merit.

At a minimum, counsel must interview potential witnesses and make independent investigations regarding the facts and circumstances of the case. Ard. v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007). To show counsel was ineffective by failing to call a witness, the witness(es) must be produced at the PCR evidentiary hearing, or their testimony must otherwise be presented, consistent with the rules of evidence. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Mere speculation regarding the witness's testimony is insufficient to establish prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993).

"In most PCR cases in which the applicant seeks relief for trial counsel's failure to call witnesses, the PCR court's analysis— and the analysis by the appellate court— is focused on the strategic considerations of counsel in balancing the potential benefits of calling a particular witness against the identifiable risks." Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018).

Counsel's performance is not deficient if he decided not to present a witness as a tactical and strategic move, nor if the witness was unlikely to appear or present testimony that could have made a difference at trial. See, e.g., Smith v. State, 404 S.C. 493, 502, 745 S.E.2d 378, 383 (2012) (finding that counsel was not deemed ineffective when petitioner failed to introduce any evidence that established prejudice to the petitioner); Edwards v. State, 392 S.C. 449, 457-58, 710 S.E.2d 60, 65 (2011) (stating that counsel was not ineffective because the witness could not withstand cross-examination due to his prior vacillation and the cumulative nature of his testimony and he

knew the petitioner's statement to the police would be entirely consistent with the supposed witness's statement at trial); Glover, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) (finding that counsel was not deficient by failing to call alibi witnesses when two witnesses who testified at PCR hearing did not establish the alibi).

Further, prejudice will generally be found if the testimony was significant and favorable enough to the Applicant so that the trial proceedings results may have been different because of the testimony. See, e.g., Lounds v. State, 380 S.C. 454, 670 S.E.2d 646 (2008) (finding that counsel was deficient by failing to call witnesses, for no other reason than lack of preparation, that may have corroborated, or bolstered defendant's credibility so that the findings at trial could have been favorable to the defendant); Thomas v. State, 308 S.C. 123, 417 S.E.2d 531 (1992) (finding that uncalled witness' testimony would have cast doubt on the sole witness' identification of the petitioner and, thus, would have made a difference at trial).

The South Carolina Supreme Court has repeatedly held that a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony per the rules of evidence at the PCR hearing to establish prejudice from the witness' failure to testify at trial. See Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995) (where witnesses applicant claimed could have provided an alibi defense did not testify at the PCR hearing, he could not establish any prejudice from counsel's failure to contact these witnesses); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992) (where applicant did not offer witnesses at PCR hearing but merely alleged they would have provided him with alibi defense and testified victims had recanted their trial testimony, he failed to establish prejudice).

At the evidentiary hearing, on direct examination, Applicant testified that Plea Counsel never discussed potential witnesses he could call. (PCR Tr. p. 10). Applicant testified that he told

Plea Counsel about a witness but they never discussed that witness "coming up and about." (PCR Tr. p. 10)

This Court finds Applicant's testimony in this matter **not credible**. This Court finds Applicant failed to establish Plea Counsel was deficient or resulting prejudice from Plea Counsel's performance. While Applicant testified that he told Plea Counsel he had a witness, Applicant failed to produce that witness and their testimony as required at the evidentiary hearing. See Glover, supra (To show counsel was ineffective by failing to call a witness, the witness(es) must be produced at the PCR evidentiary hearing, or their testimony must otherwise be presented, consistent with the rules of evidence.).

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

Allegation: Involuntary Guilty Plea

Out of an abundance of caution, this Court addresses a matter that came up in the evidentiary hearing through the witness, Shelly Dolford (Dolford), that was not within the pleadings. This Court interprets this as an allegation of involuntary guilty plea.

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 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.

At the evidentiary hearing on direct examination, Dolford testified that Applicant was and was not her son-in-law because it was "on and off." (PCR Tr. p. 26). Dolford testified that Applicant was never in jail longer than two to three days for anything that he did. (PCR Tr. p. 27). Dolford testified that Applicant was out about "four years" prior to his case being called to trial. (PCR Tr. p. 27).

The following colloquy occurred during direct examination:

- Q. Okay. All right. Were you -- what do you know about contact between Mr. Floyd, the Public Defender's Office, and Mr. McClain?
- A. Okay. From my understanding, he did not receive a call or anything from Mr. Floyd until three months prior to this trial date.
- Q. All right. So, in other words, you're saying that Mr. -- as far as you know, Mr. Floyd did not contact him in any way other

than routine court appearances up until a few months prior to trial?

A. That's correct.

Q. All right. Were you there or were you a part of the discussions that led to the decision to plead guilty?

A. I was here the date of the trial.

Q. Uh-huh. (Affirmative).

A. He sat out there for a while. I met with McKenzie and Richardson.

Q. All right. Tell me who McKenzie and Richardson are.

A. From my understanding, Richardson was the head investigator on the case. I want to say McKenzie, I'm not sure if he's with the public defenders or who he's with. But I had everything written down.

Q. Let he---

A. We met -- go ahead.

Q. Let me stop you just a second though. You said McKenzie and Reese -- so McKenzie was the head investigator?

A. No, Richardson.

Q. Richardson. Do you mean he was the head investigator for the Public Defender's Office?

A. For the State.

Q. For the State. Okay. So, he met with you and somebody from the Public Defender's Office?

A. His name is McKenslie (phonetic).

Q. Met with y'all -- what, what happened at that -- go ahead.

A. Okay.

Q. Continue on.

A. I asked him could we talk to him, try to figure out what actually was going on. We sat in that room maybe 30 minutes and they went into deep detail as to what was gonna happen. You don't have a lawyer, how can you prove this. They went into detail as how critical it could get. Before Zachary came out, Richardson stated that---

....

A. Okay. When Richardson and McKenslie (phonetic) was in there, they went through everything. Richardson stated that he was gonna text Elizabeth and tell them to offer him 18 year plea. Once the text was sent to Elizabeth, Floyd stated that he was not gonna offer him the plea. He was just gonna outright and let the judge sentence him.

Q. All right. So, you're saying that the discussion that led your son-in-law to plead guilty was, was actually not a discussion with his lawyer but was discussion with investigators?

A. Correct.

Q. To the best of your knowledge, was there ever -- are you aware of lengthy discussions of the case between your son-in-law and Mr. Floyd?

A. Not to my knowledge.

Q. Okay. I don't -- anything else you need to tell us today? That cover it?

A. That's -- that sums it up.

(PCR Tr. pp. 28-31).

Then, the following colloquy occurred between the Court and Dolford:

THE COURT: Just one question, ma'am. Your testimony was that Mr. McClain and you met with the State's investigator without Mr. Floyd present?

THE WITNESS: That is correct. We met in one of these conference rooms here.

THE COURT: The day of the trial?

THE WITNESS: The day of the trial.

THE COURT: And did Mr. Floyd know you were doing that?

THE WITNESS: I'm not sure. I just asked -- I was asking a question and Mr. McKenslie (phonetic) came in and then that's when he brought Richardson in.

THE COURT: Okay. And they, they, they were law enforcement officers that were investigators for the State?

THE WITNESS: Correct.

THE COURT: And they met with you and, and your son-in-law without his attorney present?

THE WITNESS: Correct, along with his mother, grandmother, and wife.

THE COURT: Ma'am, that just strikes me as highly unusual.

THE WITNESS: They did.

THE COURT: And did you ask for that meeting or how did, how did that meeting---

THE WITNESS: I asked---

THE COURT: ---happen?

THE WITNESS: ---could I speak with him and actually Floyd came in and got Zachary while we were talking.

THE COURT: So, he came in and---

THE WITNESS: He came---

THE COURT: ---yikes (phonetic) -- so you went to the State's investigator and said could you talk to him?

THE WITNESS: No, we were out in the lobby---

THE COURT: Okay.

THE WITNESS: ---and they were walking by and I was asking a question.

THE COURT: Okay.

THE WITNESS: And that's when he said come on, let me talk to you in this room.

THE COURT: Okay.

THE WITNESS: That's when---

THE COURT: But you---

THE WITNESS: They---

THE COURT: You initiated all of that?

THE WITNESS: Correct. Just could I speak with them --

THE COURT: Okay. That was my---

THE WITNESS: -- not knowing who they were.

THE COURT: ---concern?

(PCR Tr. pp. 31-33).

On direct examination, Plea Counsel testified that he was not aware of Dolford's meeting with anyone. (PCR Tr. p. 44). Plea Counsel testified that Thomas McKenzie was the public defender's investigator and not the State's investigator. (PCR Tr. p. 44). Plea Counsel testified that if he had found his client alone in a room with Assistant Solicitor David Richardson, there would have been problems. (PCR Tr. p. 44).

On cross-examination, the following colloquy occurred:

- Q. I guess what I'm getting at is something happened to cause him to plead guilty and you're -- your, your, your current speculation is it was just the fact that it was -- the jury was being picked?
- A. Well, I mean I -- I'm speculating.
- Q. Sure.
- A. He only knows why he decided to plead. Not me.

- Q. What I'm getting at is though---
- A. I mean---
- Q. ---is what role this conversation between -- that was testified to, and, and obviously if you don't know about it you don't know about it. But between you said a Mr. McKenzie from your office, who's an investigator from your office --
- A. Correct.
- Q. -- and someone else and my client. Do you know about that--
- A. Ms.---
- Q. ---conversation?
- A. Ms., Ms. Neyle was with me that day. She was gonna sit with me. She's an attorney.
- Q. Uh-huh. (Affirmative).
- A. She was there. I was there. Mr. McKenzie is usually available in, in the event that I need something he can go get it for me. Richardson, I have no idea what that's about. I wasn't aware of anybody in that room with him.
- Q. Gotcha.
- A. I have no idea.
- Q. Did -- do you -- are you aware of any occasions where the solicitor -- obviously we don't want the solicitor meeting with our clients without us being present. But do you -- are you aware of any occasions where an assistant solicitor would be meeting with a client of yours with say an investigator from your office present? Has that ever happened?
- A. I mean the -- not -- well, they wouldn't have my permission to do it without me being there. I mean I can't say it's never happened.
- Q. Sure.
- A. But if they asked me permission to do it, I would say no---
- Q. Gotcha.
- A. ---unless I was there but --.

(PCR Tr. pp. 54-56).

As an initial matter, This Court finds Plea Counsel's testimony credible and Dolford's testimony not credible on this issue. From the testimony and record before this Court, this Court cannot establish that this alleged meeting ever took place. Notably, Applicant did not testify to this alleged meeting on direct or cross-examination.

Further, 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).

Notably, Applicant did not allege any facts tending to prove he was prevented from informing the plea court that he was not happy with Plea Counsel. Thus, based on the evidence presented at the plea proceeding and 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**

[CONCLUSION PAGE FOLLOWS]

CONCLUSION

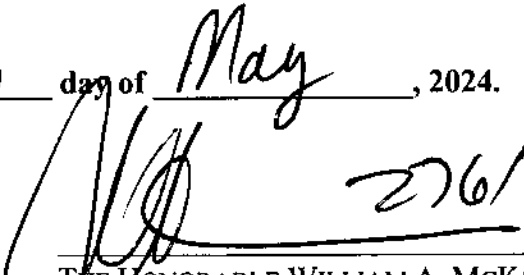
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be **DENIED and DISMISSED WITH PREJUDICE**.

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 6 day of May, 2024.



THE HONORABLE WILLIAM A. MCKINNON
Presiding Judge
Twelfth Judicial Circuit

France, South Carolina

2024 MAY -9 PM 1:04
Doris P. ...
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STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2022CP2101826

Zachary Deon McClain 2024 MAY -9 PM South Carolina State Of
DORIS DEON MCCLAIN

PLAINTIFF(S) DEFENDANT(S)
Submitted by: Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

5/9/2024

Date

For Clerk of Court Office Use Only

This judgment was entered on May 9th, 2024, and a copy mailed first class or placed in the appropriate attorney's box on May 10th, 2024, to attorneys of record or to parties (when appearing pro se) as follows:

Michael H. Lifsey PO Box 548 Chester, SC 29706

D Russell Barlow II PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Doris P O'Hara

Court Reporter

Doris Poulos O'Hara - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

