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Jul 31 2024

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Certiorari to Lexington County

Honorable Jocelyn J. Newman, Circuit Court Judge

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JONATHAN C. HUGHES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000231

---

APPENDIX

---

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ATTORNEYS FOR RESPONDENT

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**WITNESSES**

Lexington County Sheriffs Department

Shaun Spivey

Law Enforcement Case #: 15002792

**DOCKET NO. 2015GSS3200897**

**The State of South Carolina**

County of Lexington

**COURT OF GENERAL SESSIONS**

**APRIL TERM 2015**

**ARREST WARRANT NUMBER**

**2015A3210200293**

JAG

**ACTION OF GRAND JURY**

Jonathan Christian Hughes

**THE STATE**

**vs.**

**TRUE BILL**

Foreperson of Grand Jury

Date:

4/13/15

**CDR #: 0079**

Indictment for

**BURGLARY FIRST DEGREE**

§ 16-11-0311

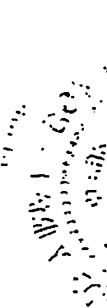
**DONALD V. MYERS, SOLICITOR**

Foreperson of Petit Jury

Date:

**TRUE COPY**

Lex. Co. C.C.P., G.S. & F.C.



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )  
 )

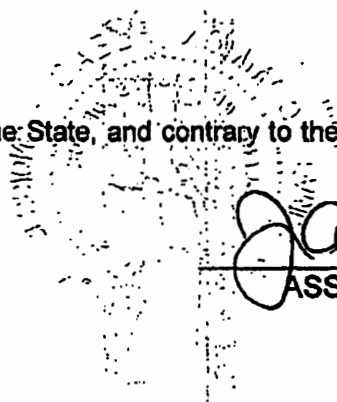
INDICTMENT FOR  
BURGLARY FIRST DEGREE

§ 16-11-0311.

At a Court of General Sessions, convened on APRIL 2015, the Grand Jurors of Lexington County present upon their oath:

That Jonathan Christian Hughes along with co-defendants did in Lexington County, South Carolina on or about February 14, 2015, knowingly and willfully enter a dwelling, to wit: \_\_\_\_\_, being the dwelling of David Quintana and others, without consent and with the intent to commit a crime therein and was armed with a deadly weapon and/or the entering or remaining occurred in the nighttime, in violation of § 16-11-311 of the Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



*[Handwritten Signature]*  
ASSISTANT SOLICITOR

**WITNESSES**

Lexington County Sheriff's Department

Shaun Spivey

Law Enforcement Case #: 15002792

**DOCKET NO. 2015GSS3200898**

**The State of South Carolina**

County of Lexington

**COURT OF GENERAL SESSIONS**

**APRIL TERM 2015**

**ARREST WARRANT NUMBER**

**2015A3210200294**

JAG

**ACTION OF GRAND JURY**

**THE STATE  
vs.**

Jonathan Christian Hughes

**TRUE BILL**

**CDR #: 0139**

Indictment for

**VERDICT**

Foreperson of Grand Jury

4/13/15

**ARMED ROBBERY  
§ 16-11-0330(A)**

**DONALD V. MYERS, SOLICITOR**

Foreperson of Petit Jury

Date:

**TRUE COPY**  
Lex. Co. C. C. P. G. S. & F. C.

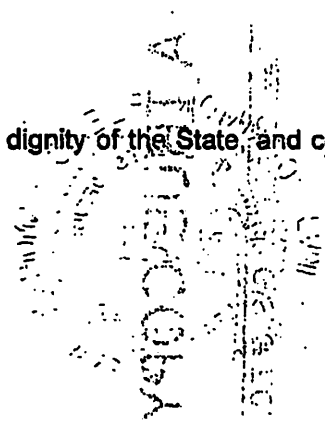
STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )  
 )

INDICTMENT FOR  
ARMED ROBBERY  
§ 16-11-0330(A)

At a Court of General Sessions, convened on APRIL 2015, the Grand Jurors of Lexington County present upon their oath:

That Jonathan Christian Hughes along with co-defendants did in Lexington County, South Carolina on or about February 14, 2015 knowingly and willfully while armed with a deadly weapon feloniously take from the person or presence of David Quintana and/or Alva Valdez, by means of force, threats or intimidation goods or monies being described as follows: a purse, electronics, cash and other personal property with the intent to deprive the owner of the use of such property, in violation of Section 16-11-330 (A) of the South Carolina Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



*[Handwritten Signature]*  
\_\_\_\_\_  
ASSISTANT SOLICITOR

State of South Carolina ) In the Court of General Sessions  
 ) Eleventh Judicial Circuit  
 County of Lexington ) 2015-GS-32-00897, -00898

State of South Carolina, )  
 )  
 Plaintiff, )  
 )  
 Vs. ) Transcript of Record  
 )  
 Jonathan Hughes, )  
 )  
 Defendant. )  
 )  
 )

April 14, 2016  
 Lexington, South Carolina

B e f o r e:

The Honorable William H. Seals, Judge

A p p e a r a n c e s:

Angela Martin, Esquire  
 Attorney for the Plaintiff

Jason Chehoski, Esquire  
 Attorney for the Defendant

Bonnie H. Kelly, CVR  
 Circuit Court Reporter

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NUMBER</u>
Case Called/Court Clerk	4
Direct Examination by the Court	4
Recitation of the Facts/Ms. Martin	6
Mitigation/Mr. Chehoski	11
Sentence by the Court	15
Certificate Page	16

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
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-- No exhibits entered --

1 (Prior to this hearing, all defendants were required  
2 to stand as a group as their rights were recited by the  
3 Court.)

4 COURT CLERK: 2015-GS-32-897, *State vs. Jonathan*  
5 *Christian Hughes*, indicted for burglary first degree. He  
6 is pleading as charged.

7 2015-GS-32-898, *State vs. Jonathan Christian Hughes*,  
8 indicted for armed robbery. He is pleading as charged.

9 Both indictments are true billed and he is represented  
10 by Mr. Chehoski.

11 (To the defendant) Raise your right hand, please.

12 JONATHAN HUGHES, having been first duly  
13 sworn, testifies as follows:

14 DIRECT EXAMINATION BY THE COURT:

15 Q All right. Mr. Huges, you are pleading guilty to  
16 armed robbery, which carries a minimum of 10 years and a  
17 maximum of 30 years; is that correct?

18 A Yes, sir.

19 Q And you are pleading guilty to burglary first degree,  
20 which carries a minimum of 15 years and a maximum of life;  
21 is that correct?

22 A Yes, sir.

23 Q Were you in the courtroom -- you need to speak up a  
24 little bit now.

25 A All right.

1 Q Were you in the courtroom when I went over your rights  
2 to a jury trial?

3 A Yes, sir.

4 Q Did you understand those rights?

5 A Yes, sir.

6 Q And you want to give up your right to a jury trial and  
7 plead guilty today.

8 A Yes, sir.

9 Q Are you satisfied with your lawyer?

10 A Yes, sir.

11 Q Has he answered all of your questions?

12 A Yes, sir.

13 Q Has he done everything you've asked him to do?

14 A Yes, sir.

15 Q Have you had enough time with your lawyer?

16 A Yes, sir.

17 Q Has anybody promised you anything to get you to plead  
18 guilty?

19 A No, sir.

20 Q Anybody threatening you in any way to make you plead  
21 guilty?

22 A No, sir.

23 Q Are you under the influence of any drugs or alcohol at  
24 this time?

25 A No, sir.

1 Q Have you answered me truthfully?

2 A Yes, sir.

3 Q Are you guilty?

4 A Yes, sir.

5 Q Have you understood all of my questions?

6 A Yes, sir.

7 Q Thank you.

8 THE COURT: Solicitor.

9 MS. MARTIN: Thank you, Your Honor. May it please the  
10 Court.

11 Your Honor, this was on Valentine's Day of 2015. It  
12 was a little after one o'clock in the morning. It happened  
13 on Doe Trail Drive, in the County of Lexington.

14 Your Honor, the home owners, David Quintana [phonetic]  
15 and Alva Valdez -- who are here on the front row -- they  
16 are common-law married. They have children together. They  
17 were actually going to sleep or had been asleep. The daddy  
18 heard a noise, thought one of the kids had gotten up and  
19 was in the den; and then the next thing he knew, there was  
20 a gun -- a man that was armed with a gun in his house.

21 Your Honor, the way the -- the -- the mobile home is  
22 situated is that on one side, there is the parent's room  
23 with the master and a bathroom; then the den is in the  
24 middle. And they had three children, and the children's  
25 bedrooms were on the other side of the mobile home.

1           Your Honor, the -- the gunman forced David back into  
2 the bedroom, was telling them -- he and his wife to get in  
3 the bedroom. Then he forced them into a bathroom area.  
4 They heard commotion, other people coming into the home.

5           This person that we believe is a co-defendant, not --  
6 not this guy, was telling them that if they didn't be  
7 quiet, if they didn't cooperate, that they'd kill the  
8 children. And just the feelings that were going and  
9 emotions that were going through their head as they were  
10 separated from their children -- they were actually take --  
11 put in -- told to go into the bathroom and get into the  
12 shower -- that was very, very traumatic.

13           And as I said, they could hear that the -- the other  
14 people -- there were other people in the house. They were  
15 -- they could hear people walking down the hall.

16           Your Honor, this defendant and two co-defendants  
17 actually took X-boxes, Wii stations, took Ms. Alva's  
18 pocketbook that had lots of credit cards in it, took an old  
19 family heirloom Bible. They -- they just came in, robbed  
20 them.

21           And even though it was pretty fast, it certainly was  
22 very traumatic. One of the children had woken up, had  
23 heard the commotion, had heard his bedroom door open, and  
24 he just pretended like he was asleep.

25           Your Honor, when -- when they left, they -- they were

1 on foot. David Quintata actually called law enforcement.  
2 Law enforcement gets there pretty quickly. It's a county  
3 case.

4 They come to investigate and when they're in this  
5 neighborhood, they come across this defendant and a co-  
6 defendant, Antonio Johnson, they're walking. They just do  
7 an ID on these people because they're still investigating.  
8 They don't know if these two people are involved or not.

9 They get their name, their address. They look at  
10 their clothes, they look at their shoes because they know  
11 that the door had been kicked in.

12 So law enforcement was -- was very, very pro-active  
13 and -- and that helped, certainly, a couple of hours later  
14 when the case finally broke.

15 Judge, what happened is, after this, the -- Mr.  
16 McNeill -- which -- who has not been to court yet -- when  
17 he went back home or went to a family member's house and --  
18 anyway, they ended up back at Mr. Hughes's family's house.

19 Your Honor, Mr. McNeill, a co -- the co-defendant that  
20 has not gone to court yet, decided that since it had gone  
21 so well and he'd gotten away with it -- this is within  
22 hours -- he decides to do another home invasion in the same  
23 area.

24 And so he goes in -- crawls through a doggie door with  
25 a long-armed gun into another home, and he's actually

1 caught and confronted by the homeowner who -- who fights  
2 with him and -- and holds him there until law enforcement -  
3 - who was right there anyway -- gets him. And they get Mr.  
4 McNeill and he has Ms. Alva's credit cards and things on  
5 his person.

6 So that case was solved very, very quickly. So they  
7 were able to get Mr. McNeill into custody and it just went  
8 from there.

9 Sure enough, Mr. Hughes and Mr. Johnson, who'd been  
10 walking, end up being implicated in this. Law enforcement  
11 gets search warrants. They talk to family members and --  
12 and it's just a very, very strong State's case.

13 Your Honor, Mr. Hughes and his co-defendant, when they  
14 got home, they -- they hid some of the stuff that they had  
15 stolen. They buried clothes. They tried to get rid of  
16 their shoes when they had known law enforcement had been  
17 interested in the shoes.

18 But law enforcement broke the case. I mean, they got  
19 everything back. They got the clothes that had been buried  
20 and the shoes and -- and things of that nature.

21 Your Honor, our intent today is to resolve all pending  
22 charges. There's some companion gun -- gun charges and a  
23 kidnapping -- two kidnappings that are being dismissed.

24 When Mr. Hughes was actually brought into custody, he  
25 was not -- he was not cooperative at the beginning. He

1 gave different statements and each time they would confront  
2 him with different evidence that they had found, and then  
3 he would admit a little bit more and a little bit more and  
4 a little bit more until finally he admits that -- not that  
5 it would have mattered if he had just been a lookout, but  
6 he finally did admit that he was one of the ones that had  
7 gone in and gotten one of the game -- game stations.

8 Your Honor, Mr. Hughes has no prior record. He has  
9 been in jail since the February date, 2/26 I think. But  
10 Mr. Chehoski can correct that.

11 Your Honor, the victims are here. They did not want  
12 to address the Court, but you know, it was very traumatic.  
13 And Detective Spivey from the Sheriff's Department would  
14 like to be heard as far as sentencing at the appropriate  
15 time.

16 THE COURT: All right. Right now will be fine.

17 MS. MARTIN: Thank you.

18 DETECTIVE SPIVEY: Thank you, Your Honor. Just want  
19 to reiterate some of the stuff that she was -- that Angela  
20 was saying.

21 This case was something that happened over Valentine's  
22 Day. I would see some time for -- for severity that took  
23 place in these -- these victims's lives. Fear, I mean,  
24 that's the biggest thing I can say. These are true, true  
25 victims that you will want to call it in this matter.

1           You know, to -- to have a family be put into a -- to a  
2 shower and be -- have threatened their children in regards  
3 to this matter, not knowing what's going on with the  
4 children while they're in the shower and not being able to  
5 move, you know, I mean, they're -- they're basically  
6 rendered helpless in the matter. And so it's a -- it's a  
7 everyday nightmare for -- for a father or mother not  
8 knowing what's going on with their children.

9           But kinda go into also with the children, you know,  
10 knowing these people are inside the house, burying their  
11 heads to kind of cover up that they're not -- that they're  
12 sleeping, faking that they're asleep while they hear all  
13 this activity going on, you know, it's just -- it's -- it's  
14 a nightmare for any family.

15           But I just wanted to basically ask that you give the  
16 max you possibly can give him.

17           THE COURT: All right.

18           DETECTIVE SPIVEY: Thank you, Your Honor.

19           THE COURT: I'll accept the plea and find that he is  
20 doing so freely, intelligently, and with the advice of  
21 competent counsel.

22           MR. CHEHOSKI: Thank you, Your Honor. May it please  
23 the Court. Mr. Hughes stands before you, 20 years old. He  
24 did complete the -- the tenth grade. Grew up in New Jersey  
25 area, has moved and lived in South Carolina, in Lexington

1 County, since 2011. He's been in custody for 424 days,  
2 ever since his arrest. He's been held without bond.

3 Before his arrest, he was working as a caretaker with  
4 his cousin, essentially helping out with an elderly patient  
5 and chores and maintaining the house.

6 Your Honor, one -- Mr. -- one of his co-defendants,  
7 Mr. Antonio Johnson, has already been to court in front of  
8 Judge Addy, at the end of last year, was sentenced to 20  
9 years. I'm going to try to make the case that Mr. Hughes  
10 deserves less than that, even strive for 15. Not at all  
11 downplaying the severity of the charges. The severity of  
12 the charges and the minimum ranges speak for themselves.  
13 And the fear that the victims felt and Mr. Johnson's role  
14 in it is why he's here today.

15 First of all, my understanding was Mr. Johnson did  
16 have a minimal prior record, while Mr. Hughes does not have  
17 any. Mr. Johnson may -- was armed with a BB gun at the  
18 time. Mr. Hughes was never armed. I don't think the --  
19 the -- he had no contact with the victims at all.

20 He admits going into the house. He did admit to that,  
21 to going and taking some items. And when confronted with  
22 the police, he did cooperate, even to the point where a lot  
23 of -- a lot of the items that he told them, they did search  
24 what -- where items were buried and where they were. He  
25 was the one who directed the -- where to find them, and

1 they determined that to be true.

2 Your Honor, this -- from what I can tell, Mr. John --  
3 Mr. Hughes, rather, was really kind of just following  
4 along. He -- he found out -- found that he got in too deep  
5 and then, you know, kind of got dragged into it. It's  
6 certainly his choice to get dragged into it. He could have  
7 walked away.

8 Understanding that, you know, at his young age, what  
9 happens in the next few moments may determine, you know,  
10 what he's going to do with -- what -- how long he's going  
11 to be spending the next days of his life and how long that  
12 -- that time will be.

13 My relationship with Mr. Hughes began when I started --  
14 -- came on with the Public Defender's Office back in  
15 October. He was one of the very first cases that I looked  
16 into, you know, read through the file, read through the  
17 statements that he gave to the police, and then -- and as  
18 through the -- the police reports, and how cooperative he  
19 was. And then realizing that he's 20 years old and it's  
20 the very first time he's ever been in trouble.

21 Mr. Hughes has always been extremely polite and  
22 respectful towards me. I think in -- in reading -- he was  
23 -- in reading through the words, at the time when the --  
24 the investigator came up and showed him more evidence, I  
25 think he realized that, you know, any charade was over and

1 the report says his head just dropped, like, you know, it's  
2 kind of the weight that comes crashing down.

3 We've gone over the collateral consequences in re the  
4 most serious -- the 85 percent, the violent crimes -- and  
5 he understands that. He feels extreme remorse. He wanted  
6 me to apologize to the victims.

7 Ms. -- Mr. Hughes is understandably very worried as to  
8 what's going to happen to him.

9 Your Honor, other than -- my relationship with him and  
10 even to the point where, you know, as we got closer to this  
11 day, we had a motion here -- I think in the past month, he  
12 moved to have me relieved simply because of our  
13 negotiations with the State weren't getting to the point  
14 where he was -- he was satisfied.

15 But even a motion to relieve me was not personal. It  
16 was -- it was just to the extent that he didn't feel like I  
17 was doing enough. We -- we came in here. Ms. Martin's --  
18 has been, from the very beginning, at least I -- as far as  
19 I'm concerned -- her hands have been tied. She was given a  
20 -- given a directive from her superiors not to make an  
21 offer as to a negotiated sentence, which is what Mr. Hughes  
22 was wanting. All we could do was get -- get some charges  
23 dismissed -- the kidnapping charges and the -- the  
24 possession of a weapon during the course of a violent crime  
25 have been dismissed as part of this plea.

1           Your Honor, because of his lack of prior record and  
2 because of his cooperation and -- and his -- I don't want  
3 to say minimum, but his lesser -- lessened involvement,  
4 we'd ask the Court to consider a 15-year sentence. But in  
5 any case, we ask for less than the 20 that his co-defendant  
6 received.

7           Your Honor, we thank -- we thank you for your time.

8           THE COURT: In reference to the burglary first, I'm  
9 going to give him 40 years. I'm going to give him 424 days  
10 credit. I'm gonna run it concurrent with armed robbery,  
11 and I'm gonna give him 30 years on that one. 424 days  
12 credit.

13           THE COURT REPORTER: Excuse me, Your Honor. Did you  
14 say ---

15           THE COURT: 40.

16           THE COURT REPORTER: 40.

17           THE COURT: 40 and 30.

18                           -- END OF TRANSCRIPT RECORD --

**CERTIFICATE**

1  
2 I, the undersigned Bonnie H. Kelly, Official  
3 Court Reporter for the Fifth Judicial Circuit of the  
4 State of South Carolina, do hereby certify that the  
5 foregoing is a true, accurate, and complete transcript  
6 of record of all the proceedings had and evidence  
7 introduced in the hearing of the captioned cause,  
8 relative to appeal, in the Eleventh Circuit Court for  
9 Lexington County, South Carolina, on the 14th day of  
10 April, 2016.

11 I do further certify that I am neither of kin,  
12 counsel, nor interest in any party hereto.

13  
14 

15  
16 Bonnie H. Kelly, CVR  
17 Official Court Reporter

18  
19 Columbia, South Carolina  
20 January 29, 2017

21  
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25  
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FEB 23 2017

APPELLATE DEFENSE

1548-1ite

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington  
STATE VS.

INDICTMENT/CASE#: 2015GS3200897

Jonathan Christian Hughes

A/W#: 2015A3210200293

AKA:

Date of Offense: 2/14/2015

Race: Black Sex: M Age: 20

S.C. Code § : 16-11-0311

DOB: [REDACTED] SS#: [REDACTED]

CDR Code #: 0079

Address:

City, State, Zip: Lexington, SC 29073-7382

SENTENCE SHEET

DL#: [REDACTED] SID#: SC02188696

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

CONVICTED OF or  PLEADS

In disposition of the said indictment comes now the Defendant who was  
TO: Burglary / Burglary (After June 20, 1985) - First degree

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC w/minor 1st or Lewd Act)  §17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST: [Signature] 064062 Jonathan Hughes [Signature] 69355  
Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,

for a determinate term of 40 300 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of  
probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
by the State Department of Corrections. 424 days

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal  
Domestic Violence ) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

\_\_\_\_\_ days/hours Public Service Employment

Payment Terms: \_\_\_\_\_

Obtain GED

Set by SCDPPPS \_\_\_\_\_

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

Recipient: \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

\*Fine: \$ \_\_\_\_\_

Substance Abuse Counseling

§ 14-1-206 (Assessments 107.5%) \$ \_\_\_\_\_

Random Drug/Alcohol testing

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00

Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

§ 56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_

Other: **A TRUE COPY**

§ 56-1-286 (DUI Breath Test) \$25 \$ \_\_\_\_\_

LEX. CO. CLERK, C.S. & F.C.

Proviso 47.9 (Public Def/Prob) \$500 \$ \_\_\_\_\_

§ 14-1-212 (Law Enforc. Funding) \$25 \$25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ \_\_\_\_\_

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ \_\_\_\_\_

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_

Proviso 90.5 (NCCJA Surcharge) \$5 \$5

3% to County (if paid in installments) \$ \_\_\_\_\_

TOTAL \$130

Appointed PD or appointed other counsel,  
§ 47.12 requires \$500 be paid to Clerk  
during probation.

Clerk of Court/ Deputy Clerk Beth A. Langford

Presiding Judge [Signature]

Court Reporter: B. Kelly

Judge Code: 21-14-16

Sentence Date: 02/15/15

10-30 jnr

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington  
STATE VS.

INDICTMENT/CASE#: 2015GS3200898

Jonathan Christian Hughes

A/W#: 2015A3210200294

AKA:

Date of Offense: 2/14/2015

Race: Black Sex: M Age: 20

S.C. Code §: 16-11-0330(A)

DOB: SS#:

CDR Code #: 0139

Address:

City, State, Zip: Lexington, SC 29073-7382

DL#: SID#: SC02188696

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was

RECEIVED  
MAY 09 2016  
SC Court of Appeals

TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC w/minor 1st or Lewd Act)  §17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

Solicitor: [Signature] SC Bar# [Number] Defendant: [Signature] Attorney for Defendant: [Signature] SC Bar# [Number]

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,

for a determinate term of 30 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years

and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment

of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 424 days

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

Payment Terms: \_\_\_\_\_

Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

\*Fine: \$ \_\_\_\_\_

§ 14-1-206 (Assessments 107.5 %) \$ \_\_\_\_\_

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ \_\_\_\_\_

§ 56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_

§ 56-1-286 (DUI Breath Test) \$25 \$ \_\_\_\_\_

Proviso 47.9 (Public Def/Prob) \$500 \$ \_\_\_\_\_

§ 14-1-212 (Law Enforce. Funding) \$25 \$25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ \_\_\_\_\_

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ \_\_\_\_\_

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_

Proviso 90.5 (SCCJA Surcharge) \$5 \$5.00

3% to County (if paid in installments) \$ \_\_\_\_\_

TOTAL \$130

Clerk of Court/ Deputy Clerk: Beth A. [Signature]

Court Reporter: Bonnie Kelly

SCCA/217 (03/2011)

PTUP \_\_\_\_\_ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: A TRUE COPY

Lex. Co. C.C.R., G.S. & F.C.

Appointed PD or appointed other counsel

§ 47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge: [Signature]

Judge Code: 2157

Sentence Date: 4-14-16

ORIGINAL

STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS  
COUNTY OF LEXINGTON ) ELEVENTH JUDICIAL CIRCUIT

APR 14 2016 3:23

v. ) NOTICE OF MOTION AND  
JONATHAN C. HUGHES, ) MOTION TO RECONSIDER SENTENCE

Defendant. )

INDICTMENT#: 2015GS3200897, 98

205 A321620293 + 2A4

TO: ANGELA MARTIN, Assistant Solicitor for the Eleventh Judicial Circuit

PLEASE TAKE NOTICE that the Defendant, Jonathan C. Hughes, through his undersigned attorney, will move before the Honorable William H. Seals, as soon as the matter can be heard, to reconsider the sentence imposed by the Court on April 14, 2016. Specifically, the Defendant pled guilty to first-degree burglary, and armed robbery, with no recommendation from the State on sentencing. The Court sentenced the Defendant to forty years imprisonment, credit for time served.

Respectfully submitted,



Jason Scott Chehoski  
Attorney for the Defendant

Lexington, South Carolina

April 14, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
v.	)	<b>MEMORANDUM IN SUPPORT OF</b>
	)	<b>MOTION TO RECONSIDER SENTENCE</b>
JONATHAN C. HUGHES,	)	
	)	INDICTMENT#: 2015GS3200897, 98
Defendant.	)	
	)	

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On April 14, 2016, the Defendant, Jonathan Christian Hughes pled guilty in front of the Honorable William H. Seals to one count of Burglary in the First Degree and one count of Armed Robbery. In exchange for the plea, the State dismissed two counts of Kidnapping and one count of Possession of a Weapon in the Commission of a Violent Crime. There were no other recommendations or negotiations from the State. Judge Seals sentenced the Defendant to forty (40) years on the Burglary charge and thirty (30) years on the Armed Robbery charge. The Defendant, through his attorney, filed a motion to reconsider the sentence on April 14, 2016. On April 21, 2016, Judge Seals requested written grounds for reconsideration of the sentence.

Pursuant to Rule 29 of the SC Rules of Criminal Procedure (SCRCrimP), there are two exceptions to the long-standing rule that the court does not retain the authority to hear a criminal matter once the term of court during which the judgment was entered expires. State v. Hinson, 303 S.C. 99, 399 S.E.2d 422 (1990). Those two exceptions are motions for new trials based on newly discovered evidence and a timely post trial motion. Rule 29, SCRCrimP. This current motion to reconsider sentence was filed within ten (10) days of the imposition of the sentence. This matter is properly before the court.

The Defendant, through his attorney, bases this motion on the grounds of the disparity of the sentence given to the Defendant as compared to a similarly situated codefendant.

The codefendant pled on December 14, 2015 in front of the Honorable Frank R. Addy, Jr. to one count of Burglary First Degree and one count of Armed Robbery and received a 20 year sentence to run concurrently with each other. As with the Defendant, the State dismissed two counts of Kidnapping charges and one count of Possession of a Weapon in the Commission of a Violent Crime with no other recommendations or negotiations from the State. The sentencing sheets from that plea are attached to this memorandum. The Defendant, through his attorney stated during the plea that he has no prior record, cooperated with the police during the course of their investigation by giving two confessions, and was never armed during the incident. The Defendant had no contact with the victims involved in this incident and could not have been identified by the victims. In confessing to the police, the Defendant was able to tell the investigators where many of the items taken from this incident were located and subsequently recovered. During the plea, the State referred to another home invasion that led the police to break the case against the Defendant and his codefendant. The record reflects that this second incident was the work of a third codefendant, whose case has not yet been heard, and was solely the work of that third codefendant. The Defendant, through his attorney, submits to the court that there is no rational basis for the Defendant to receive a sentence double the length of that of a similarly situated codefendant and that the sentence given to the Defendant violates the Eight Amendment to the United States Constitution and the Article I, Section 15 of the South Carolina Constitution.

Other jurisdictions have considered disparate sentences between co-defendants outside of the context of a death penalty case. Consider *State of Ohio v. Moore*, 2014 Ohio 5135 (Ohio App., 2014), where the Appellant and his codefendant robbed a Hard Rock Café in May 2000. In this case, the codefendant “by all accounts, masterminded the robbery and carried the

*gun, pleaded guilty and received concurrent nine-year prison terms without any firearm specifications. Moore, who was not armed and was described by one of the victim's as having shown some compassion during the robbery, went to trial and received a prison term of ten years on each count, to run consecutively to each other and to a three-year firearm specification, for a total of 33 years," Moore at ¶2. Even after being remanded to a newly assigned sentencing judge from a previous appeal, Moore was subsequently sentenced to a eight-year term, to run consecutively to each other and a three-year firearms specification, for a total prison term of 27 years. Moore at ¶8. Even in a case where one codefendant pled guilty and another went to trial, the court was disturbed because the record did not support the disparity of the sentences given to Moore as opposed to that of the codefendant. "[L]eniency for a plea alone cannot explain why the terrorizing gunman who was the mastermind of the crimes received a concurrent, nine-year prison term for his conduct and Moore received a consecutive sentence of 27 years. Nor should it." Id at ¶37. The Ohio Revised Code 2929.14(C)(4) requires the court to make findings necessary in order to impose a consecutive sentence, on appeal the court found that the record did not support those findings on a clear and convincing basis. Moore at ¶40.*

In *State v. Bailey*, 251 Kan. 527, 834 P.2d 1353 (1992), two codefendants were arrested for a series of robberies, including one that resulted in the death of an attendant. Both codefendants claimed the other was the more culpable and that they only served as the getaway driver. Both were subsequently sentenced on four counts of aggravated robbery and one count of first degree felony murder. Both codefendants were given identical sentences of 15 years to life on the aggravated robbery charges and one life term for the felony murder. Bailey's sentence, however, were ordered to run consecutively while his codefendant's sentence were concurrent. This sentence structure would have forced Bailey to serve 50% longer than his codefendant

before being eligible for parole. *State v. Bailey*, 251 Kan. 527 at 529, 834 P.2d 1353 at 1354. The court emphasized in remanding, finding that the record demonstrated the codefendant was more culpable, that the “trial judge is not bound to sentence the defendant in this case to the same or a lesser sentence than that of his codefendant. The trial court, however, must consider the sentence given to the codefendant and, if a longer sentence is given, the reason for doing so should be set forth on the record.” *Bailey* at 531, 1356.


Lastly, I ask the court to consider the case of *People v. Vasquez*, 763 N.E.2d 779 (Ill. App., 2001). *Vasquez* was sentenced to 30 years for armed robbery while his codefendants received a 25 year sentence for first degree murder and a six-year consecutive sentence for armed robbery, *Vasquez* at 788. While the disparate sentence claim was denied since the court found they were not similarly situated codefendants, the court, quoting *People v. Taylor*, 742 N.E.2d 357 (2000), stated “[t]he general rule as to the question of whether defendant’s sentence was unfairly disparate is that arbitrary and unreasonable disparity between sentences of similarly situated codefendants is impermissible.”

In the present case, both the Defendant and the codefendant have pled guilty to the exact same charges with the exact same position taken by the State and thus are similarly situated. The record shows that the Defendant was no more culpable, and perhaps less culpable in conduct, than the codefendant who received a 20-year sentence. The *Moore* and *Bailey* cases are compelling because the court performs a culpability analysis based on the defendant’s conduct as compared to the codefendant. In doing so, they noted that while both the defendant and his codefendant in that case were equally liable, their disparate sentences were out of proportion with their respective conduct. Had the court performed a likewise analysis, it would not have seen anything on the record to suggest that the Defendant’s conduct warranted twice the sentence

of a similarly situated codefendant. Fundamental fairness requires that such a wide disparity be discussed on the record given the totality of the circumstances. In defining abuse of discretion, the Supreme Court of Kansas in *State v. Davis*, 256 Kan. 1, 883 P.2d 735 (1994) at 743 stated that it happens “only if no reasonable person would take the view adopted by the trial court,” quoting *State v. Brown*, 823 P. 2d 190 (1990). The Defendant submits that when two similarly situated codefendants, both in terms of charges and relative culpability, receive such disparate sentences without any comment on the record as to the reasoning for the greater sentence, then such an instance has occurred.

For the reasons stated above, the Defendant moves to reconsider the sentence in this case.

Respectfully submitted,

  
\_\_\_\_\_  
Jason Scott Chehoski  
Attorney for the Defendant

Lexington, South Carolina

April 26, 2016

ORIGINAL

STATE OF SOUTH CAROLINA )	IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON )	ELEVENTH JUDICIAL CIRCUIT
STATE )	
vs. )	MEMORANDUM IN OPPOSITION TO
JOHNATHAN C. HUGHES, )	DEFENDANT'S MOTION TO RECONSIDER
)	INDICTMENT #: 2015GS3200897, 98, ET. AL
)	
<u>                    </u> )	
DEFENDANT )	

This motion comes before the Court by motion of the Defendant, Johnathan C. Hughes, requesting the Court to reconsider its sentence in this matter. The State opposes the Defendant's motion as the Court's sentence was proper.

In his motion, the Defendant did not supply the Court with any new mitigating factors as to why Defendant Hughes should receive a sentence reduction. The Defendant has not given any change in circumstance or any new factors for sentence consideration that the Court had not heard at the time of the sentencing.

South Carolina case law gives the Court broad discretion in imposing sentences. There have been no facts supporting an allegation of prejudice against this defendant or any corrupt motive. See Brooks v. State, 481 S.E.2d 712(1997), Garrett v. State, 465 S.E.2d 349(1995), and State v. Bolin, 39 S.E.2d 197(1946).

During the plea, the Court heard from the State, law enforcement, the victims, the defense counsel and the Defendant. The Court heard the facts of this night time home invasion, kidnaping and armed robbery. At the time of the plea, the Court was provided with the codefendant's sentence. Nothing new has been provided that would warrant any sentence reduction.

At the time of the plea, the Defendant was advised of the potential maximum sentence he could receive, which in this case was life plus sixty years. The Defendant and his attorney indicated that the defendant understood the possible penalty and agreed there was no recommendation on sentencing. The Defendant voluntarily completed his guilty plea after being

advised of all of his Constitutional rights by the Court. The imposed sentence of forty years is within the statutory limitations. There has been no judicial error of law.

The Defendant's argument for reconsideration is based on the disparity between sentences of similarly situated codefendants. The Defendant cites non-controlling case law from Ohio, Kansas and the Northeast that requires trial courts to set forth on the record reasons for consecutive sentences and/or disparities in sentences among codefendants. The State contends that this law is not controlling in our jurisdiction. A sentencing judge may consider a wide variety of factors, including a codefendant's sentence for the same offenses. State v. Brewington, 226 S.E.2d. (1976).

For the reasons stated herein, the State requests that the Court deny the Defendant's motion for reconsideration and affirm its previously imposed sentence.

Respectfully Submitted,



Angela Garrick Martin  
Senior Assistant Solicitor

Lexington, SC  
April 29, 2016

ORIGINAL

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )  
 )  
v. )  
JONATHAN C. HUGHES, )  
 )  
DEFENDANT. )

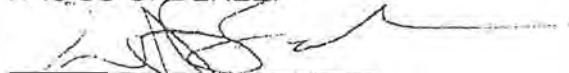
IN THE COURT OF GENERAL SESSIONS  
ELEVENTH JUDICIAL CIRCUIT  
2015GS3200897, ET AL

ORDER DENYING REQUEST TO  
RECONSIDER SENTENCE

On April 14, 2016, Defendant Hughes pled guilty in front of the Honorable William Seals to Burglary first and Armed Robbery. The Court sentenced him to a total of forty years. On the same day, Defense counsel filed a motion for the Court to reconsider this sentence. On April 21, 2016, the Court requested written grounds for reconsideration of the sentence. On April 26, 2016, Defense counsel filed his memo and on April 29, the State filed its response.

After a careful and thoughtful review of both briefs, the Court declines to reconsider its previously imposed sentence. Therefore, the defense's motion to reconsider is hereby denied.

IT IS SO ORDERED



The Honorable William Seals

Dated: 5/3/16

2016 - 3 APR 21  
HONORABLE WILLIAM SEALS  
COURT OF GENERAL SESSIONS  
ELEVENTH JUDICIAL CIRCUIT

SCANNED NOV-01-2019

32

FORM 5

2019 CP 3204424

IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA )

County of Lexington )

Jonathan Christian Hughes )

Full name and prison number (if any) of Applicant )

v. )

State of South Carolina )

APPLICATION FOR

POST-CONVICTION RELIEF

FILED  
2019 NOV -1 AM 9:55  
LISA M. COMER  
CLERK OF COURT  
LEXINGTON SC

**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional Inst.
2. Name and location of Court which imposed sentence Lexington County  
General Sessions
3. Name(s) of co-defendant(s) (if any) Jahman McNeill, Antonio  
Johnson
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2015-65-32-00897
  - (b) 2015-65-32-00898

- (c) \_\_\_\_\_
- 5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) April 14, 2016.
  - (b) ~~April 14, 2016.~~
  - (c) \_\_\_\_\_
- 6. Check whether a finding of guilty was made:
  - (a) after a plea of guilty
  - (b) after a plea of not guilty \_\_\_\_\_
  - (c) after a plea of nolo contendere \_\_\_\_\_
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?  
yes
- 8. If you answered "yes" to (7), list:
  - (a) the name of each Court to which you appealed:
    - i. Court of Appeals
    - ii. ~~Court of Appeals~~
    - iii. \_\_\_\_\_
  - (b) the result in each such Court to which you appealed:
    - i. Affirmed
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (c) the date of each such result:
    - i. Oct. 17, 2018
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (d) if known, citations of any written opinion or orders entered pursuant to such results:
    - i. 2018 - UP - 382
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
- 9. If you answered "no" to (7), state your reasons for not so appealing:
  - (a) \_\_\_\_\_
  - (b) \_\_\_\_\_

(c) \_\_\_\_\_

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective assistance of counsel

(b) guilty plea was not knowing, voluntary, & intelligent

(c) conflict of interest

11. State concisely and in the same order the facts which support each of the grounds set out

in (10): didn't object to solicitor bringing up another case during plea

(a) didn't ensure I agreed with factual basis of guilty plea

(b) guilty plea involuntary because lawyer didn't tell me solicitor would ask for the maximum sentence

(c) public defender's office represented my codefendants

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(b) the name and location of the Court in which each was filed:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(c) the disposition thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

no

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

(b) the proceedings in which each ground was raised:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) had to exhaust direct appeal before proceeding into
- (b) PCR
- (c) \_\_\_\_\_

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? \_\_\_\_\_
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?  
\_\_\_\_\_

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
  - i. Jason Chehoski  
Lexington County Public defender's Office
  - ii. Rob Pachack  
Appellate Defense
  - iii. Joanna Delamy  
Appellate Defense
- (b) the proceedings at which each such attorney represented you:
  - i. plea
  - ii. Direct appeal
  - iii. direct appeal

19. State clearly the relief you seek in filing this application:

new trial  
\_\_\_\_\_  
\_\_\_\_\_

20. Are you now under sentence from any other court that you have not challenged?

no  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF SOUTH CAROLINA )  
County of Lexington )

VERIFICATION

I, Jonathan Christian Hughes, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

J Hughes  
\_\_\_\_\_

SWORN to and subscribed before me this 31<sup>st</sup>  
day of October, 2019.

[Signature] (L.S.)  
Notary Public

My Commission Expires: October 30, 2022

2019 C 03204424

APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, Jonathan Christian, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

J. Christian  
Applicant

SWORN or affirmed to and subscribed before me this 31<sup>st</sup> day of October, 2019.

[Signature]  
Notary Public

My Commission Expires: October 30, 2022

FILED  
2019 NOV - 1 AM 9:55  
LISA M. COMER  
CLERK OF COURT  
LEXINGTON SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
	)	
Jonathan Christian Hughes, #367815,	)	Case No.: 2019-CP-32-4424
	)	
Applicant,	)	<b>RETURN AND MOTION FOR A</b>
	)	<b>MORE DEFINITE STATEMENT</b>
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The State (Respondent), making its return to the application for post-conviction relief filed by Eddie Bass (Applicant) on November 1, 2019, would respectfully show this Court:

I. Procedural History

Applicant is presently incarcerated according to an order of commitment of the Lexington County Clerk of Court. During its April of 2015 term, the Lexington County Grand Jury indicted Applicant for first-degree burglary (2015-GS-32-897) and armed robbery (2015-GS-32-898). The Lexington County Grand Jury also indicted Applicant for the possession of a weapon during the commission of a violent crime (2015-GS-32-894) and two counts of kidnapping (2015-GS-32-895; -896). Applicant was represented by Senior Assistant Public Defender Jason Scott Chehoski (plea counsel), and Assistant Solicitor Angela Garrick Martin of the Eleventh Circuit Solicitor’s Office prosecuted the case. On April 14, 2016, Applicant appeared before the Honorable William H. Seals, and pleaded guilty as indicted to first-degree burglary and armed robbery. In accordance with the plea agreement, the State dismissed the remaining charges. Judge Seals sentenced Applicant to imprisonment for forty years for first-degree burglary and thirty years for armed robbery, with the sentences running concurrently, and with credit for time served.

Plea counsel filed a timely notice of appeal. Appellate Defender Robert M. Pachak of the

South Carolina Commission on Indigent Defense (appellate counsel) perfected the appeal on Applicant's behalf, and Assistant Attorney General William Frederick Schumacher, IV, represented the State. Appellate counsel argued on appeal that Judge Seals erred in denying plea counsel's motion to reconsider Applicant's sentence due to the difference between Applicant's sentence and that of his codefendant. The South Carolina Court of Appeals affirmed in an unpublished opinion. State v. Hughes, Op. No. 2018-UP-382 (S.C. Ct. App. filed October 17, 2018) (per curiam). The Remittitur was issued on November 2, 2018.

## II. Current Application

Applicant alleges he is entitled to post-conviction relief based upon multiple grounds, which Respondent interprets as follows: (1) plea counsel was constitutionally ineffective for failing to object when the solicitor brought up "another case" during the plea hearing, (2) plea counsel was constitutionally ineffective for failing to ensure that Applicant agreed with the factual basis of the guilty plea, (3) Applicant did not knowingly and voluntarily plead guilty because plea counsel did not tell Applicant that the solicitor would request that Judge Seals impose the maximum sentence, and (4) plea counsel had a conflict of interest because the Lexington County Public Defender's Office represented Applicant's codefendants. Applicant prays that the PCR court would grant post-conviction relief and remand for a new trial. Attached to this return and incorporated by reference are the records of the Lexington County Clerk of Court regarding the subject convictions, the records from the Lexington County Clerk of Court regarding the offenses that were dismissed as a part of Applicant's plea deal, the transcript from Applicant's plea hearing, the records from Applicant's direct appeal, and the application for post-conviction relief. Respondent reserves the right to amend this return upon receipt of any relevant materials.

### III. Ineffective Assistance of Counsel

Applicant, like all other defendants, has the right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that counsel was constitutionally ineffective, he must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result.” Strickland, 466 U.S. at 686. In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Petitioner such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S.

52 (1985). The “prejudice prong ordinarily requires more than simply a defendant’s assertion that but for counsel’s deficient performance he would not have pled but would have gone to trial.” Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing: (1) counsel was deficient and (2) there is a reasonable probability that but for counsel’s errors, the defendant would not have pleaded guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668. Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove “counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” Id. at 697. Therefore, the function of the post-conviction relief court is to determine if “in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance” required of a criminal defense attorney. Id. at 690.

“A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed.” Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (S.C. Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977)). “Indeed, where a thorough colloquy

is conducted, courts must exercise caution in setting aside the guilty plea.” Garren v. State, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); see Jamison v. State, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014) (observing that “guilty plea[s] must be treated as final in the vast majority of cases” and instructing that caution must be exercised so as not to “undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea”).

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 counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel’s errors, the defendant would not have pleaded guilty, but would have insisted on going to trial. See Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). While most claims that a plea was involuntary require a showing of ineffective assistance of counsel, there are two exceptions: (1) the applicant was not represented by counsel at the guilty plea; or (2) the plea was rendered involuntary based on the State’s failure to disclose exculpatory evidence based on Brady v. Maryland, 373 U.S. 83 (1963). To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969). Defendant’s knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and “may be accomplished by colloquy between court and defendant, between court and defendant’s counsel, or both.” Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison,

431 U.S. 63 (1977)). Therefore, 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. Crawford v. United States, 519 F.2d 347 (4th Cir. 1975).

The mere possibility that Counsel had a conflict of interest is insufficient to impugn Applicant's conviction. State v. Gregory, 364 S.C. 150, 152-53, 612 S.E.2d 449, 450 (2005) (citing Langford v. State, 310 S.C. 357, 426 S.E.2d 793 (1993)). A conflict of interest occurs:

[W]hen a defense attorney places himself in a situation inherently conducive to divided loyalties . . . . If a defense attorney owes duties to a party whose interests are adverse to those of the defendant, than an actual conflict exists. The interests of the other client and the defendant are sufficiently adverse if it is shown that the attorney owes a duty to the defendant to take some action that could be detrimental to his other client.

Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809, 811 (1984) (citing Zuck v. State of Alabama, 588 F.2d 436 (5th Cir. 1979)).

The Supreme Court of South Carolina has further established that:

In order to establish a violation of the Sixth Amendment, a defendant who raised no objection at trial must demonstrate that an actual conflict of interest adversely affected his lawyer's performance . . . . [A] defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice in order to obtain relief. . . . But until a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for his claim of ineffective assistance.

Id. at 437-37, 315 S.E.2d at 810-11 (citing Cuyler v. Sullivan, 446 U.S. 335 (1980)).

Respondent submits that Applicant likely cannot show that he is entitled to relief on the bases that Applicant's guilty pleas were not knowingly and voluntarily given or that his attorney was constitutionally ineffective; however, Respondent requests an evidentiary hearing in order to address the questions of fact raised that the record may not conclusively refute. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (holding that an evidentiary hearing is required when an application for post-conviction relief alleges specific instances of ineffectiveness that are not conclusively refuted by the record) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d

707 (1981)).

#### IV. Motion for a More Definite Statement

Respondent moves for a more definite statement as to Applicant's allegations. Applicant alleges his plea counsel was constitutionally ineffective for failing to ensure that Applicant agreed with the facts recited by the State during his plea hearing, but does not explain how the recitation was inaccurate and how the outcome of the hearing would have been different had the recitation been different. Applicant fails to set forth with specificity the facts and circumstances upon his claims are based. The Uniform Post-Conviction Procedure Act requires that Applicant must "specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). The Supreme Court of South Carolina has provided that:

[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure Act. The bare assertion by the appellant that he was deprived of counsel is insufficient.

Coardes v. State, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974).

Furthermore, Rule 8(a), SCRPC, requires all civil pleadings include "a short and plain statement of the facts showing that the pleader is entitled to relief."

Applicant has failed to state with any specificity the specific facts giving rise his allegations. Respondent moves pursuant to Rule 12(e), SCRPC, to require Applicant to provide a more definite statement of his claims. Respondent moves to require Applicant to file an amended application well in advance of any evidentiary hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief,

Respondent reserves the right to move to dismiss the relevant allegation(s).

#### V. Denial of All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

#### VI. Future Amendments and the Discovery Process

Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed counsel, that attorney and not the Applicant is the only individual authorized to file amendments to this application for post-conviction relief. See Rule 11, SCRPC. Pro se filings will not be considered at the evidentiary hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent pursuant to Love v. State, Op. No. 27921 (S.C. Sup. Ct. filed October 2, 2019) (Shearhouse Adv. Sh. No. 39 at 14), or, alternatively, Respondent will move for a continuance in the matter. See Love, at 24 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

#### VII. Conclusion

WHEREFORE, Respondent requests that the PCR court require Applicant to provide a more definite statement as requested herein and then hold an evidentiary hearing regarding

Applicant's allegations.

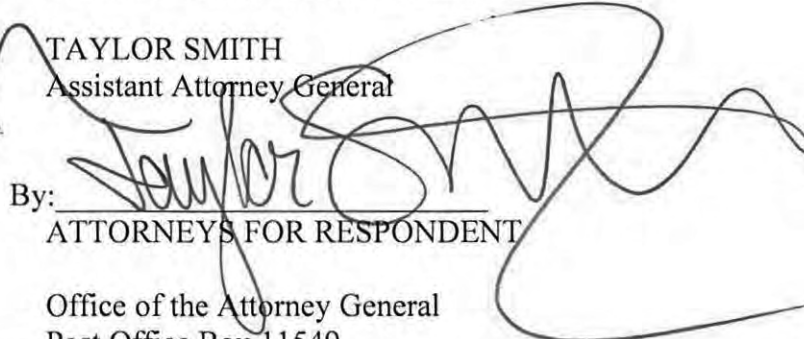
Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

TAYLOR SMITH  
Assistant Attorney General



By: \_\_\_\_\_  
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
Telephone: (803) 734-3737

March 3, 2020

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF LEXINGTON )  
 )  
 JONATHAN C. HUGHES, #367815 )  
 )  
 Applicant, )  
 )  
 vs )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 Respondent, )  
 \_\_\_\_\_ )

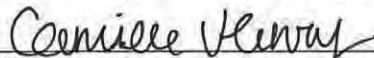
IN THE COURT OF COMMON PLEAS  
**2019-CP-32-4424**

CERTIFICATE OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion for More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Ola A. Johnson, Esquire**  
**Ola A. Johnson, Attorney at Law**  
**Post Office Box 549**  
**Lexington, SC 29071**

DATED this the 3<sup>rd</sup> day of March, 2020.

  
 Camille Henry, Legal Assistant  
 For Respondent

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
<b>JONATH HUGHES,</b>	)	<b>CASE NO.: 2019-CP-32-4424</b>
	)	
Applicant,	)	
	)	
v.	)	<b>AMENDMENT TO APPLICATION</b>
	)	<b>FOR POST CONVICTION RELIEF</b>
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

Applicant, amending his application for Post-Conviction Relief dated October 31, 2019, further alleges as additional grounds regarding his claim of ineffective assistance of counsel as follows:

1. Applicant's counsel, Jason Chehoski, failed to discuss the evidence with applicant.
2. Applicant's counsel, Jason Chehoski, failed to inform the solicitor that he would accept a 15 year sentence as part of a plea.
3. Applicant's counsel Jason Chehoski failed to object to the solicitor presenting information to the court regarding the co-defendant Jahmand McNeill's second Burglary committed the same day as this incident. (Transcript p.8, Lines 19-23).
4. Applicant's counsel Jason Chehoski failed to object to the solicitor presenting a witness that requested the maximum possible sentence. (Transcript p.11, Lines 15-16) and failed to advise applicant that this would be presented by the state.
5. Applicant's counsel, Jason Chehoski, coerced the applicant into entering a guilty plea by informing the applicant he would receive a sentence of 20 years like his co-defendant Antonio Johnson.

6. Applicant's counsel, Jason Chehoski had a conflict of interest in representing Applicant. Applicant has learned that another Lexington Public Defender, David Mauldin, represented co-defendant Jahmand McNeill in this case. Applicant believes that this prevented counsel from being effective in his representation of applicant and applicants counsel should have made a motion to have an attorney outside of the public defender's office appointed to represent him.
7. During the plea the court did not find that the applicant was entering the plea voluntarily (Transcript p. 11, Lines 19-21). Also, the court did not make a finding that there was a factual basis for the plea and it did not inquire if the applicant agreed to the facts as presented by the state.

Furthermore, the Applicant requests that he be permitted to Amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. *See Simpson v. Moore*, 367 S.C. 587, 627 S.E.2d (2006).

Respectfully submitted,



---

**OLA JOHNSON**  
Attorney for Applicant  
P.O. Box 549  
Lexington, SC 29071  
803-360-8692 Phone  
olajohnsonlaw@gmail.com

This 26<sup>th</sup> day of May, 2020.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF LEXINGTON )  
 )  
**JONATH HUGHES,** )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT

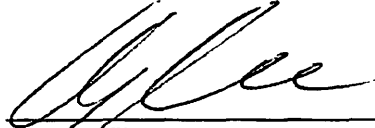
**CASE NO.: 2019-CP-32-4424**

**CERTIFICATE OF SERVICE**

I, Ola Johnson, hereby certify on that on May 26, 2020, I served a copy of the AMENDMENT TO APPLICATION FOR POST CONVICTION RELIEF on Taylor Zane Smith, Assistant Attorney General by Email and U.S. Mail to the following address:

TAYLOR ZANE SMITH, Assistant Attorney General  
SC Attorney General's Office  
Rembert Dennis Building  
1000 Assembly Street, Room 519  
Columbia, S.C. 29201

5-26-20  
Date

  
\_\_\_\_\_  
OLA JOHNSON

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
 	)	
<b>JONATHAN HUGHES,</b>	)	<b>CASE NO.: 2019-CP-32-4424</b>
	)	
Applicant,	)	
	)	
v.	)	<b>SECOND AMENDED</b>
	)	<b>POST CONVICTION RELIEF</b>
STATE OF SOUTH CAROLINA,	)	<b>APPLICATION</b>
	)	
Respondent.	)	
_____	)	

Applicant, by and through his undersigned attorney, hereby amends his application for Post-Conviction Relief dated October 31<sup>st</sup>, 2019 and filed November 1<sup>st</sup>, 2019. This amended complaint adopts and includes all grounds in the original application and the first Post-Conviction Relief Application filed June 3<sup>rd</sup>, 2020 by applicants appointed counsel Ola Johnson. Applicant entered a guilty plea to Armed Robbery, Indictment 2015-GS-32-898 and Burglary 1<sup>st</sup> degree, Indictment 2015-GS-32-897 and two charges of Kidnapping and one charge of Possession of a Weapon During the Commission of a Violent Crime were dismissed. Applicant was sentenced to 40 years and 30 years concurrent by the Hon. Willam H. Seals. Applicant further alleges as additional grounds regarding his claim of ineffective assistance of counsel as to Jason Chehoski as follows:

1. Counsel failed to meet with applicant a sufficient number of time to review the evidence.
2. Prior to the guilty plea, Applicant’s counsel failed to explain the details of the Applicants guilty plea and sentencing.
3. Applicant’s counsel failed to interview the victims David Quintana and Alva Valdez regarding these charges.

4. Applicant's counsel failed to interview the witnesses Diamond McLamb and Derrick McNeil regarding these charges.
5. Applicant's counsel failed to interview the co-defendants Antonio Johnson and Jahmand McNeill regarding these charges.
6. Following the plea Applicants counsel failed to file a motion to reconsider the sentence.
7. Applicant seeks to have his conviction vacated.

Furthermore, the Applicant requests that he be permitted to Amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



---

**OLA JOHNSON**  
Attorney for Applicant  
P.O. Box 549  
Lexington, SC 29071  
803-360-8692 Phone  
olajohnsonlaw@gmail.com

This 24 day of November, 2020.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF LEXINGTON )  
 )  
 JONATHAN HUGHES, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT

CASE NO.: 2019-CP-32-4424

**CERTIFICATE OF SERVICE**

I, Ola Johnson, hereby certify on that on November 28, 2020, I served a copy of the  
SECOND AMENDED POST CONVICTION RELIEF APPLICATION on TAYLOR Z. SMITH,  
Assistant Attorney General by Email and U.S. Mail to the following address:

**TAYLOR Z. SMITH, Asst. Attorney General**  
**SC Attorney General's Office**  
**P.O. Box 11549**  
**Columbia, S.C. 29211**

11-28-20  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
OLA JOHNSON

1 State of South Carolina ) In the Court Of Common Pleas  
 2 County of Lexington ) Case No.: 2019-CP-32-04424  
 3 Jonathan C. Hughes, )  
 4 Applicant/Plaintiff, )  
 5 vs. ) Transcript of Proceedings  
 6 State of South Carolina, )  
 7 Respondent/Defendant. )  
 8 \_\_\_\_\_ )

9 June 6, 2022

10 Lexington, South Carolina

11  
12 BEFORE:

13 The Honorable Jocelyn Newman, Judge.  
14

15 APPEARANCES:

16 Ola A. Johnson, Esquire  
17 Attorney for the Applicant/Plaintiff

18 Lillian L. Meadows, Assistant Attorney General  
19 Attorney for the Respondent/Defendant

20 ALSO PRESENT:

21 Jonathan C. Hughes  
22  
23  
24  
25

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15	EXHIBITS	
16	NONE	
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1 Thereupon, the following proceedings were had,

2 THE COURT: Okay. Ready when y'all are.

3 MS. MEADOWS: All right. Thank you, Your Honor.

4 May it please the Court. This matter is Jonathan C.

5 Hughes versus State of South Carolina, 2019-CP-32-4424.

6 In April 2015, Mr. Hughes was indicted for  
7 first-degree burglary, armed robbery, possession of a  
8 weapon during the commission of a violent crime, and two  
9 counts of kidnapping. Senior Assistant Public Defender  
10 Jason Chehoski represented Mr. Hughes on these charges  
11 and Assistant Solicitor Angela Martin prosecuted the  
12 case.

13 On April 14th, 2016, Mr. Hughes appeared before  
14 Judge William Seals and pleaded as indicted to  
15 first-degree burglary and armed robbery. The remaining  
16 charges were dismissed as part of the plea agreement.  
17 Judge Seals sentenced Mr. Hughes to concurrent terms of  
18 40 years for first-degree burglary and 30 years for armed  
19 robbery. Mr. Chehoski filed a motion to reconsider  
20 sentence on Mr. Hughes' behalf, which Judge Seals denied.  
21 On appeal, Mr. Hughes argued Judge Seals erred in denying  
22 his motion to reconsider the sentence based on the  
23 disparate sentence Applicant received compared to his  
24 co-defendant. The Court of Appeals ultimately affirmed  
25 Mr. Hughes' convictions and sentences.

1           On November 1, 2019, Mr. Hughes filed a timely  
2 application for PCR. He is present today and represented  
3 by Mr. Johnson.

4           It is the State's understanding that Mr. Hughes is  
5 going forward on all the allegations raised in the  
6 original, amended, and second amended applications,  
7 although I believe there is some overlap in those.

8           THE COURT: Okay. Mr. Johnson.

9           MR. JOHNSON: Your Honor, may I ask the AG a  
10 question real quick?

11          THE COURT: Certainly.

12          MR. JOHNSON: Your Honor, Ola Johnson, representing  
13 Mr. Jonathan Hughes and we would call Mr. Hughes at this  
14 time to testify.

15          THE COURT: Okay. Mr. Hughes, come on forward to be  
16 sworn. I believe we're waiting, you mentioned there's an  
17 application. I have an amendment. Is there a second  
18 amendment?

19          MR. JOHNSON: I'll put that on the record, Judge,  
20 just the dates. I guess we'll go by the dates. The  
21 original application as well as the amended application,  
22 that was filed June 3rd, 2020. I filed a second amended  
23 post conviction relief application and that was filed  
24 December of 2020 and I have both of those.

25          THE COURT: I need a copy of the second amended.

JONATHAN HUGHES - DIRECT BY MR. JOHNSON

5

1 MR. JOHNSON: Yes, Your Honor.

2 Thereupon,

3 JONATHAN HUGHES

4 after having been first duly sworn, testified as follows,

5 MR. JOHNSON: Judge, this is printed on both sides,  
6 but you've got the other one.

7 THE COURT: Yes.

8 MR. JOHNSON: Yes, ma'am. Thank you.

9 THE COURT: Thank you.

10 MR. JOHNSON: Thank you, Judge.

11 THE COURT: All right. Mr. Johnson, your witness.

12 MR. JOHNSON: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MR. JOHNSON:

15 Q. Mr. Hughes, who is the attorney that represented you  
16 in this matter?

17 A. Jason Chehoski.

18 Q. Okay. He's seated here in the courtroom today?

19 A. Yes, sir.

20 Q. Okay. Mr. Hughes, in that representation do you  
21 feel like Mr. Chehoski discussed the evidence with you  
22 sufficiently in this case to prepare?

23 A. Uhm, not really.

24 Q. Okay. How many times did he meet with you?

25 A. Maybe about four times.

1 Q. Did he provide you a copy of the discovery?

2 A. Yes, sir.

3 Q. Okay. And did he come and show you all the, any  
4 audio/video recordings and the evidence?

5 A. There was none.

6 Q. There was none. And did you communicate to  
7 Mr. Chehoski about the fact that you wished to accept the 15  
8 year sentence as part of a plea, did you ask him to  
9 communicate that to the Solicitor?

10 A. Yes, sir.

11 Q. Did he do that to your knowledge?

12 A. Uhm, yeah. He told me he did.

13 Q. He did not?

14 A. No. He told me he did.

15 Q. He told you he did?

16 A. Yes, sir.

17 Q. During your guilty plea, was there a time where, do  
18 you remember the admission, or the submission of information  
19 about co-defendant Jamon McNeal having a second burglary  
20 committed the same day referencing transcript page 8, lines 19  
21 through 23? Do you remember that?

22 A. Yes, sir.

23 Q. And did Mr. Chehoski fail to object to that in any  
24 way?

25 A. No, sir.

1 Q. He didn't -- Did he object?

2 A. No, sir.

3 Q. He did not object. And do you feel like that's  
4 something he should have done?

5 A. Yes, sir.

6 Q. Okay. And in presentation during the plea, did you  
7 receive any sort of notice that there would be a request from  
8 the State for the maximum possible sentence?

9 A. No, sir.

10 Q. And referencing the transcript page 11, lines 15  
11 through 16, do you remember a detective stepping up as part of  
12 the State's presentation requesting the maximum possible  
13 sentence for you?

14 A. Yes, sir.

15 Q. And was it your understanding that they were gonna  
16 do that?

17 A. No, sir.

18 Q. Did you want Mr. Chehoski to object to that?

19 A. Yes, sir.

20 Q. I'm sorry. Yes?

21 A. Yes. I wanted him to.

22 Q. Did you want him to withdraw your guilty plea at  
23 that point?

24 A. Yes, sir.

25 Q. Okay. And did you ever receive statements from

1 Mr. Chehoski promising you that you would receive a sentence  
2 of 20 years like your co-defendant Antonio Johnson?

3 A. Yes. Before I came, before I went to court, he came  
4 to see me one last time. He told me that I would probably get  
5 20 to 25 like my co-defendant.

6 Q. Okay. And that's what you thought you were gonna  
7 get?

8 A. Yes, sir.

9 Q. Okay. And did you feel like there was a conflict of  
10 interest for Mr. Chehoski since Mr. Mauldin, David Mauldin was  
11 the public defender who represented the co-defendant Jamon  
12 McNeal?

13 A. Yes, sir.

14 Q. Did you try to ask him about that or did you think  
15 --

16 A. No, sir.

17 Q. -- that was communicated? No. Did you feel he  
18 should have done something to conflict your case out?

19 A. Yes, sir.

20 Q. Did he ever make any motion or any effort to get you  
21 another lawyer?

22 A. Not that I remember.

23 Q. Okay. During the guilty plea, do you recall, did  
24 the Court ever make a finding that there was a factual basis  
25 for your plea? Do you remember that?

1 A. I'm not understanding what you're asking.

2 Q. Did the Judge, do you remember, did they ever make a  
3 finding that there was a factual basis for your plea during  
4 your plea?

5 A. No, sir.

6 Q. You said no?

7 A. No, sir.

8 Q. Okay. And were you properly advised of all your  
9 rights during your plea?

10 A. No, sir.

11 Q. So were you not advised about the right to confront  
12 witnesses at trial?

13 A. No, sir.

14 Q. In other words, right of confrontation?

15 A. No, sir.

16 Q. You didn't hear about that?

17 A. No, sir.

18 Q. And did you ever get advised of your right to remain  
19 silent?

20 A. Uh, when I first got arrested.

21 Q. But at the plea you were not advised of that?

22 A. No, sir.

23 Q. And was there ever a finding that you have knowingly  
24 and intelligently waived these rights? Do you remember the  
25 Court ever doing that?

1           A.    What do you mean?

2           Q.    Did the Court ever find that you understood your  
3 rights and you waived your rights at this guilty plea? Do you  
4 feel like that was done?

5           A.    Well, when the Judge asked me if I was guilty, I  
6 didn't really give him an answer.

7           Q.    Okay. But you were not advised of those rights that  
8 I just questioned you about? You were not advised --

9           A.    Not all of them. I didn't know I could ask. I  
10 didn't know I could question victims and witnesses and things  
11 like that.

12          Q.    You mean the right of confrontation?

13          A.    Yes. Yes. Yes, sir.

14          Q.    You did not know at trial that you had that right?

15          A.    Yes, sir.

16          Q.    Okay. Did the Court ever question you about whether  
17 or not you agreed with the facts as they were presented by the  
18 State?

19          A.    I'm not understanding that. I'm not understanding  
20 what you're asking.

21          Q.    Do you remember a time if the Court ever confirmed  
22 with you whether or not you agreed with the facts that were  
23 read into the record by the Solicitor? Did they do that?

24          A.    I'm not - I don't remember. I don't know.

25                THE COURT: Mr. Hughes, let me interrupt real

1           quickly. You're very soft spoken and we've got the  
2           microphone as close as we can, but you need to speak up  
3           because everyone in the room needs to hear you including  
4           the gentleman at the back door, the bailiff at that back  
5           door there so everyone needs to hear you.

6           THE WITNESS: Yes, ma'am. I'm sorry. I  
7           apologize.

8           THE COURT: Okay. So just probably pretend like  
9           you're talking to him and then you'll be loud enough,  
10          okay?

11          THE WITNESS: All right.

12 BY MR. JOHNSON:

13          Q. Did Mr. Chehoski ever explain to you the details of  
14          your guilty plea and sentencing?

15          A. Uhm, no. He didn't really say that, you know. I  
16          mean, he just told me that I could get 15 to life, I mean, you  
17          know, but that was about it.

18          Q. Okay. And to your knowledge, did he ever interview  
19          victims David Quintana and Aldo Valdez?

20          A. Uh, no.

21          Q. Did he ever have a private investigator come talk to  
22          you and work with your case?

23          A. No, sir.

24          Q. And did he ever interview witness Diamond McLamb and  
25          Derek McNeal as far as you know?

1 A. No, sir.

2 Q. Did he fail to interview co-defendants Antonio  
3 Johnson and Jamon McNeal as far as you know?

4 A. No, sir.

5 Q. He failed to do that?

6 A. Yes, sir.

7 Q. Okay. Was it your impression that he filed a motion  
8 to reconsider? Did he ever tell you that?

9 A. I was never notified of that.

10 Q. He never mailed you anything about it?

11 A. No, sir. Not that I remember. I mean, I didn't  
12 receive anything.

13 Q. All right. Do you feel like you were coerced into  
14 entering this guilty plea by these facts?

15 A. Uh, yeah.

16 Q. You said yes?

17 A. Yes, sir. Yes, sir.

18 MR. JOHNSON: Okay. No further questions, Your  
19 Honor.

20 THE COURT: Cross examination.

21 MS. MEADOWS: Just briefly.

22 CROSS EXAMINATION

23 BY MS. MEADOWS:

24 Q. Mr. Hughes, I believe you stated that Mr. Chehoski  
25 told you you would receive a 20 year sentence. I think you

1 said right before you pled guilty is when he told you that?

2 A. Yes. He came to see me, uhm, maybe like a couple of  
3 days before I went to court and he told me that being that my  
4 co-defendant got 20 years, I would probably get the same  
5 sentence.

6 Q. Okay. But he never promised you you would receive a  
7 20 year sentence, correct?

8 A. No. He never said I promise you you're gonna get 20  
9 years.

10 Q. Okay. And then you also testified that Mr. Chehoski  
11 never went over any of your constitutional rights with you  
12 including your right to a jury trial, et cetera?

13 A. No. I mean, yeah. He told me I could go to trial  
14 if I wanted to, but that was about it. He never told me that  
15 I could, that he could ask the witnesses or victims questions  
16 and things like that. He never told me that.

17 MS. MEADOWS: Okay. Nothing further, Your Honor.

18 THE COURT: Any redirect?

19 MR. JOHNSON: No, Your Honor.

20 THE COURT: Okay. Thank you. Mr. Hughes, you can  
21 go sit back next to your lawyer.

22 MR. JOHNSON: We have no more witnesses, Your Honor.

23 THE COURT: All right. From the State.

24 MS. MEADOWS: The State calls Jason Chehoski.

25 Thereupon,

1 JASON CHEHOSKI

2 after having been first duly sworn, testified as follows,

3 THE CLERK: Please have a seat. Once you're seated,  
4 state your full name spelling your last please.

5 THE WITNESS: Jason Chehoski. Last name is spelled  
6 C-h-e-h-o-s-k-i.

7 DIRECT EXAMINATION

8 BY MS. MEADOWS:

9 Q. Okay. And how long have you been practicing law?

10 A. A little more than 20 years.

11 Q. Okay. And how much of that time has been in  
12 criminal law?

13 A. About 11.

14 Q. Okay. And how did you become involved in Mr.  
15 Hughes' case?

16 A. I was hired by the Eleventh Circuit Public  
17 Defender's Office in October of 2015 and Mr. Hughes' file was  
18 part of the case load I inherited.

19 Q. Okay. And then would you mind giving the Court kind  
20 of a brief explanation of Mr. Hughes' charges and how those  
21 charges arose?

22 A. Mr. Hughes was among a party of three people that  
23 broke into a house and while the other two co-defendants held  
24 the victims at gunpoint, Mr. Hughes was involved in the  
25 looting of the house.

1 Q. Okay. And how many times did you meet with him over  
2 the course of your representation?

3 A. My first meeting with him was on November 4th of  
4 2015, then again on December 8th, 2015, March 14th - I'm sorry  
5 - February 19th, 2016, again March 14th, 2016, April 1st,  
6 2016, April 8th, 2016, and he pled guilty on April 14th,  
7 2016.

8 Q. Okay. So about maybe six or seven times?

9 A. Yes.

10 Q. Okay. And did you discuss the charges and the  
11 potential sentences he was facing at those meetings?

12 A. Yes.

13 Q. Okay. And did you discuss his constitutional rights  
14 with him including his right to a jury trial, to confront  
15 witnesses?

16 A. Yes. I go over their rights with them individually  
17 before we go in front of the Judge when we sign the  
18 paperwork.

19 Q. Okay. And did he ever indicate to you that he  
20 didn't understand your discussions about the charges or his  
21 rights?

22 A. We wouldn't have gone in front of the Judge if I  
23 felt he didn't understand what he was doing.

24 Q. Okay. And then could you briefly describe the  
25 State's evidence against Mr. Hughes?

1           A.    I believe the biggest evidence against Mr. Hughes  
2    was Mr. Hughes' statements to the police.  I believe he gave  
3    at least three statements admitting to involvement, to being  
4    there, and to participating in the crimes that he was charged  
5    with.

6           Q.    Okay.  And were these statements recorded?

7           A.    These statements were, I believe, written.

8           Q.    Okay.  And did you go over those with Mr. Hughes?

9           A.    Yes.

10          Q.    Okay.  And then how did the guilty plea come about  
11    in this case?

12          A.    We were getting close to the point where we were  
13    going to have to decide if this case was going to be a plea or  
14    a trial.  My notes indicate that this case was going to go on  
15    the trial docket the week of May 16th of 2016 unless he  
16    accepted the guilty plea the week of I believe the 11th.  He  
17    pled on the 14th.

18          Q.    Okay.  Did Mr. Hughes ask you to inform the  
19    Solicitor that he would plead guilty in exchange for a 15 year  
20    sentence?

21          A.    Yes.

22          Q.    Okay.  And did you convey that to the Solicitor?

23          A.    Yes.

24          Q.    What was her response?

25          A.    Her response was that there were not going to be any

1 offers.

2 Q. Okay. All right. And did you ever promise Mr.  
3 Hughes that he would receive a particular sentence if he pled  
4 guilty?

5 A. I did not promise him. I thought that he had, in  
6 light of one of, one of his co-defendants had pled initially  
7 and received a 20 year sentence, I thought Mr. Hughes' case  
8 compared favorably with that co-defendant since that  
9 co-defendant was armed and had a prior record. Mr. Hughes had  
10 neither.

11 Q. Okay. And I believe Mr. Hughes testified earlier  
12 that one of the investigators requested the maximum sentence  
13 at the plea hearing. Did you see that you had any basis to  
14 object to that request?

15 A. I did not. It was, again, it's victim impact at  
16 that time and I feel like they're free to say whatever they  
17 feel is appropriate as long as it's not derogatory toward my  
18 client.

19 Q. Okay. And then do you recall the Solicitor  
20 informing Judge Seals that one of the co-defendants attempted  
21 a second burglary without Mr. Hughes on the night of the  
22 robbery?

23 A. I don't remember that directly, but if it's in the  
24 record, I'm not gonna refute it.

25 Q. Okay. Did you find anything objectionable about her

1 sharing that information?

2 A. Looking back, I think there was, since Mr. Hughes  
3 had no part in that, if I, again, it was, I think that was a  
4 solo job and Mr. McNeal was apprehended at the scene on that  
5 one.

6 Q. Okay. All right. And then was there anything about  
7 the Solicitor's recitation of the facts that seemed inaccurate  
8 to you based on your understanding of the evidence?

9 A. I don't believe so.

10 Q. Okay. And do you recall if Mr. Hughes gave you any  
11 indication that he had some disagreement with those facts?

12 A. I don't remember there being any.

13 Q. Okay. And at any time during the plea hearing did  
14 Mr. Hughes give you any indication he did not have a full  
15 understanding of the charges against him and the consequences  
16 of pleading guilty?

17 A. No.

18 Q. And you did file a motion to reconsider, correct?

19 A. Yes.

20 Q. And was that denied with or without a hearing?

21 A. It was denied without a hearing, but we were allowed  
22 to brief it.

23 Q. Okay. And then lastly as to the conflict issue, I  
24 believe Mr. Hughes states in one of his amended applications  
25 that another attorney in your office David Mauldin represented

1 co-defendant McNeal?

2 A. That's correct.

3 Q. Okay. And do attorneys in your office ever  
4 represent co-defendants?

5 A. We do. After Mr. Hughes' case, I think a new policy  
6 was instituted on charges that carry 20 years or more where we  
7 would represent one co-defendant, whoever we felt was the most  
8 culpable the rest would be conflicted out to a 608 attorney.

9 Q. Okay. Well, the time before that policy was  
10 instituted, what sort of practices did your office use in  
11 order to avoid and issues with that?

12 A. When there are co-defendants that are both being  
13 represented by the office, we make sure that the attorneys  
14 representing them are supported by different support staff,  
15 paralegals, case managers.

16 Q. Okay. And did you and Mr. Mauldin ever discuss  
17 these cases with one another?

18 A. Nothing more than whether or not, you know, whether  
19 or not the case may go to trial, but nothing in depth.

20 Q. Okay. And did the knowledge that another public  
21 defender in your office was representing one of the  
22 co-defendants influence in any way your representation of Mr.  
23 Hughes?

24 A. No.

25 Q. Okay. And did you personally represent anyone other

1 than Mr. Hughes who is involved in this case?

2 A. No.

3 MS. MEADOWS: Okay. Nothing further, Your Honor.

4 THE COURT: Cross examination.

5 MR. JOHNSON: Thank you, Your Honor.

6 CROSS EXAMINATION

7 BY MR. JOHNSON:

8 Q. Mr. Chehoski, how many times did you discuss the  
9 evidence with Mr. Hughes?

10 A. I believe I went to visit him at the jail  
11 approximately six times in the six months I represented him.

12 Q. Okay. Did Mr. Hughes relate to you that he wanted  
13 you to tell the Solicitor he would take 15 years as part of a  
14 guilty plea?

15 A. He did.

16 Q. He did?

17 A. I relayed that to, as I testified on direct, he did  
18 make that offer and I relayed that to the State. They were  
19 not willing to make that offer.

20 Q. Okay. Did you tell Mr. Hughes about that?

21 A. Yes.

22 Q. Okay. And when they brought up this information  
23 about Mr. Jamon McNeal, the co-defendant's second burglary,  
24 you indicated you did not make any objection to that?

25 A. I did not.

1 Q. You feel that was not relevant however to Mr.  
2 Hughes?

3 A. It was not relevant. That's correct.

4 Q. Okay. Was there anything you could have done, or  
5 you could have made a motion to withdraw the plea at that  
6 point, or made some sort of an objection to that on the  
7 record?

8 A. I could have made an objection or just reiterated  
9 that those facts were not relevant to Mr. Hughes.

10 Q. Okay. And you didn't do that?

11 A. I did not do that.

12 Q. Okay. Did you make any type of objection or motion  
13 to withdraw when the State called a witness that asked for the  
14 maximum possible sentence?

15 A. I did not.

16 Q. Okay. Do you remember that happening? Referencing  
17 page 11 in the transcript.

18 A. I don't remember it, but again I would defer to the  
19 transcript.

20 Q. Okay. And when that happened, did you ever advise  
21 Mr. Hughes that it was possible at the guilty plea that that  
22 might happen, that someone could get up and ask for the max?

23 A. I don't remember specifically telling him that, but  
24 generally my practice is, especially on a serious case like  
25 this, that there would be victim impact and that they can ask

1 for anything they want.

2 Q. But in this case it was law enforcement. You didn't  
3 tell him the State could present a witness, but that law  
4 enforcement could do that?

5 A. I don't specifically recall telling him that, no.

6 Q. Okay. Did you ever imply to him that he was gonna,  
7 or tell him he was going to get a 20 year sentence like his  
8 co-defendant Antonio Johnson?

9 A. I believe in our discussions I told him that I  
10 thought that his case compared favorably to Mr. Johnson and  
11 that I would be asking for a sentence to reflect that,  
12 specifically that Mr. Hughes was not armed during this  
13 incident; I don't believe he had any contact with any of the  
14 victims; and also Mr. Hughes had no prior record. I believe I  
15 mentioned that to Judge Seals on numerous occasions during my  
16 presentation.

17 Q. Okay. And during the representation when David  
18 Mauldin represented co-defendant Jamon McNeal, was there a  
19 situation where you had a problem, did you ever recognize that  
20 as a problem and maybe using a private investigator from your  
21 office or using the same staff to work on this case and having  
22 a co-defendant represented by the other Public Defender, did  
23 you not consider that a conflict?

24 A. I did. I brought this to my boss' attention,  
25 Mr. Madsen. He indicated that again as long as we're being

1 supported by separate staff, that it wasn't a problem and at  
2 that point in time in our office we did not have a full time  
3 investigator on our staff.

4 Q. Okay. Did you ever have an investigator go talk to  
5 Mr. Hughes to question him about what some options might be to  
6 explore the case or work on a defense?

7 A. I don't believe so. No. I did not.

8 Q. Okay. During the plea, did you realize that during  
9 this plea there was no advisement? Or was there, prior to  
10 this transcript, was there any type of advisement that you  
11 remember where the Court advised Mr. Hughes of his right to  
12 confrontation at trial or his right to remain silent?

13 A. Again, I personally go over that with my clients.  
14 When it's on the record, I don't remember specifically what  
15 Judge Seals discussed on the record and whatever is on the  
16 record is what I would defer to.

17 Q. Okay. Are you saying you do, you remember you  
18 advised him of these rights or you're not sure or what?

19 A. Especially on a serious case like this, yes, I did  
20 it.

21 Q. Okay. Do you recall that the Court did not actually  
22 make a finding that the plea was voluntarily entered into or  
23 that there was a factual basis for the plea? Do you remember  
24 that happening or the absence of that language?

25 A. I do not remember, again, specifically what the

1 specific words that were mentioned on the record. If they're  
2 not on the record, I'm not going to dispute that though.

3 Q. If that is not on the record, do you feel that you  
4 should have paused things and maybe stepped back and talked to  
5 your client about that or advise the Court that maybe you  
6 should go into that on the record?

7 A. Perhaps in hindsight both myself and the Assistant  
8 Solicitor handling the case could have advised the Court to  
9 make those specific findings.

10 Q. Okay. And did you explain fully to Mr. Hughes the  
11 guilty plea and sentence, what the potential sentences were?

12 A. Yes. I did.

13 Q. And did you ever attempt to interview victims David  
14 Quintana and Aldo Valdez?

15 A. No.

16 Q. Did you ever attempt to interview witnesses Diamond  
17 McLamb and Derek McNeal?

18 A. No.

19 Q. Or did you ever attempt to interview co-defendants  
20 Antonio Johnson and Jamon McNeal?

21 A. No.

22 Q. Did you mail Mr. Hughes anything to notify him of  
23 your motion to reconsider?

24 A. I don't believe I did. No. Let me check my notes  
25 again. There's nothing indicating that I sent him anything

1 regarding my motion to reconsider. I think I told him after  
2 the plea that I would do such a thing though.

3 MR. JOHNSON: Okay. No more questions, Your  
4 Honor.

5 THE COURT: Any redirect?

6 REDIRECT EXAMINATION

7 BY MS. MEADOWS:

8 Q. Mr. Chehoski, I believe Mr. Johnson just asked you  
9 about whether you interviewed the co-defendants. Is that the  
10 thing that you would generally do in a case like this?

11 A. Not typically. Since they're represented by  
12 counsel, I would need to get permission from their attorney to  
13 speak with them.

14 MS. MEADOWS: Okay. Your Honor, may I approach with  
15 a copy of the transcript?

16 THE COURT: Yes.

17 BY MS. MEADOWS:

18 Q. Mr. Chehoski, turn to page 11. If you could read  
19 lines 19 through 21.

20 A. All right. This is from the Court. I accept the  
21 plea and find that he is doing so freely, intelligently and  
22 with the advice of competent counsel.

23 Q. Okay. Do you believe that was a sufficient finding  
24 on the part of Judge Seals?

25 A. Yes.

1 MS. MEADOWS: Okay. Nothing further.

2 THE COURT: Anything further, Mr. Johnson?

3 MR. JOHNSON: No, ma'am.

4 THE COURT: All right. Thank you. You may step  
5 down. Any additional witnesses from the State?

6 MS. MEADOWS: No, ma'am. The State rests.

7 THE COURT: All right. Let me hear argument. Mr.  
8 Johnson.

9 MR. JOHNSON: Thank you, Your Honor. Well, we just  
10 point out what we've already gone over and which is  
11 located in my amended application, the original  
12 application, the second amended application focusing on  
13 the fact that the transcript does not contain actual  
14 advisement of the rights to confrontation, or the right  
15 to remain silent. I think that's pretty clear. There is  
16 a reference here in the transcript early on about page 4  
17 that says prior to this hearing, all defendants were  
18 required to stand as a group as their rights were recited  
19 by the Court, and then it goes into the transcript that  
20 there's no advisement of specific rights about  
21 confrontation of witnesses or right to remain silent and  
22 those are essential.

23 Of course, with the case law, I'll just put it on  
24 the record, there is, of course, I think State v.  
25 Armstrong, 263 South Carolina 594, 1975, the Court's

1 warnings should include an explanation of defendant's  
2 waiver of constitutional rights and a realistic picture  
3 of all sentencing possibilities. Floyd v. Alabama, it  
4 goes into the necessity for that and that's 395 U.S. 238.  
5 That talks about the necessity of finding a factual basis  
6 for the plea and I would just point out, of course, since  
7 traditionally in all guilty pleas we have that recitation  
8 where the Court explains each of these rights and it  
9 didn't seem to happen here, that it's insufficient to  
10 rely upon that sentence on page 4 because it doesn't  
11 really get into the particulars of what is advised, what  
12 Mr. Hughes was advised of and I think case law says  
13 pretty clear that that's necessary. For someone to  
14 voluntarily waive their rights they have to fully be  
15 advised and understand them and knowingly and  
16 intelligently waive them.

17 In addition to that, Your Honor, my client's  
18 indicated that he was not advised by Mr. Chehoski about  
19 some key things regarding the motion to reconsider. Mr.  
20 Chehoski, I believe, stated he didn't think that he  
21 actually did mail him anything about that and he was not  
22 under the impression that anyone was going to get up from  
23 the State's point. I think in the transcript it's clear  
24 that a detective got up called in by the Solicitor who  
25 asked for the maximum possible sentence and my client was

1 not made aware that that was a possibility. He actually  
2 testified that he thought he was going to get a 20 year  
3 sentence which is obviously not the case. And that's all  
4 we have, Judge.

5 THE COURT: That portion about the Court's failure  
6 to advise him of his rights or failure to make sufficient  
7 findings, is that not a direct appeal issue?

8 MR. JOHNSON: Well, Your Honor, at this point if  
9 that issue was not included, I think for this to be a  
10 legitimate plea whether it was appealed or not, I don't  
11 know that the State has a response to that, but I think  
12 that it would make it a plea that was invalid obviously  
13 at this point if it was not something ruled upon by the  
14 Court of Appeals.

15 THE COURT: So why not habeas corpus or a direct  
16 appeal or something along those lines.

17 MR. JOHNSON: Yes, ma'am.

18 THE COURT: Okay. All right. Just curious. Yes,  
19 ma'am.

20 MS. MEADOWS: Thank you, Your Honor. Just briefly.  
21 As to the advisement of rights, it's the State's position  
22 that Mr. Chehoski testified he fully advised Mr. Hughes  
23 of those rights prior to pleading guilty and although we  
24 do not have the transcript indicating exactly what Judge  
25 Seals went over with the defendants prior, it does say on

1 page 5 of the transcript, you know, Judge Seals asked,  
2 did you understand those rights and do you want to give  
3 up your right to a jury trial and plead guilty today, et  
4 cetera, and it's the State's position that that is  
5 certainly sufficient in addition to Mr. Chehoski's  
6 testimony.

7 And as to the allegation that the Solicitor, or the  
8 State requested Judge Seals impose the maximum sentence,  
9 we would just note for the record that Ms. Martin did not  
10 make any request or recommendations as far as sentencing.  
11 This was one of the investigators that asked Judge Seals  
12 to impose the maximum sentence and it is, again, that was  
13 not a recommendation by the State, and as Mr. Chehoski  
14 said, victim impact and investigators are kind of given  
15 latitude to address the Court.

16 THE COURT: All right. Mr. Hughes' application for  
17 post conviction relief is respectfully denied. I'm not  
18 gonna articulate the full findings and facts and  
19 conclusions of law. I know I need to do that in writing  
20 anyway, but just minimally I will say that to the extent  
21 that there has been any showing of ineffective  
22 assistance, and I'm not saying that there has been  
23 because I haven't fully gone through that analysis, but  
24 there's certainly not been any showing of prejudice; that  
25 but for counsel's errors, the outcome would have been

1 different, and I guess I should say, but for counsel's  
2 alleged errors because once again I don't know that there  
3 are any errors or that there were any errors.

4 Based on Mr. Chehoski's testimony, he's an  
5 experienced attorney, gave credible testimony as to his  
6 performance in this case and for those reasons and others  
7 which I will articulate in writing the application is  
8 denied. I'll ask the State to prepare a proposed order  
9 for me and send it to me in Word format so that I may  
10 edit it at my leisure.

11 MS. MEADOWS: Okay. Thank you.

12 THE COURT: Thank you.

13 MS. MEADOWS: Do you have a timeline for that order?

14 THE COURT: I would like the order of course in the  
15 next 20 days. We'll say that, okay?

16 MS. MEADOWS: Okay.

17 THE COURT: So I'm not gonna do a separate order. I  
18 want you to do the order and then I'll just change it if  
19 I disagree with what you put in there as to actually my  
20 findings. That's why I want it in Word format. Thank  
21 you.

22 MS. MEADOWS: Yes, ma'am.

23 Whereupon, the hearing was concluded.

24

25

## 1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

3 (COUNTY OF LEXINGTON )

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5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,  
6 and Retired Official Circuit Court Reporter for the Eleventh  
7 Judicial Circuit in and for the State of South Carolina, do  
8 hereby certify that I reported the proceedings in the before  
9 captioned case in the Court of Common Pleas in and for the  
10 State of South Carolina on the 6th day of June, 2022.

11 I FURTHER CERTIFY that the forgoing 30 pages  
12 constitute a true and accurate record of said proceedings.

13 I FURTHER CERTIFY that I am neither related, counsel  
14 to, nor of interest to any party hereto.

15 IN WITNESS WHEREOF, I have hereunto set my hand at  
16 Lexington County, this 29th day of March, 2024.

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By:s/Steven E. LeBlanc

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Steven E. LeBlanc, Sr., R.P.R.  
State of South Carolina.

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South Carolina Department of Corrections; and (4) the pleadings filed in the instant post-conviction relief action.

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 failed to meet the high burden required for a grant of post-conviction relief pursuant to Rule 71.1, SCRPC, and the Uniform Post-Conviction Procedure Act<sup>1</sup> (the Act). For the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

## II. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Lexington County Clerk of Court. Applicant was arrested on February 15, 2015, following an investigation into an armed robbery and burglary of a residence involving Applicant and two co-defendants, Jahmand McNeill and Antonio Johnson. During its April 2015 term, the Lexington County Grand Jury indicted Applicant for first-degree burglary (2015-GS-32-0897); armed robbery (2015-GS-32-0898); two counts of kidnapping (2015-GS-32-0895, -0896); and possession of a weapon during the commission of a violent crime (2015-GS-32-0894). Senior Assistant Public Defender Jason S. Chehoski represented Applicant on these charges and Assistant Solicitor Angela G. Martin of the Eleventh Circuit Solicitor's Office prosecuted the case.

On April 14, 2016, Applicant appeared before the Honorable William H. Seals, and pleaded guilty as indicted to first-degree burglary and armed robbery. The State dismissed the remaining charges as part of the plea agreement; however, no formal negotiations or recommendations were made from the State as to sentencing. Judge Seals accepted Applicant's plea and sentenced him to

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<sup>1</sup> S.C. Code Ann. §§ 17-27-10 to -160.

concurrent terms of forty years' imprisonment for first-degree burglary and thirty years for armed robbery.

Mr. Chehoski filed a timely motion to reconsider sentence and memorandum in support, citing the disparity between the sentence Applicant received compared with Antonio Johnson, who pled before Applicant and was sentenced to twenty years' imprisonment. The State filed a memorandum in opposition to Applicant's motion on April 29, 2016. On May 3, 2016, Judge Seals issued an order denying Applicant's motion to reconsider.

Following Judge Seals' denial of Applicant's post-plea motion, Mr. Chehoski filed a notice of appeal on Applicant's behalf. Appellate Defender Susan B. Hackett represented Applicant on appeal, raising the following issue:

Whether the plea court erred in denying plea counsel's motion to reconsider the sentence when his sentence was disparate to that of a co-defendant?

Following briefing, our Court of Appeals issued an unpublished opinion affirming Applicant's convictions and sentences on October 17, 2018. *Hughes v. State*, 2018-UP-382 (S.C. Ct. App. filed Oct. 17, 2018). The case was remitted back to the circuit court on November 2, 2018.

### **III. SUMMARY OF FACTS**

On February 14, 2015, David Quintana, Alva Valdez, and their three children were asleep in their home. (Plea Tr. 6; R. 6). Mr. Quintana, hearing a noise, went into the den and discovered an armed gunman at approximately 1:00 am. (Plea Tr. 6; R. 6). The gunman, later identified as McNeill, first forced Mr. Quintana and Ms. Valdez back into their bedroom. (Plea Tr. 6-7; R. 6-7). He then forced the couple into their bathroom. (Plea Tr. 6; R. 6).

It was at that time that the couple heard commotion and other people coming into the home and walking down the hall. (Plea Tr. 6; R. 6). McNeill told them if they did not be quiet and

cooperate, the men would kill their children. (Plea Tr. 6; R. 6). Meanwhile, Applicant and Johnson entered the home and stole several items, including: (1) X-box video game consoles; (2) a Wii video game console; (3) Valdez's pocketbook, containing her credit cards; and (4) an old Bible, considered a family heirloom. (Plea Tr. 7; R. 7). The three co-defendants then fled on foot while Mr. Quintana called law enforcement. (Plea Tr. 7-8; R. 7-8).

Shortly after arriving at the scene, officers found Applicant and Johnson walking through the neighborhood. (Plea Tr. 8; R. 8). Officers, not in possession of evidence implicating the two men in the robbery, allowed Applicant and Johnson to head home after obtaining their identification information. (Plea Tr. 8; R. 8). The two men returned home and hid some of the stolen items, buried the clothes they were wearing, and tried to dispose of their shoes after observing the officers' interest in their footwear.<sup>2</sup> (Plea Tr. 8-9; R. 8-9).

Meanwhile, McNeill attempted a second home invasion a few hours later in that same general area. (Plea Tr. 8; R. 8). However, the homeowner caught McNeill and held him there until police arrived. (Plea Tr. 8-9; R. 8-9). When McNeill was arrested, officers found Ms. Valdez's credit cards and other stolen items on his person. (Plea Tr. 9; R. 9). Applicant and Johnson were ultimately implicated as McNeill's accomplices in the earlier robbery. (Plea Tr. 9; R. 9). Officers eventually recovered the buried clothes and other stolen items from Applicant and Johnson. (Plea Tr. 9; R. 9).

#### **IV. ISSUES BEFORE THIS COURT**

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

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<sup>2</sup> The record indicates officers were interested in the men's shoes because they knew the door to the home was kicked in during the burglary. (Plea Tr. 8; R. 8).

1. Ineffective assistance of counsel: "didn't object to solicitor bringing up another case during plea"
2. Ineffective assistance of counsel: "didn't ensure I agreed with factual basis of guilty plea"
3. Involuntary guilty plea: "lawyer didn't tell me solicitor would ask for the maximum sentence"
4. Conflict of interest: "public defender's office represented by codefendants"

The State requested an evidentiary hearing through its return and motion for a definite statement on March 3, 2020. On May 26, 2020, PCR counsel filed an amended application pursuant to Rule 71.1, SCRCP, to conform to the evidence presented at the PCR hearing in the event that any new issues arise during the court of the hearing. PCR counsel further amended the application to include the following claims:

5. Applicant's counsel, Jason Chehoski, failed to discuss the evidence with applicant.
6. Applicant's counsel, Jason Chehoski, failed to inform the solicitor that he would accept a 15 year sentence as part of a plea.
7. Applicant's counsel Jason Chehoski failed to object to the solicitor presenting information to the court regarding the co-defendant Jahmand McNeill's second Burglary committed the same day as this incident. (Transcript p.8, Lines 19-23).
8. Applicant's counsel Jason Chehoski failed to object to the solicitor presenting a witness that requested the maximum possible sentence. (Transcript p. 11, Lines 15-16) and failed to advise applicant that this would be presented by the state.
9. Applicant's counsel, Jason Chehoski, coerced the applicant into entering a guilty plea by informing the applicant he would receive a sentence of 20 years like his co-defendant Antonio Johnson
10. Applicant's counsel, Jason Chehoski had a conflict of interest in representing Applicant. Applicant has learned that another Lexington Public Defender, David Mauldin, represented co-defendant Jahmand McNeill in this case. Applicant believes that this prevented counsel from being effective in his representation of applicant and applicants counsel should have made a motion

to have an attorney outside of the public defender's office appointed to represent him.

11. During the plea the court did not find that the applicant was entering the plea voluntarily (Transcript p. 11, Lines 19-21).
12. [T]he court did not make a finding that there was a factual basis for the plea and it did not inquire if the applicant agreed to the facts as presented by the state.

On November 28, 2020, PCR counsel filed a second amended application to include the following claims:<sup>3</sup>

13. Counsel failed to meet with applicant a sufficient number of time to review the evidence.
14. Prior to the guilty plea, Applicant's counsel failed to explain the details of the Applicants guilty plea and sentencing.
15. Applicant's counsel failed to interview the victims David Quintana and Alva Valdez regarding these charges.
16. Applicant's counsel failed to interview the witnesses Diamond McLamb and Derrick McNeil regarding these charges.
17. Applicant's counsel failed to interview the co-defendants Antonio Johnson and Jahmand McNeill regarding these charges.
18. Following the plea Applicants counsel failed to file a motion to reconsider the sentence.<sup>4</sup>

## V. STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act<sup>5</sup> (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based upon the following types of allegations:

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<sup>3</sup> PCR counsel additionally amended the application on Applicant's behalf to conform to the evidence presented at the PCR hearing in the event that any new issues arise during the course of the hearing. *See Simpson v. Moore*, 367 S.C. 587, 599, 627 S.E.2d 701, 708 (2006), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018); Rule 15(b), SCRCP (pleadings may be amended, even after judgment, to conform to issues tried by express or implied consent but not raised in the original pleadings).

<sup>4</sup> Because this claim is directly refuted by the record, this Court will not address it further. (R. 17-22).

<sup>5</sup> S.C. Code Ann. §§ 17-27-10 to -160.

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

S.C. Code Ann. § 17-27-20(A).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee all criminal defendants the right to “assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.” *Strickland v. Washington*, 466 U.S. 668, 685 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction. 466 U.S. at 687. To obtain relief, a PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness; *and* (2) there is a reasonable probability the outcome of the

proceeding would have been different but for counsel's deficient performance. *Williams v. State*, 363 S.C. 341, 343, 611 S.E.2d 232, 233 (2005) (citing *Strickland*, 466 U.S. 668). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; see also *Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

The applicant bears the heavy burden of establishing both prongs of the *Strickland* standard by a preponderance of the evidence. *Hughes v. State*, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); Rule 71.1(e), SCRCP. To prove deficient performance, the applicant must establish that, in light of all the circumstances, the acts or omissions complained of "fell below an objective standard of reasonableness" as measured by "prevailing professional norms." *Strickland*, 466 U.S. at 688. Reviewing courts should be deferential in this inquiry, and apply "a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id.* at 689. With respect to prejudice, the applicant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Id.* When evaluating this probability, the reviewing court "should consider the specific impact counsel's error had on the outcome of the trial" coupled with "the strength of the State's case in light of . . . the [totality of the] evidence presented to the jury." *Smalls*, 422 S.C. at 188, 810 S.E.2d at 843. Significantly, "the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." *Strickland*, 466 U.S. at 696.

Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonably professional assistance.” *Butler v. State*, 286 S.C. 441, 445, 334 S.E.2d 813, 816 (1985). “The burden of rebutting this presumption ‘rests squarely on the defendant,’ and ‘[i]t should go without saying that the absence of evidence cannot overcome [i]t.’ ” *Dunn v. Reeves*, 594 U.S. \_\_\_, \_\_\_, 141 S. Ct. 2405, 2410 (2021) (alteration in original) (quoting *Burt v. Titlow*, 571 U.S. 12, 22–23 (2013)). In fact, “even if there is reason to think that counsel’s conduct ‘was far from exemplary,’ a court still may not grant relief if ‘[t]he record does not reveal’ that counsel took an approach that *no competent lawyer would have chosen*.” *Id.* (alteration in original) (emphasis added) (quoting *Titlow*, 571 U.S. at 23–24). Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686; see *Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the “benchmark” of the right to counsel is the “fairness of the adversary proceeding”).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, *Hill v. Lockhart*, 474 U.S. 52 (1985) extended the two-part *Strickland* test to challenge guilty pleas based on ineffective assistance of counsel. See *Padilla v. Kentucky*, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). When reviewing a guilty plea, the analysis of counsel’s performance under the first prong of *Strickland* remains unchanged—the applicant must show that counsel’s representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. *Hill*, 474 U.S. at 58–59; accord *Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his guilty plea was induced by

ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the competence demanded of attorneys in criminal cases." *Hill*, 474 U.S. at 56. The second, or "prejudice" prong, however, "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." *Id.* at 58–59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." *Id.* at 59.

This inquiry "focuses on a [applicant]'s decisionmaking" and does not turn on the outcome of the applicant's actual criminal proceeding or potential outcome had the applicant chosen to proceed to trial. *Lee v. United States*, 582 U.S. \_\_\_, \_\_\_, 137 S. Ct. 1958, 1966 (2017). However, the applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. *Padilla*, 559 U.S. at 372. The post-conviction relief judge must therefore "look to contemporaneous evidence to substantiate a defendant's expressed preferences." *Lee*, 582 U.S. at \_\_\_, 137 S. Ct. at 1967. Accordingly, in determining whether a guilty plea was taken in accordance with constitutional standards, the post-conviction relief judge must analyze and consider the entire record, including the transcript of the guilty plea and the evidence presented at the PCR hearing. *Harres v. Leeke*, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

Surmounting *Strickland's* high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." *Lee*, 582 U.S. at \_\_\_, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); *cf. Hill*, 474 U.S. at 58 ("[R]equiring a 'prejudice' showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.'"). Reviewing "[c]ourts should not upset a plea solely because of *post*

*hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies." *Lee*, 582 U.S. at \_\_\_\_, 137 S. Ct. at 1967. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. *Turner v. State*, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

## VI. FINDINGS OF FACT & CONCLUSIONS OF LAW

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

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

Set forth below are the relevant findings of facts and conclusions of law pursuant to S.C. Code Ann. § 17-27-80.

**A. Failure to adequately review evidence with Applicant<sup>6</sup>**

Regarding Applicant's claim that plea counsel did not sufficiently review discovery with him, this Court finds Applicant failed to establish counsel provided constitutionally ineffective assistance under either prong of *Hill*. This Court finds applicable the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment" at all stages of Applicant's proceedings. *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland*, 466 U.S. 668). Mr. Chehoski credibly testified at the PCR hearing that he met with Applicant six times over the course of his representation and provided specific dates of these meetings. During these meetings, Mr. Chehoski stated he explained to Applicant the elements of the offenses, discussed Applicant's version of events, and extensively reviewed all evidence and discovery with him. Applicant's own testimony, although predominantly incredible, establishes he met with Mr. Chehoski several times to review discovery and discuss his case.

This Court further finds credible and persuasive Mr. Chehoski's demonstrated recollection of the evidence produced by the State and his explanations to Applicant about how each piece of evidence would be used against him at trial. Specifically, Mr. Chehoski recalled explaining to Applicant that the most damaging evidence against him were his inconsistent statements to law enforcement. Counsel's recollection is consistent with the record. Specifically, the solicitor advised the plea court that Applicant "gave different statements and each time [officer's] confronted] him" with different pieces of evidence, (Plea Tr. 9–10; R. 9–10), and that his "story evolved from participating in the crime as a lookout to an eventual admission he had entered the home and stolen one of the video game consoles." (Plea Tr. 10; R. 10). Additionally, Applicant's

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<sup>6</sup> Claims 5 and 13

ability to direct law enforcement to the area where some of the buried items were located and eventually recovered is certainly probative of guilt. (Plea Tr. 12–13; R. 12–13).

This Court does not find credible Applicant’s testimony that Mr. Chehoski “did not really” discuss the evidence with him, particularly in light of his admission at the PCR hearing that Mr. Chehoski gave him a copy of the discovery and met with him approximately four times to review this evidence. Additionally, Applicant advised Judge Seals during the plea colloquy that he had enough time to speak with Mr. Chehoski about his case; that Mr. Chehoski had answered all his questions; that Mr. Chehoski had done everything he asked him to do; and that he was completely satisfied with Mr. Chehoski’s services. (Plea Tr. 5; R. 5). *See United States v. Lott*, 630 F. Supp. 611, 613–14 (E.D. Va.) (rejecting the defendant’s claim of ineffective assistance of counsel for failure to investigate, interview witness, and meet with her a sufficient number of times where she testified under oath at the plea hearing “that she had had sufficient opportunity to discuss the plea agreement with her attorney” and “that [her attorney] had explained the agreement to her and that the decision to plead guilty was voluntarily made after full consultation with her attorney”), *aff’d*, 795 F.2d 82 (4th Cir. 1986); *see also Dalton v. State*, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (Ct. App. 2007) (“[S]tatements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements.”).

Applicant otherwise failed to identify precisely what Mr. Chehoski did not explain or disclose to him from the materials provided in discovery, or what, if anything, could have been achieved had Mr. Chehoski spent more time with him in consultation regarding the contents of the evidence. *See Smith v. State*, 404 S.C. 493, 500–01, 745 S.E.2d 378, 382 (Ct. App. 2012) (noting that an applicant must present evidence to show how additional time spent in consultation

regarding discovery would have resulted in a different outcome; mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief); *Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009) (noting that to establish prejudice based on failure to investigate or prepare for trial when the applicant enters a guilty plea, he must ordinarily present some evidence “that would have affected counsel’s advice to [him] to accept the plea bargain offered or that would have caused [him] to decline to accept it”); *cf. 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*, 422 S.C. 174, 810 S.E.2d 836.

Based on the foregoing, this Court finds no deficiency in counsel’s consultation with Applicant regarding the evidence in discovery, nor any resulting prejudice. Accordingly, Applicant’s ineffective assistance claims pertaining to this allegation are **DENIED**.

**B. Failure to explain terms of plea agreement and plea process to Applicant<sup>7</sup>**

Regarding Applicant’s claim that plea counsel failed to adequately explain the terms of the plea agreement and plea process, this Court finds Applicant failed to meet his burden under *Hill* based on Applicant’s representations to the plea court as well as plea counsel’s credible testimony he thoroughly explained to Applicant prior to his plea the details of the plea agreement, including the charges he would be pleading to; the charges the State would be dismissing; the potential sentence he was facing; that the State would not be making a recommendation as to sentencing; the constitutional rights Applicant would forfeit by pleading guilty; and all the options available to him for resolving the charges against him. Mr. Chehoski further testified that Applicant never

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<sup>7</sup> Claim 14

indicated to him either before or during the plea that he did not understand the terms of the plea agreement. If he had any doubt regarding Applicant's understanding of the plea proceedings, Mr. Chehoski explained, he would not have allowed Applicant to plead guilty that day. Applicant's own testimony, although predominantly incredible, establishes he met with Mr. Chehoski to discuss his case and options for resolving the charges several times prior to the plea.

At the PCR hearing, Applicant was asked if counsel explained the details of the plea and sentencing. Applicant responded, "not really, just said I could get fifteen to life." However, Applicant's testimony regarding the sentencing range is consistent with the terms of the plea agreement as demonstrated by the record from the plea hearing and Mr. Chehoski's testimony at the PCR hearing. Applicant additionally failed to identify anything specific that Mr. Chehoski did not sufficiently explain to him, that he did not understand, or otherwise demonstrate a reasonable probability that Applicant "would not have pleaded guilty and would have insisted on going to trial" but for Mr. Chehoski's purported failure to sufficiently explain the plea agreement or process. *Hill*, 474 U.S. at 59.

Nevertheless, this Court finds any possible deficiency or error by counsel was cured by the information conveyed by Judge Seals at the plea hearing. *See Rayford v. State*, 314 S.C. 46, 48, 443 S.E.2d 805, 806 (1994) (holding that the record of the plea proceeding, including applicant's answers to the plea judge's questions, clearly established that applicant understood the possible sentences and refuted applicant's claim on PCR that he did not understand the terms of a plea agreement). The plea colloquy indicates that the full plea agreement consisted of the State dismissing the kidnapping and weapons charges in exchange for Applicant pleading "straight up" to burglary and armed robbery. Applicant confirmed he understood the charges he was pleading guilty to, the charges that were dismissed as part of the plea agreement, and the maximum sentence

he could receive. (Plea Tr 4–5; R. 4–5). The record therefore contradicts Applicant’s assertion he was under a misapprehension or misunderstood the terms of the plea agreement. *See Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997) (finding the guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge).

Based on the foregoing, this Court finds no deficiency in counsel’s consultation with Applicant regarding the terms of the plea agreement and plea process, nor any resulting prejudice. Accordingly, Applicant’s request for relief by way of this allegation is **DENIED**.

**C. Failure to inform solicitor that Applicant would accept a fifteen-year plea<sup>8</sup>**

Regarding Applicant’s claim plea counsel failed to negotiate a plea agreement or otherwise inform the State that he would accept a plea offer with a fifteen-year sentence, this Court again finds Applicant failed to satisfy the *Hill* requirements based on the combined record of the plea hearing and PCR hearing.

Before deciding whether to plead guilty, a defendant is entitled to the effective assistance of competent counsel.” *Padilla*, 559 U.S. at 364 (citations omitted); *see, e.g., Lafler v. Cooper*, 566 U.S. 156, 170 (2012) (recognizing that “the right to adequate assistance of counsel cannot be defined or enforced without taking account of the central role plea bargaining plays in securing convictions and determining sentences”); *Missouri v. Frye*, 566 U.S. 134 (2012) (finding that in the context of plea negotiations, an attorney’s failure to communicate a formal plea offer to a criminal defendant falls below an objective standard of reasonableness under *Strickland*); *see also Strickland*, 466 U.S. at 688 (explaining that counsel has a duty “to consult with the defendant on important decisions and to keep the defendant informed of important developments in the course

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<sup>8</sup> Claim 6

of the prosecution.”); *but see United States v. Horne*, 987 F.2d 833, 836 (D.C. Cir. 1993) (noting that the constitutional requirement of effective assistance of counsel is intended “to guarantee a fair disposition of defendant’s case, not to ensure that he is able to drive the hardest possible plea bargain . . .” (citing *Fields v. Att’y Gen. of State of Md.*, 956 F.2d 1290, 1298 (4th Cir. 1992))).

However, a defendant has no constitutional right to plea bargain. *Weatherford v. Bursey*, 429 U.S. 545, 561 (1977); *Frye*, 566 U.S. at 148 (“[A] defendant has no right to be offered a plea . . .”); *accord. State v. Chisolm*, 312 S.C. 235, 237–38, 439 S.E.2d 850, 852 (1994). Rather, “[t]he decision whether to offer a plea bargain is within the solicitor’s discretion.” *State v. Whipple*, 324 S.C. 43, 49, 476 S.E.2d 683, 686 (1996); *see State v. Thrift*, 312 S.C. 282, 291–92, 440 S.E.2d 341, 346–47 (1994) (“Prosecutors may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they can simply decide not to prosecute the offense in its entirety.”); *State v. Langford*, 400 S.C. 421, 436 n.6, 735 S.E.2d 471, 479 n.6 (2012) (stating “[u]ndoubtedly, the solicitor has discretion in choosing how to proceed with a case, including whether to prosecute in the first place and whether he brings it to trial or offers a plea bargain”). Accordingly, counsel cannot be constitutionally ineffective for failing to obtain a particular plea offer. *See State v. Chisolm*, 312 S.C. 235, 237–38, 439 S.E.2d 850, 851–52 (1994) (rejecting the appellant’s contention he was “denied fair and even handed treatment by the solicitor’s office . . . as evidenced by the absence of plea negotiations by the prosecutor” because there is no constitutional right to plea bargain)

Here, this Court finds credible and persuasive the testimony of Mr. Chehoski, who presented well-recalled testimony of his negotiations with the solicitor and is consistent with the record from the plea hearing. Specifically, Mr. Chehoski testified at the PCR hearing that he asked Assistant Solicitor Martin about a fifteen-year plea deal, and she told him “there would not

be *any* offers.” Applicant even admitted that Mr. Chehoski communicated to him the State’s rejection of his request for a fifteen-year sentence. Moreover, Mr. Chehoski acknowledged Applicant’s request for a negotiated sentence on the record during his mitigation presentation. *See Suber v. State*, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007) (noting that “[i]n determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing” (citation omitted)); He stated Assistant Solicitor Martin’s “hands have been tied” because she was “given a directive from her superiors not to make an offer as to a negotiated sentence.” (Plea Tr. 14; R. 14). Mr. Chehoski nonetheless gave an extensive mitigation presentation and concluded his remarks by asking the plea court to consider a fifteen-year sentence. (Plea Tr. 10–15; R. 10–15).

Because plea counsel informed the solicitor Applicant would plead guilty in exchange for a fifteen-year sentence, Applicant’s ineffective assistance claim pertaining to this allegation is **DENIED**.

**D. Failure to interview witnesses<sup>9</sup>**

As to Applicant’s claim plea counsel provided constitutionally ineffective assistance by failing to interview the victims, alleged witnesses, and co-defendants, this Court finds Applicant failed to overcome the “strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment” in this regard. *Ard*, 372 S.C. at 331, 642 S.E.2d at 596 (citing *Strickland*, 466 U.S. 668). “A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). “[W]hile the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview

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<sup>9</sup> Claims 15–17

potential witnesses and to make an independent investigation of the facts and circumstances of the case.” *Ard*, 372 S.C. at 331–32, 642 S.E.2d at 597 (internal quotation marks omitted) (emphasis omitted).

However, counsel need only interview potential witnesses “when it is reasonable to do so.” *Edwards v. State*, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011); *see id.* at 457, 710 S.E.2d at 64–65 (“While our case law does provide that defense counsel must, at a minimum, interview potential witnesses, a strict adherence to that rule loses sight of the controlling standard for counsel’s duty to investigate: reasonableness. Indeed, it would be an absurdity to require criminal defense lawyers to interview *every* potential witness when they can articulate reasonable grounds not to. When counsel makes such a reasonable decision, he will have fulfilled the duty he owes to his client.”). “In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” *Strickland*, 466 U.S. at 691; *cf. Green v. French*, 143 F.3d 865, 892 (4th Cir. 1998) (“Although counsel should conduct a reasonable investigation into potential defenses, *Strickland* does not impose a constitutional requirement that counsel uncover every scrap of evidence that could conceivably help their client.”), *abrogated on other grounds by Williams v. Taylor*, 529 U.S. 362 (2000).

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel’s duty to investigate. *See Ard*, 372 S.C. at 331, 642 S.E.2d at 597 (“Without a doubt, [a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation.”). “[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation.” *Strickland*, 466 U.S. at 690–91; *see id.* (“In

other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.”). Thus, in applying the *Strickland* standard to a claim of failure to investigate, counsel’s decision not to undertake a particular investigation must be evaluated with heavy deference to counsel’s judgment. *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 63 (Ct. App. 2014).

Applicant contends Mr. Chehoski failed to interview the following individuals: (1) the victims, David Quintana and Alva Valdez; (2) alleged witnesses, Diamond McLamb and Derrick McNeill; (3) and Applicant’s co-defendants, Antonio Johnson and Jahmand McNeill. At the PCR hearing, Mr. Chehoski testified he did not interview any of these individuals. Regarding the co-defendants, he noted that he would not normally attempt to speak with his clients’ co-defendants because they would be represented by counsel, and he would have to get special permission to do so. The only testimony Applicant presented on this claim is that Mr. Chehoski did not interview these witnesses.

This Court finds Applicant failed to meet his burden under *Hill* because he did not present any evidence or testimony from any of these witnesses at the PCR hearing. Our Supreme Court has “repeatedly held a PCR applicant *must produce the testimony* of a favorable witness *or otherwise offer the testimony in accordance with the rules of evidence* at the PCR hearing” in order to prevail on this type of claim. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998); *see, e.g., Clark v. State*, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (holding that “pure conjecture” as to what a witness’s testimony would have been is not sufficient to show a reasonable probability the result at trial would have been different); *Glover v. State*, 318 S.C. 496, 498–99, 458 S.E.2d 538, 540 (1995) (mere speculation as to un-presented witness’ testimony does not satisfy PCR applicant’s burden); *see generally Premo v. Moore*, 562 U.S. 115, 132 (2011) (noting

that “[h]indsight and second guesses are also inappropriate, and often more so, where a plea has been entered without a full trial” because “[t]he plea process brings to the criminal justice system a stability and a certainty that must not be undermined by the prospect of collateral challenges in cases not only where witnesses and evidence have disappeared, but also in cases where witnesses and evidence were not presented in the first place”).

Likewise, this Court will not credit Applicant’s present claim he would have gone to trial absent plea counsel’s allegedly deficient performance when he failed to identify an issue plea counsel missed in preparation of the case or any meritorious defense pertaining to these witnesses that would have helped Applicant’s case or affected his decision to plead guilty. *See Davis v. State*, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997) (“To establish applicant was prejudiced as a result of counsel’s failure to prepare for trial, the applicant must present evidence to show how the discoverable matters or defenses would have resulted in a different outcome.”); *Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009) (noting that to establish prejudice based on failure to investigate or prepare for trial when the applicant enters a guilty plea, he must ordinarily present some evidence “that would have affected counsel’s advice to [him] to accept the plea bargain offered or that would have caused [him] to decline to accept it”).

Based on the foregoing, this Court finds no deficiency in counsel’s failure to interview these witnesses, nor any resulting prejudice. Accordingly, Applicant’s request for relief by way of these allegations is **DENIED**.

**E. Failure to object to information presented about co-defendant’s unrelated crime**<sup>10</sup>

Applicant next contends plea counsel provided constitutionally ineffective assistance by failing to object to the solicitor presenting information to the plea court regarding McNeill

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<sup>10</sup> Claims 1 and 7

committing a second burglary the same day as the burglary giving rise to Applicant's charges. This Court disagrees, and finds Applicant failed to meet his burden under *Hill*.

At the PCR hearing, Mr. Chehoski testified that he could not recall the solicitor bringing up McNeill's second burglary; however, he testified the information was irrelevant and could not have prejudiced Applicant because he was not involved in that burglary. The record from the plea hearing supports Mr. Chehoski's conclusion and shows that (1) McNeill's second burglary was discussed in the context of the investigation and events that led to Applicant's arrest, and (2) that it was made abundantly clear Applicant was not involved. (Plea Tr. 8-9; R. 8-9).

Additionally, Applicant neither provided a basis upon which plea counsel could have objected to this information nor demonstrated how he was prejudiced from the solicitor including it in her factual presentation. *See, e.g., Basham v. United States*, 109 F. Supp. 3d 753, 776 (D.S.C. 2013) (noting that "[i]t is axiomatic that if the claim or claims that counsel failed to raise are devoid of legal merit, a defendant suffers no prejudice and cannot establish a claim of ineffective assistance of counsel"), *aff'd*, 789 F.3d 358 (4th Cir. 2015), and *aff'd*, 789 F.3d 358 (4th Cir. 2015); *Carter v. Douma*, 796 F.3d 726, 735 (7th Cir. 2015) (reiterating that counsel's "performance is not deficient[, as element of claim for ineffective assistance,] by failing to make a futile objection"); *see generally Kimmelman v. Morrison*, 477 U.S. 365, 386 (1986) (explaining that only if counsel's acts or omissions, examined within the context of all the surrounding circumstances, were outside the "wide range" of professionally competent assistance, will the petitioner meet this initial burden).

Because the solicitor presenting information to the plea court regarding the co-defendant's second burglary was not improper, this Court finds no deficiency on the part of plea counsel for

failing to object, nor any resulting prejudice. Accordingly, Applicant's request for relief by way of these allegations is **DENIED**.

**F. Facts**<sup>11</sup>

Applicant next makes two analogous claims regarding the facts presented at the plea hearing. Specifically, he alleges (1) plea counsel was ineffective for failing to ensure Applicant agreed with the factual basis for the plea as set forth by the solicitor, and (2) his plea was involuntary because the plea court did not make a finding that there was a factual basis for the plea nor did it inquire with Applicant as to whether he agreed with the facts presented by the State. This Court disagrees.

At the PCR hearing, when asked about the solicitor's recitation of the facts at the plea hearing, Mr. Chehoski testified there were no apparent inaccuracies in the solicitor's recitation of the facts, and it appeared that Applicant fully understood the facts. He further stated that Applicant did not indicate to him at any point during the plea proceeding that he disagreed with the facts as presented. Even Applicant failed to identify anything in the factual basis for the plea as set forth by the solicitor that he believed to be inaccurate or insufficient.

Applicant therefore failed to specify how Mr. Chehoski's failing to ensure Applicant agreed with the solicitor's recitation of facts constitutes deficient performance. *See Strickland*, 466 U.S. at 690 (To prove deficient performance, the applicant must "identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment" and establish that, in light of all the circumstances, the acts or omissions complained of "were outside the wide range of competence" demanded of attorneys in criminal cases.). Applicant further failed to demonstrate that, had Mr. Chehoski stopped the plea proceeding to ensure Applicant agreed

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<sup>11</sup> Claims 2 and 12

with the facts presented, he “would not have pleaded guilty and would have insisted on going to trial.” *Hill*, 474 U.S. at 59.

This Court would further note that Applicant waived his right to challenge the State’s version of facts and sufficiency of the evidence against him when he pleaded guilty and waived his right to a jury trial. *See Whetsell v. State*, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981) (explaining that a plea waives all non-jurisdictional defects and defenses, including challenges to the sufficiency of the evidence and claims of a violation of a constitutional right prior to the plea); *see also United States v. Willis*, 992 F.2d 489, 490 (4th Cir. 1993) (explaining that “a guilty plea constitutes a waiver of all nonjurisdictional defects, including ‘the right to contest the factual merits of the charges’ ” (quoting *United States v. Freed*, 688 F.2d 24, 25 (6th Cir. 1982))); *see Freed*, 688 F.2d at 25 (noting that a guilty plea constitutes “a waiver of all so-called ‘non-jurisdictional defects’ or, more accurately, any claims not logically inconsistent with the issue of factual guilt, as well as the right to contest the factual merits of the charges against him”)

Even though Applicant did not specifically acknowledge the accuracy of the State’s factual presentation, the record demonstrates Applicant did not voice any concerns regarding the accuracy of the facts and plea counsel’s credible testimony establishes that Applicant never indicated to him at any point during the plea proceeding that he disagreed with the facts as presented. *See State v. Rikard*, 371 S.C. 295, 300–01, 638 S.E.2d 72, 75 (Ct. App. 2006) (rejecting the defendant’s argument that the plea “court erred in accepting her plea or refusing to allow her to withdraw her plea” on the grounds that “she did not admit to the facts presented by the State” where she did not raise any objection to the solicitor’s recitation of facts; where she admitted she was guilty of the charged offenses for which she had been apprised of the elements; and because the solicitor provided a sufficient factual basis in the record to support each of the charges even though the

defendant did not specifically acknowledge the accuracy of the State's factual presentation); *LoPiano v. State*, 270 S.C. 563, 569, 243 S.E.2d 448, 451 (1978) ("We are not here concerned with the weight or sufficiency of the evidence to sustain a conviction. By entering a plea of guilty, LoPiano waived his right to attack his conviction on this ground. Since we have determined that LoPiano's plea was entered voluntarily and understandingly, he does not now have the right, in post-conviction proceedings, to attack the plea upon the ground that the facts were insufficient to establish the offense to which he pled.").

Further, Judge Seals' acceptance of Applicant's plea as entered "freely, intelligently, and with the advice of competent counsel," (Plea Tr. 11; R. 11), constitutes a finding that "there is a sufficient factual basis for a conclusion that the defendant committed all of the elements of the offenses." *United States v. Morrow*, 914 F.2d 608, 611 (4th Cir. 1990); *see id.* (finding the district court judge "did not abuse his [wide] discretion in accepting the plea as being supported by sufficient facts" because "the district court need only be subjectively satisfied that there was a factual basis for acceptance of the plea" (citations omitted)); *see also United States v. Mitchell*, 104 F.3d 649, 652 (4th Cir. 1997) (noting that the plea court "need only be subjectively satisfied that there is a sufficient factual basis for a conclusion that the defendant committed all of the elements of the offense" to accept the plea); *Ramey v. State*, 257 S.C. 127, 130, 184 S.E.2d 544, 546 (1971) (rejecting the applicant's attempt on post-conviction relief to attack her plea on ground that the facts were insufficient to establish degree of offense to which she pled because the guilty plea was voluntarily and understandingly entered).

Based on the foregoing, this Court finds no deficiency in counsel's failure to ensure Applicant agreed with the solicitor's recitation of facts, nor any resulting prejudice. This Court further finds the plea court's acceptance of Applicant's plea as knowingly and voluntarily entered

conclusively establishes the elements of the offense and the material facts necessary to support the conviction. Accordingly, Applicant's request for relief by way of these allegations is **DENIED**.

**G. Maximum sentence**<sup>12</sup>

Applicant next makes two analogous claims pertaining to the lead detective's request following the solicitor's recitation of facts that Applicant receive the maximum sentence allowable. (Plea Tr. 11; R. 11). Specifically, he alleges (1) his plea was involuntary because plea counsel did not tell him the solicitor would ask for the maximum sentence, and (2) that plea counsel should have objected or attempted to withdraw the plea after the detective made the statement. This Court disagrees.

The plea record reflects that Detective Spivey, one of the investigating officers from the Lexington County Sheriff's Department, spoke at the hearing on behalf of the victims and law enforcement. (Plea Tr. 10–11; R. 10–11). He reiterated that the victims were extremely traumatized by the crime, stating Quintana and Valdez recalled one or more of the burglars threatening to harm their children and reminding the plea judge the children were also harmed by the burglars' actions. (Plea Tr. 10–11; R. 10–11). He concluded his remarks by requesting the plea judge give Applicant the maximum possible sentence. (Plea Tr. 11; R. 11).

At the PCR hearing, Applicant testified Mr. Chehoski failed to advise him the State was going to be recommending the maximum sentence, and that it was his understanding the State would not be making a recommendation at all. He further testified that he wanted Mr. Chehoski to object to Detective Spivey's request and ultimately withdraw his plea. However, nothing was presented at the PCR hearing nor is there any indication in the plea record that Applicant attempted to pause the plea proceeding and ask counsel to withdraw his plea. Mr. Chehoski explained that

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<sup>12</sup> Claims 3 and 8

Detective Spivey spoke at the hearing only for purposes of providing a victim impact statement.<sup>13</sup> He therefore did not think to object nor did he see any basis upon which he could have objected because individuals giving victim impact statements are free to say whatever they think is appropriate as long as it is not derogatory. *Cf. Winkler v. State*, 418 S.C. 643, 653, 795 S.E.2d 686, 692 (2016) (explaining that “[o]ne of the key circumstances a court must consider in its examination of counsel’s decision not to make a particular objection is whether there was any law to support the objection”).

When asked whether he advised Applicant that a victim or representative could request the maximum sentence, Mr. Chehoski testified he could not recall exactly what he told Applicant regarding victim impact but that his general practice in serious cases is to advise clients serious victims can generally ask for whatever they want. It further appears from the record that Mr. Chehoski did not know the detective would request the maximum sentence and therefore could not have warned Applicant. Nonetheless, Applicant failed to provide any basis upon which plea counsel could have objected or withdrawn the plea, and the record indicates the State complied with the plea agreement. Specifically, the record is devoid of any statements from Assistant Solicitor Martin regarding sentencing. *Cf. State v. Rikard*, 371 S.C. 295, 302, 638 S.E.2d 72, 76 (Ct. App. 2006) (holding that the plea court did not err in denying the defendant’s request to

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<sup>13</sup> As Mr. Chehoski mentioned, this Court would further note that a victim of any crime committed in South Carolina is guaranteed certain constitutional and statutory rights to justice and due process that “are honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protections afforded criminal defendants[.]” S.C. Code Ann. § 16-3-1505; *see id.* (“[T]he General Assembly declares its intent, in this article, to ensure that all victims of and witnesses to a crime are treated with dignity, respect, courtesy, and sensitivity . . .”). Specifically, Article I, § 24(A)(5) of the South Carolina Constitution provides that “victims of crime have the right to . . . be heard at any proceeding involving a post-arrest release decision, a plea, or sentencing.” Victim impact evidence is “simply another form or method of informing the sentencing authority about the specific harm caused by the crime in question . . .” *Payne v. Tennessee*, 501 U.S. 808, 824–25 (1991).

withdraw her guilty plea where the defendant was pleading “straight up” without any negotiations or recommendations and the State indicated on the sentencing sheet that it would make no recommendation regarding sentencing but then requested that the court impose the maximum sentence).

Moreover, even if plea counsel was somehow deficient in this regard, Applicant failed to demonstrate any resulting prejudice because the plea judge did not acquiesce to the detective’s request. Rather, the plea judge sentenced Applicant within the parameters of the plea agreement and Applicant failed to show that his sentence would have differed if plea counsel had objected to the detective’s statement. Additionally, as discussed in section B, *supra*, Mr. Chehoski gave an extensive mitigation presentation on Applicant’s behalf, noting his lack of criminal history and the fact that he was not armed during the burglary. (Plea Tr. 10–15). He further informed the plea court that Johnson—who Mr. Chehoski asserted was more culpable than Applicant—had already pled and received twenty years. (Plea Tr. 13; R. 13). He then asked the plea court to consider a fifteen-year sentence. (Plea Tr. 15; R. 15).

Based on the foregoing Applicant failed to demonstrate ineffective assistance of counsel pertaining to the detective’s statement. Having failed to show ineffective assistance, Applicant cannot show an involuntary plea attributable to ineffective assistance. Accordingly, Applicant’s request for relief by way of these allegations is **DENIED**.

**H. Involuntary guilty plea and coercion<sup>14</sup>**

Applicant next contends his guilty plea was involuntary because (1) plea counsel coerced him into pleading guilty by informing him he would receive a twenty-year sentence; (2) plea

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<sup>14</sup> Claims 9 and 11

counsel failed to properly advise him of the constitutional rights he waived by pleading guilty;<sup>15</sup> and (3) the plea court did not make a specific finding that his guilty plea was voluntarily entered. This Court disagrees and finds the combined record from the plea hearing and the PCR hearing establishes Applicant freely, knowingly, and voluntarily pleaded guilty. *See Harden v. State*, 360 S.C. 405, 409, 602 S.E.2d 48, 50 (2004) (highlighting that “[w]hen examining issues related to a guilty plea, it is appropriate to consider the entire record, including the transcript of the guilty plea, and the evidence presented at the PCR hearing”); *see also Hill*, 474 U.S. at 56 (holding that where “a defendant is represented by counsel during the plea process and enters his plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel’s advice ‘was within the range of competence demanded of attorneys in criminal cases’ ” (quoting *McMann v. Richardson*, 397 U.S. 759, 771 (1970))).

“[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced.” *Reed v. Becka*, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). Because a criminal defendant waives several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Pittman v. State*, 337 S.C. 597, 524 S.E.2d 623 (1999). To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. *Brady v. United States*, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free

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<sup>15</sup> Although this claim was not specifically pled, this Court grants Applicant’s request to conform to the evidence presented at the PCR hearing as set forth in his first and second amended applications and finds there was sufficient testimony and evidence presented on this issue that it was implicitly raised. *See Simpson v. Moore*, 367 S.C. 587, 599, 627 S.E.2d 701, 708 (2006), *abrogated on other grounds by Smalls*, 422 S.C. 174, 810 S.E.2d 836; Rule 15(b), SCRPC (pleadings may be amended, even after judgment, to conform to issues tried by express or implied consent but not raised in the original pleadings).

of threats or other coercion that would impermissibly distort the defendant's choice. *Id.* at 755; *see also United States v. Smith*, 440 F.2d 521, 528–529 (7th Cir. 1971) (Stevens, J., dissenting) (explaining that voluntariness relates to the trustworthiness of the admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. *Boykin*, 395 U.S. at 243. Additionally, the defendant "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman*, 337 S.C. at 599, 524 S.E.2d at 624. The defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993). To ensure the defendant understands the consequences of his guilty plea, the plea judge "usually questions the defendant about the facts surrounding the crime and punishment that could be imposed." *Dover v. State*, 304 S.C. 433, 434–35, 405 S.E.2d 391, 392 (1991). However, the plea judge "does not have to direct the defendant's attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea." *Carter v. State*, 329 S.C. 355, 362, 495 S.E.2d 773, 776 (1998).

Moreover, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." *McMann*, 397 U.S. at 770. An applicant who enters a plea on the advice of counsel may

“only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel’s errors, the [applicant] would not have pled guilty, but would have insisted on going to trial.” *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. *Wolfe*, 326 S.C. at 165, 458 S.E.2d at 370. 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.” *Harres*, 282 S.C. at 133, 318 S.E.2d at 361.

Nonetheless, because “[a] guilty plea is a solemn, judicial admission of the truth of the charges against an individual, . . . a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed.” *Dalton*, 376 S.C. at 137, 654 S.E.2d at 874 (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977)); see *McMann*, 397 U.S. at 774 (noting the compelling interests in maintaining the finality of guilty-plea convictions validly obtained). Indeed, admissions made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements.” *Dalton*, 376 S.C. at 137–38, 654 S.E.2d at 874 (internal citations and quotation marks omitted); cf. *Blackledge*, 431 U.S. at 73–74 (pointing out that representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a “formidable barrier in any subsequent collateral proceedings”).

Here, Applicant testified at the PCR hearing that neither the plea court nor Mr. Chehoski advised him of his constitutional rights. Specifically, he recalled Mr. Chehoski telling him he could go to trial but “that was about it.” He further stated that neither Mr. Chehoski nor the plea court advised him of his right to confront and question witnesses against him at trial. Applicant additionally testified that he was advised of his right to remain silent when he got arrested but not at his plea. He stated that the plea judge asked him if he was guilty but that Applicant “didn’t really give an answer.” Finally, Applicant testified that the plea court did not make a finding that he waived those rights or that his guilty plea was knowingly and voluntarily entered.

This Court finds that Applicant knew the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty in accordance with the requirements of *Boykin* and *Pittman*. Here, the record indicates that all defendants pleading guilty that day were brought before the plea court as a group and advised of their rights. (Plea Tr. 4; R. 4). Judge Seals additionally asked Applicant about his understanding of those rights at the outset of his individual plea proceeding. (Plea Tr. 5; R. 5). Applicant confirmed—under oath—that he understood and wished to these rights and plead guilty. (Plea Tr. 5; R. 5). Applicant additionally told Judge Seals he understood the charges he was pleading guilty to, the charges that were dismissed as part of the plea agreement, and the maximum sentence he could receive. (Plea Tr 4–5; R. 4–5).

In addition to Applicant’s representations to the plea court, this Court finds credible plea counsel’s testimony that he explained to Applicant the constitutional rights he would have at trial, including the ability to confront and cross-examine witnesses against him and call witnesses on his own behalf at trial. As discussed in section B, *supra*, Mr. Chehoski testified that his general practice is to discuss with his clients their constitutional rights several times, especially in a case as serious as Applicant’s. Specifically, his general practice when a client pleads guilty is to go over

as serious as Applicant's. Specifically, his general practice when a client pleads guilty is to go over each constitutional right a final time right before they appear before the plea judge. He additionally testified he would not have allowed Applicant to appear before the plea court that day and plead guilty if he had any doubt regarding Applicant's understanding of these rights.

Further, Applicant's claim that the plea court did not make a specific finding that his guilty plea was knowingly voluntarily entered is directly refuted by the record. When Judge Seals accepted the plea, he expressly found Applicant was "doing so freely, intelligently, and with the advice of competent counsel." (Plea Tr. 11; R. 11). See *United States v. Terry*, 606 F. App'x 712, 713 (4th Cir. 2015) (rejecting the defendant's attempt to "challenge[] his plea on the ground that the district court did not take special care to assure that his plea was knowing and voluntary" where the district court conducted a sufficient colloquy and reiterating that "[a] guilty plea is valid where the defendant voluntarily, knowingly, and intelligently pleads guilty 'with sufficient awareness of the relevant circumstances and likely consequences' " (quoting *Brady*, 397 U.S. at 748)).

Applicant next claims his plea was involuntary and coerced due to plea counsel allegedly promising him he would receive a twenty-year sentence if he pleaded guilty because Johnson was sentenced to twenty years. This Court disagrees, and finds Applicant failed to present any valid reasons why he should be allowed to depart from the truth of the statements he made during the plea proceeding, particularly in light of his contradictory testimony at the PCR hearing regarding his understanding of the plea agreement and what Mr. Chehoski told him about sentencing. See *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975) (finding that the accuracy and truth of an accused's statements at a guilty plea proceeding are "conclusively" established unless he makes some reasonable allegation why this should not be so), *overruled on other grounds by United States v. Whitley*, 759 F.2d 327 (4th Cir. 1985).

Applicant additionally did not allege any facts at the PCR hearing tending to prove he was prevented from informing the plea court that it was his understanding he would receive twenty-year sentence. *See Dalton v. State*, 376 S.C. at 137–38, 654 S.E.2d at 874 (holding that “admissions made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements” (quotation marks and citations omitted); *Fields*, 956 at 1299 (“Fields presents no evidence that suggests his representations during his plea were untruthful or involuntary, and he is therefore rightly bound by his sworn statements.”).

At the PCR hearing Applicant first testified that Mr. Chehoski promised him he would receive a sentence between twenty and twenty-five years right before his plea. Specifically, he testified that Mr. Chehoski came to see him at the jail a few days before he appeared in court, where he informed him that Johnson had just pleaded guilty and received twenty years. He stated Mr. Chehoski told him he would get the same sentence. However, on cross-examination, Applicant admitted that Mr. Chehoski never promised him he would receive twenty years. Further, “[t]he colloquy establishes that [Applicant] did not have any misconceptions regarding sentencing.” *Roddy v. State*, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000); *cf. United States v. Stephens*, 427 F. Supp. 3d 680, 689 (D.S.C. 2019) “[W]hen a defendant pleads guilty, the court must be able to rely on the defendant’s self-interest and his truthful testimony in deciding to find the defendant guilty based on a guilty plea.”).

Unlike Applicant’s inconsistent testimony, this Court finds credible Mr. Chehoski’s testimony that he made no promises to Applicant regarding sentencing. Rather, he stated he thought Applicant and his co-defendant were similarly situated because neither of them were found with a gun nor had a criminal record. Mr. Chehoski advised the plea court of this information during his

mitigation presentation, which was extensive. (Plea Tr. 11–15; R. 11–15). At the end of his presentation, Mr. Chehoski asked the plea court to sentence Applicant to consider a fifteen-year sentence. (Plea Tr. 15; R. 15). He further filed a motion to reconsider sentence on Applicant’s behalf, which was denied without a hearing. (R. 17–22).

This Court further finds Applicant’s claim of coercion is wholly without merit, particularly in light of his solemn declarations on the record at the plea hearing that no one promised him anything to get him to plead guilty or threatened him in any way. (Plea Tr. 5; R. 5). While Applicant now claims he was coerced by his attorney into entering into a guilty plea, he made it clear to the plea court that the decision to plead guilty was his own. *See United States v. Morrow*, 914 F.2d 608, 613 (4th Cir. 1990) (rejecting Morrow’s post-plea claims that his plea was involuntary and coerced where he affirmed to the plea court under oath that no one “had threatened, persuaded, or induced Morrow into pleading guilty” because “[w]hile not . . . an insurmountable barrier to a defendant who claims that his plea was coerced, such declarations made in open court carry a strong presumption of veracity” (citing *Blackledge*, 431 U.S. at 74–75); *see generally North Carolina v. Alford*, 400 U.S. 25, 31 (1970) (explaining that the test for determining the validity of a guilty plea is “whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant”); *cf. Brady*, 397 U.S. at 751 (declining to hold a guilty plea compelled and invalid “whenever motivated by the defendant’s desire to accept the certainty or probability of a lesser penalty rather than face a wider range of possibilities extending from acquittal to conviction and a higher penalty authorized by law for the crime charged”).

“Courts naturally look with a jaundiced eye upon any defendant who seeks to withdraw a guilty plea after sentencing on the ground that he expected a lighter sentence.” *United States v. Crusco*, 536 F.2d 21, 24 (3d Cir. 1976); *see Daniel v. Cockrell*, 283 F.3d 697, 703 (5th Cir. 2002)

(absent a showing of force of threat by some other actor, the “guilty plea is not rendered involuntary by the defendant’s mere subjective understanding that [he] would receive a lesser sentence . . .”); *McMann*, 397 U.S. at 774 (noting the compelling interests in maintaining the finality of guilty plea convictions validly obtained). In *Brady*, the United States Supreme Court explained:

Often the decision to plead guilty is heavily influenced by the defendant’s appraisal of the prosecution’s case against him and by the apparent likelihood of securing leniency should a guilty plea be offered and accepted. Considerations like these frequently present imponderable questions for which there are no certain answers; judgments may be made that in the light of later events seem improvident, although they were perfectly sensible at the time. The rule that a plea must be intelligently made to be valid does not require that a plea be vulnerable to later attack if the defendant did not correctly assess every relevant factor entering into his decision. A defendant is not entitled to withdraw his plea merely because he discovers long after the plea has been accepted that his calculus misapprehended the quality of the State’s case or the likely penalties attached to alternative courses of action.

*Id.* at 756–57.

The fact that Mr. Chehoski advised Applicant there was a *possibility* he would receive a twenty-year sentence does not render Applicant’s guilty plea invalid, especially given Applicant’s acknowledgment on the record that he knew the sentencing range and that no recommendations were being made by the State. *See generally Wolfe*, 326 S.C. 158, 485 S.E.2d 367 (holding the guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge).

Surmounting *Strickland*’s high bar is never an easy task, and the strong societal interest in finality has “special force with respect to convictions based on guilty pleas.” *Lee*, 137 S. Ct. at 1967; *cf. Hill*, 474 U.S. at 58 (“[R]equiring a ‘prejudice’ showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel ‘will

serve the fundamental interest in the finality of guilty pleas.’”). Based on the foregoing, this Court finds Applicant’s plea was freely, knowingly, and voluntarily entered. Accordingly, Applicant’s requests for relief on the grounds that his plea was involuntary are **DENIED**.

**I. Conflict of interest**<sup>16</sup>

Finally, Applicant contends he was denied effective assistance of counsel due to an alleged conflict of interest based on Applicant’s counsel and his co-defendant’s counsel working in the same public defender’s office. Although Applicant admitted at the PCR hearing that he never asked Mr. Chehoski about this alleged conflict, he stated he believes it prevented plea counsel from providing effective assistance. He claims Mr. Chehoski should have asked the court to appoint a private attorney to represent him. This Court disagrees.

A “criminal defendant’s Sixth Amendment right to effective assistance of counsel includes a right to counsel “unhindered by a conflict of interest.” *Gonzales v. State*, 419 S.C. 2, 9, 795 S.E.2d 835, 839 (2017) (citation omitted), *abrogated on other grounds by Smalls*, 422 S.C. 174, 810 S.E.2d 836. “An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendant’s.” *Staggs v. State*, 372 S.C. 549, 551, 643 S.E.2d 690, 692 (2007). In order to demonstrate a violation of his Sixth Amendment rights, “the defendant [must] demonstrate[] that counsel ‘actively represented conflicting interests’ and that ‘an actual conflict of interest adversely affected his lawyer’s performance.’ ” *Strickland*, 466 U.S. at 692 (quoting *Cuyler v. Sullivan*, 446 U.S. 335, 348–50 (1980)).

The United States Supreme Court reiterated in *Mickens v. Taylor* that an “actual conflict,” for Sixth Amendment purposes, is a “conflict that [adversely] *affected counsel’s performance*—as opposed to a mere theoretical division of loyalties.” 535 U.S. 162, 171 (2002). In other words,

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<sup>16</sup> Claims 4 and 10

“[t]he mere possibility defense counsel may have a conflict of interest is insufficient to impugn a criminal conviction,” *State v. Gregory*, 364 S.C. 150, 152–53, 612 S.E.2d 449, 450 (2005), and an actual conflict of interest does not arise from an irrelevant or “hypothetical conflict having no effect on trial counsel’s representation . . .” *United States v. Taylor*, 139 F.3d 924, 931 (D.C. Cir. 1998). This Court would further note that “the fact that counsel does not advise a defendant of the potential conflict of interest does not affect the constitutionality of the conviction,” *Jackson v. State*, 329 S.C. 345, 355, 495 S.E.2d 768, 773 (1998), and the “Rules of Professional Conduct have no bearing on the constitutionality of a criminal conviction.” *Langford v. State*, 310 S.C. 357, 360, 426 S.E.2d 793, 795 (1993).

This Court finds Applicant failed to establish any actual conflict of interest arose from plea counsel’s representation of him while Assistant Public Defender David Mauldin represented McNeill. *See Jordan v. State*, 406 S.C. 443, 449, 752 S.E.2d 538, 541 (2013) (reiterating that “until a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for his claim of ineffective assistance” (internal quotations marks and citations omitted))). Mr. Chehoski testified at the PCR hearing that attorneys in their office routinely represent co-defendants. He nonetheless brought the potential conflict of interest to the attention of Robert Madsen, the Chief Public Defender for the Eleventh Judicial Circuit. Mr. Madsen told him it would not be an issue as long as Mr. Chehoski and Mr. Mauldin were assigned different support staff. Mr. Chehoski confirmed that was the general office policy when attorneys in their office represent co-defendants, although the office has a new policy in place where, if multiple co-defendants are facing a sentence of twenty years or more, the office will take on the representation of the most culpable co-defendant and the rest are assigned out to attorneys on the contract list. However, this policy was not in place at the time he represented Applicant.

While a potential conflict of interest may have existed based on Mr. Chehoski and Mr. Mauldin working in the same public defender's office, this Court finds it never ripened into an actual conflict. See *United States v. Gantt*, 140 F.3d 249, 254 (D.C. Cir. 1998) (explaining that the "adverse effect" element of the *Cuyler* test requires the defendant "to demonstrate that the conflict had some negative effect upon his defense (defined as an actual lapse in representation)" (internal quotations marks and citations omitted)). Mr. Chehoski credibly testified that, although he could not specifically recall having a conversation with Mr. Mauldin, they would not have discussed the case in depth. Mr. Chehoski further reiterated that Mr. Mauldin's representation of McNeill did not influence his representation of Applicant, and Applicant could not point to an actual conflict. Additionally, nothing in the record suggests the potential conflict caused Mr. Chehoski to treat Applicant's case in such a manner as to obtain more favorable consideration for McNeill or that it otherwise negatively affected his representation of Applicant.

Based on the foregoing, this Court finds the fact that Applicant's counsel and his co-defendant's counsel worked in the same public defender's office did not create an actual conflict of interest. Accordingly, Applicant's ineffective assistance claims pertaining to this allegation is **DENIED**.

## VII. CONCLUSION

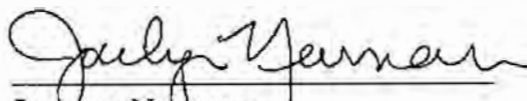
For all the foregoing reasons, this Court finds Applicant has failed to meet his burden of proof as to any of the allegations advanced in this post-conviction relief action and has not established any constitutional violations or deprivations entitling him to post-conviction relief. Therefore, this Court denies relief on all grounds and dismisses this post-conviction relief action with prejudice.

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

**IT IS THEREFORE ORDERED:**

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 5<sup>th</sup> day of December 2023.

  
 JOCELYN NEWMAN  
 Presiding Circuit Court Judge  
 Eleventh Judicial Circuit

Columbia, South Carolina