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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
Clifton Newman, Circuit Court Judge

2016-CP-21-1380

Nathaniel Nesmith, #361804,

Appellant,

v.

State of South Carolina,

Respondent.

NOTICE OF APPEAL

Nathaniel Nesmith, #361804, appeals the Order of Dismissal with Prejudice, denying his Application for Post-Conviction Relief, which was filed April 12, 2022, issued by The Honorable Clifton Newman., Presiding Judge of the Twelfth Judicial Circuit Court of Common Pleas. Appellant received written notice of this Order on April 22, 2024.

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May 10, 2024

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ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE	IN THE COURT OF COMMON PLEAS FOR THE TWELFTH JUDICIAL CIRCUIT
Nathaniel Nesmith, #361804, Applicant, v. State of South Carolina, Respondent.	CASE NO. 2016–CP–21–1380 **ORDER OF DISMISSAL WITH PREJUDICE**

Presiding Judge:	Hon. Clifton Newman
Applicant's Attorney:	Joshua A. Bailey, Esq.
Respondent's Attorney:	D. Russell Barlow, II, Esq.
Plea Counsel:	William E. Grove, Esq.
Date of Hearing:	October 20, 2022
Court Reporter:	Krystal J. Smith

This matter comes before the Court by way of Nathaniel Nesmith's (Applicant) application for post-conviction relief (PCR) filed on June 9, 2016. Respondent, the State of South Carolina, filed its Return on February 25, 2021.[1] On October 11, 2022, Applicant, through counsel, filed its amended PCR application.

On October 20, 2022, an evidentiary hearing was held at the Florence County Courthouse before the Honorable Clifton Newman. Assistant Attorney General D. Russell Barlow, II, represented Respondent. Applicant was present and represented by Joshua A. Bailey, Esquire (PCR Counsel). At the hearing, Applicant proceeded on the claim in his amended application. In

[1] The delay in Respondent's return to the application was because Applicant had a pending motion to reconsider sentence in general sessions.

support of these claims, Applicant testified on his behalf, and Respondent presented testimony from William E. Grove, Esquire (Plea Counsel).[2]

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. During its June of 2014 term, the Florence County Grand Jury indicted Applicant for Murder, Armed Robbery, Conspiracy, Kidnapping, and Possession of a Weapon During the Commission of a Violent Crime (2014-GS-21-00691).

On October 21, 2014, Applicant pled guilty before the Honorable Benjamin H. Culbertson to the lesser included offense of voluntary manslaughter and as indicted to armed robbery.[3] Judge Culbertson sentenced Applicant to imprisonment for concurrent terms of thirty (30) years for each crime. Applicant filed a motion to reconsider the sentence on October 23, 2014. Prior to the resolution of that motion, Applicant filed a notice of appeal on November 3, 2014. The South Carolina Court of Appeals subsequently dismissed Applicant's appeal without prejudice by order filed on November 25, 2014, due to the pending motion. The Remittitur was returned on December

[2] Plea Counsel was an Assistant Public Defender with the Twelfth Circuit Public Defender's Office when he represented Applicant. (PCR Tr. p. 25).

[3] Applicant's Conspiracy, Kidnapping, and weapons charges were dismissed as part of the plea deal.

12, 2014. On April 18, 2016, Applicant's motion was heard before Judge Culbertson. An order denying Applicant's motion was signed and filed on September 12, 2019.

Applicant did not file a subsequent appeal of his convictions or 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:

> Your Honor, Mr. Nesmith was with two Codefendants, Mr. Donald Ray Dollard and Mr. Gregory Canty. They got in, I think, Mr. Dollard's vehicle, if I'm not mistaken, and came to Florence to a store that is run by a man by the name of Brian McElveen.
>
> Also present there was an associate of his, Mr. Clay McKnight. Neither of them wish to be here today, Your Honor, which -- I believe a part of the reason for that may be because that store Mr. McElveen runs is a place known for gambling, and that is probably why this store was targeted to be robbed.
>
> Your Honor, Mr. Canty did not go into the store but remained in the vehicle, but I think he gave Mr. Dollard and Mr. Nesmith the name of Brian McElveen, which gained them access to get into the store.
>
> There was a surveillance video camera there at the store, and Mr. Nesmith and Mr. Dollard went to the store and knocked on the door and was told, according to what Mr. Nesmith tells us -- everything he told we have not been able to corroborate. He was not the first one to talked. Mr. Dollard talked immediately with the law enforcement. Mr. Nesmith, I believe, was truthful with me. He told me that they were told, go away; we are closed; and they said, right, and called out his name. Then he opened the door and let them in.
>
> They went in and Mr. Clay McKnight was there and Mr. McElveen was there, and Mr. David Jenkins was there, and Mr. Jenkins was getting ready to go. They told him you've got to stay or go, and he says okay and walks out the door, and they begin to rob Mr. McKnight and Mr. McElveen.
>
> On the way to the store they had stopped at another store which was like a Dollar General, and they got some twist ties or zip ties, and like a toy badge and toy handcuffs, and they handcuffed them. Mr. Dollard or Mr. Nesmith one had a badge. Mr. Dollard had the zip ties and he was going to tie the people up with zip ties.

Then there was a knock at the door and he told Mr. Nesmith to answer the door. Mr. Nesmith answered the door and Mr. Jenkins was there with a gun, which was a high point, and he tried to fire and the gun misfired, and he didn't even have a magazine in it. He had the magazine in his pocket, we found later.

But you could tell on the video that he tried to fire and kind of fooled with it, and Mr. Dollard -- Mr. Nesmith returned fire. He thought he was shot, he says. You know, when the gun clicked he just fired. Mr. Jenkins ran around the corner of the building, and he got shot. Mr. Nesmith did hit him, and he went around the corner of the building where he expired.

Mr. Nesmith said they planned on robbing the store. They were told they had a lot of money there. I think they knew it might have been a gambling joint.

He did express remorse to me and said he didn't intend on hurting anybody. Mr. Jenkins came -- I assume Mr. Jenkins went to his truck and he probably thought something was up and there was a robbery and he was trying to stop it.

Mr. Nesmith did express remorse to me. I would defer at this time -- I believe there may be some other details I left out. I will defer to the Investigators, but I do need to tell you one other thing. According to Mr. Nesmith, the reason this took place and they were together and they were robbing -- they had charges pending in Williamsburg County for a bank robbery -- is that Mr. Dollard had a young, twenty-five year old girlfriend that was strung out on cocaine and kept trying to get cocaine and money from Mr. Dollard, and he was afraid he was going to lose her and intended on leaving his wife for this young girlfriend who happens to be the niece of a narcotics agent for the Williamsburg Sheriff's Office, and he told me this. I called there and found out who he was. I called him and asked him if he had a twenty-five year old niece that had a relationship with Dollard and was strung out on drugs, and he said he did; that he believed that to be true about his niece.

So I corroborated that what he told me was true with regards to that. He told me Mr. Dollard was the driving force behind this, trying to get money, and he was going along with him. Mr. Canty was going to go along with it but when they got there he said he wasn't going to go in; he was not getting out of the vehicle.

They got Fifteen Hundred Dollars from Mr. Clay McKnight. There was more money there they didn't know about and didn't take that Mr. McElveen had hidden. Mr. McElveen had given Fifteen Hundred Dollars to Mr. McKnight and that's when Mr. McKnight

came in the store, so they were able to find and see quickly that and that is how they got that Fifteen Hundred Dollars.

Mr. Nesmith said he got Five Hundred and Mr. Dollard told law enforcement he got Five Hundred Dollars, but Mr. Dollard said he gave Mr. Canty Five Hundred Dollars. Mr. Nesmith verified that.

So that is what happened. After the shooting they got the money and took off and went back toward Florence, Florence County and the Williamsburg County area, and Johnsonville-Hemingway area, where they were from.

(Plea Tr. pp. 11-15)

CURRENT ACTION BEFORE THIS COURT

Applicant timely, albeit prematurely, commenced this PCR action on November 17, 2021. Applicant asserts he is being held in custody unlawfully, alleging:

1. "Ineffective assistance of counsel"
   a. "Plea entered based upon counsels uninformed decision"
   b. "Plea counsel did not advise me [to appeal], nor did he file [an] appeal."

On October 11, 2022, Applicant, through PCR Counsel, amended his PCR application to include the following allegations:

1. Involuntary Guilty Plea
   a. Petitioner avers that prior to the entry of his guilty plea, he met with his counsel (a) and the assistant solicitor to discuss the case. Petitioner avers that this meeting took place at the courthouse. Petitioner avers that following this meeting, and having been advised by counsel, he believed that he would be sentenced to ten (10) years in exchange for his guilty plea. Petitioner further avers that counsel contacted his mother by telephone and informed her of the date/time of the plea and that Applicant would be sentenced to ten (10) years in prison.

Before this Court are the Florence County Clerk of Court records regarding the subject's convictions and sentences, the Applicant's records from the South Carolina Department of Corrections, the Applicant's guilty plea transcript[4], and the records of the current PCR action.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act[5] (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. 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

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[4] Notably, at the PCR hearing, Respondent and Applicant agreed that the court reporter indicated the guilty plea transcript was not available in this case. However, after the PCR hearing, Respondent found the guilty plea transcript in Applicant's co-defendant's PCR and PCR Appeal file. That record is now before this Court.

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

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 decision making" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. 357, 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 Plea 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, 104 S.Ct. 2052; 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. 8-9); 2. Applicant was not under the influence of drugs or alcohol, which may affect his ability to understand the plea proceedings (Plea Tr. p. 7); 3. Applicant understood the sentencing range (Plea Tr. pp. 8-9); 4. Applicant understood his right to a jury trial and that he waived those rights by pleading guilty (Plea Tr. pp. 7-8); 5. Applicant clearly indicated he was satisfied with Plea Counsel (Plea Tr. p. 10); 6. Applicant indicated no one was forcing him to plead guilty, and his decision to plead guilty was voluntary (Plea Tr. p. 10); 9. Applicant agreed with the facts surrounding the State's case as what happened in the case (Plea Tr. pp. 11-16); 10. Applicant's plea was qualified as freely, knowingly, and voluntarily entered into (Plea Tr. p. 22).

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS ON THE MERITS

Allegation: **Involuntary Guilty Plea**
Allegation: **Plea Counsel Told Applicant He Would Only Receive Ten Years If He Plead**

Applicant alleges Plea Counsel was constitutionally ineffective and that his guilty plea was involuntary. Specifically, Applicant alleges Plea Counsel told him he would only get ten (10) years. 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 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 minimum and maximum sentencing ranges on all charges that he pleaded guilty to. 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 that he thought he was pleading to ten (10) years for voluntary manslaughter. (PCR Tr. p. 8). Applicant testified that there was no gun, shell casings, DNA, or no photo ID evidence against him in this case. (PCR Tr. p. 11). Applicant testified that Plea Counsel told him to tell the plea court that no one had promised him anything. (PCR Tr. p. 16). Applicant was asked if Plea Counsel instructed him on how to answer the plea court's questions, and he replied, "No, he didn't." (PCR Tr. p. 16). Applicant testified that his Plea Counsel called his mother and told her he would get ten (10) years. (PCR Tr. p. 17).[6]

On cross-examination, Applicant testified that Plea Counsel told him that he would get thirty (30) years if he went to trial. (PCR Tr. p. 20). Applicant testified that his DNA was not present on Victim, and Victim did not make contact with Applicant, so it would not have been there anyway. (PCR Tr. pp. 20-21). Applicant testified that there was video evidence that showed him as the shooter of the Victim. (PCR Tr. p. 21). Applicant testified that the plea court explained the minimum and maximum sentence, and he thought he was "copping out" to ten (10) years. (PCR Tr. pp. 21-22).

On redirect examination, Applicant testified that he would not have pled guilty if he had known he would get thirty (30) years imprisonment and not ten (10) years. (PCR Tr. p. 24).

On direct examination, Plea Counsel testified that the State's version of events was not different from Applicant's version of events. (PCR Tr. p. 28). Plea Counsel testified that Applicant

[6] Applicant submitted an affidavit from Applicant's mother without objection wherein the affiant stated Plea Counsel told her Applicant would only receive ten (10) years. (PCR Tr. pp. 16-17).

did at one point wish to go to trial, and they discussed the defense of stand your ground; however, after explaining that bringing the harm upon yourself precludes that affirmative defense, Applicant and he started to discuss plea deals. (PCR Tr. p. 28). Plea Counsel testified that Applicant understood what he was pleading to. (PCR Tr. p. 29). Plea Counsel testified that he nor the solicitor ever told him he would only get ten (10) years if he pled guilty. (PCR Tr. p. 29). Plea Counsel testified that as part of their discussions, he would ask for the lower end of ten (10) years, but there was no recommendation and no guaranteed offer made to Applicant. (PCR Tr. p. 29). Plea Counsel testified that he did not specifically recall the phone call to Applicant's mother, but it would have been his practice to tell her the range of ten (10) to (30) years but that he would never have told her of a definitive outcome. (PCR Tr. pp. 29-30).

On cross-examination, Plea Counsel testified that he did not recall any letter where Applicant agreed to plead to ten (10) years. (PCR Tr. pp. 32-33). After reviewing eight letters from Applicant in Plea Counsel's file, Plea Counsel testified that in the seventh letter, Applicant agreed to five (5) to seven (7) years but he did not have a letter agreeing to ten (10) years. (PCR Tr. p. 34).

This Court finds Applicant's testimony **not credible** and Plea Counsel's testimony **credible**. Furthermore, 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).

Notably, Applicant did not allege any facts tending to prove he was prevented from informing the plea court that Plea Counsel told him that he would only receive ten (10) years. In fact, the record refutes Applicant's allegations. 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 1st **day of** April**, 2024.**

~~THE HONORABLE~~ CLIFTON NEWMAN
Presiding Judge
Twelfth Judicial Circuit

Columbia, South Carolina

FILED
2024 APR 12 PM 2:37
DORIS POWELL GUARA
CCCP & GS
FLORENCE COUNTY, SC

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

FILED

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP2101380

Nathaniel Nesmith	2024 APR 12 PM 2:49 DORIS POULOS O'HARA CCCP & GS FLORENCE COUNTY, SC	South Carolina State Of
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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ 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.

CERTIFIED: A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

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.

4/12/2024

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

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MAY 16 2024
S.C. SUPREME COURT

This judgment was entered on **April 12, 2024**, and a copy mailed first class or placed in the appropriate attorney's box on **April 12, 2024**, to attorneys of record or to parties (when appearing pro se) as follows:

Joshua A. Bailey PO Box 555 Florence, SC 29503

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.