

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Florence County

Honorable William A. McKinnon, Circuit Court Judge

ZACHARY D. MCCLAIN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000784

APPENDIX

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State of South Carolina	)	Court of General Sessions
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2019-GS-21-01001
	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
	)	
Zachary D. McClain,	)	
	)	
Defendant.	)	
	)	

July 18, 2002
 Florence, South Carolina

B E F O R E:

The Honorable D. Craig Brown, Judge

A P P E A R A N C E S:

David Richardson, Esquire
 Attorney for the State

Scott Floyd, Esquire
 Attorney for the Defendant

Krystal J. Smith
 Official Circuit Court Reporter III

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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(No Exhibits Presented)

COURT REPORTER LEGEND

dashes	--	intentional or purposeful interruption
		or change in thought
ellipses	. . .	trailing off
[ph]		phonetically written
[sic]		written as said

1 JULY 18, 2022

2 (WHEREUPON, the proceedings began at 1:48 p.m.)

3 THE COURT: All right.

4 MR. JEPERTINGER: Your Honor --

5 MR. RICHARDSON: Yeah.

6 MR. JEPERTINGER: Well, go ahead.

7 MR. RICHARDSON: May it please the Court. Yeah, Judge, I
8 have the video back here. So if you don't mind, I'll stand
9 here.

10 The defendant has indicated he wishes to plead guilty to
11 the two charges, 2019-GS-21-01001. Those two charges are
12 armed robbery under the 10-to-30 year statute and possession
13 of a weapon during a violent crime under the 0-to-5 year
14 statute. He's represented by Scott Floyd, and these pleas are
15 without negotiation or recommendation.

16 THE COURT: All right.

17 MR. FLOYD: Your Honor, could I have one minute? I have
18 a question I couldn't understand.

19 (WHEREUPON, there was a pause in the proceedings, after
20 which the proceedings resumed as follows.)

21 THE COURT: Are you ready to proceed?

22 MR. FLOYD: Yes, sir, Your Honor.

23 Your Honor, I had mentioned to Mr. Jepertinger and Mr.
24 Richardson this request, and certainly this is completely in
25 your hands. Mr. McClain has indicated that he wants to enter

1 his plea today. He -- I don't know if you remember, but you
2 did a motion to revoke his bond a while back, probably in --
3 when was it? April maybe, I think?

4 MR. RICHARDSON: April.

5 MR. FLOYD: It was April, but he has a monitor on his --
6 he wears a monitor now because of a pending charge that he
7 has.

8 THE COURT: In Darlington County?

9 MR. FLOYD: In Darlington. That's right.

10 Your Honor, he wanted me to request to you that he go
11 ahead and enter his plea today, and if you would consider
12 withholding his sentence until in the morning so he could
13 visit with his -- his children. And I told him I would ask
14 you, and that it certainly is up to the Court, but -- and I
15 wanted to do that.

16 Like I said, he does have a monitor and he's always been,
17 you know, faithful about appearing in court whenever I ask him
18 to and has, you know, been to visit me in the office whenever
19 I ask him to and all that sort of thing. But, Your Honor, I
20 just wanted to put that request on the record on behalf of Mr.
21 McClain.

22 THE COURT: All right. Well, I'm not inclined to do
23 that. I've never done that before. So I'm certainly -- in
24 light of the seriousness of these charges.

25 MR. FLOYD: Right.

1 THE COURT: And I'm not saying he would, but certainly
2 have had individuals cut monitors off and and abscond. So --
3 but I respect your request and --

4 MR. FLOYD: Yes, sir.

5 THE COURT: Is your client still ready to go forward?

6 MR. FLOYD: Yes, sir, Your Honor.

7 THE COURT: All right. Sir, if you'd raise your right
8 hand, please. Do you swear to tell the truth, the whole
9 truth, and nothing but the truth, so help you God?

10 THE DEFENDANT: I do.

11 THE COURT: You can put your hand down. You're Zachary
12 Deon McClain?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: I need you to speak up. Okay?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Have you ever been treated for alcohol abuse,
17 drug abuse, or mental illness?

18 THE DEFENDANT: No, sir.

19 THE COURT: Within the last 24 hours, have you taken any
20 medication, drugs, or alcohol?

21 THE DEFENDANT: No, sir.

22 THE COURT: Are you aware of any physical, emotional, or
23 nervous problem that would prevent you or keep you from
24 understanding what's going on here today?

25 THE DEFENDANT: No, sir.

1 THE COURT: All right. The State indicates you wish to
2 enter a plea to two separate charges, one being an armed
3 robbery. Is that correct?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: You understand it carries a minimum of 10
6 years up to 30 years?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: You understand that that's considered under
9 South Carolina law to be a violent offense?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: As well as a most serious offense which falls
12 under the two-strike rule?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you understand that this armed robbery is,
15 in essence, a no-parole offense?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: That any sentence imposed by the Court is
18 pretty much day for day?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you still want to go forward and plead
21 guilty to that charge?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Mr. Floyd, you're confident that he
24 understands the consequences of pleading to a violent as well
25 as most serious offense?

1 MR. FLOYD: Yes, sir, Your Honor.

2 THE COURT: All right. In addition, the State indicates
3 you're pleading guilty to possession of a weapon during the
4 commission of a violent crime. Is that correct?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You understand that carries up to 5 years?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And my reading of the statute is that because
9 the mandatory minimum is more than the five years, it can be
10 run consecutive or concurrent? It's not mandatory
11 consecutive?

12 MR. FLOYD: That's correct, Your Honor.

13 THE COURT: Do you understand that, Mr. McClain?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you still want to plead guilty to that
16 charge?

17 THE DEFENDANT: Yes, sir.

18 DEFENDANT'S RIGHTS

19 THE COURT: Now, Mr. McClain, when you plead guilty, you
20 give up certain important constitutional rights. First of
21 all, you give up your right to a jury trial. In fact, in your
22 case, we've selected a jury and they're actually back in the
23 jury room right now waiting to come out here. Do you
24 understand you have a right to a jury trial?

25 I've already told this jury -- in fact, I told the entire

1 jury panel that you're presumed innocent of these charges and
2 that the State would have to prove your guilt beyond a
3 reasonable doubt.

4 If we go forward with your trial, your attorney, Mr.
5 Floyd, on your behalf, would have a right to question and
6 cross-examine any witnesses that the State put up. You'd have
7 a right to remain silent. If you did, I would tell the jury
8 they couldn't hold that against you. If you made any
9 incriminating statements -- none have been brought to my
10 attention, but if any were made, you would certainly have a
11 right to challenge the admissibility of those statements. Do
12 you understand all those rights?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you want to give up your right to a jury
15 trial here today, proceed, and plead guilty to each of these
16 two charges?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. Now, you understand -- well,
19 you're represented by Mr. Floyd and Ms. Neyle. Have you
20 talked to your lawyers enough?

21 THE DEFENDANT: Yeah.

22 THE COURT: Sir?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you need any more time to talk to them?

25 THE DEFENDANT: No, sir.

1 THE COURT: Understood your talks with them?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Have any complaints about them?

4 THE DEFENDANT: No, sir.

5 THE COURT: Has anyone promised you anything or held out
6 any hope of reward to get you to plead here today to these
7 charges?

8 THE DEFENDANT: No, sir.

9 THE COURT: Has anyone used any threats, force, pressure,
10 or intimidation to get you to plead here today?

11 THE DEFENDANT: No, sir.

12 THE COURT: Has anyone mistreated you in any way, whether
13 it be law enforcement or Solicitor's Office?

14 THE DEFENDANT: No, sir.

15 THE COURT: Have you had enough time to make up your mind
16 as to whether or not you want to plead guilty to these charges
17 or go to trial?

18 THE DEFENDANT: No, sir.

19 THE COURT: You need some more time? Have you had enough
20 time?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Have you understood my question, sir?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And how do you wish to plead to each of these
25 two charges here today? Guilty or not guilty?

1 THE DEFENDANT: Guilty.

2 THE COURT: All right, Mr. Richardson.

3 FACTS

4 MR. RICHARDSON: Thank you, Your Honor.

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

10 (WHEREUPON, the video was played.)

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

17 There are two cash registers that you'll see these folks
18 standing at. At each one of the registers, the armed robber
19 grabs the cash till, and he's covered head to toe except for
20 his hands, and he has no gloves on. That becomes important
21 here during the investigation.

22 After he exits the store, the victim contacts law
23 enforcement. Kevin Buxton, who's in the courtroom, amongst
24 others, responded and was at the store within minutes. They
25 met with the owner of the store, who is seated behind me,

1 Ankit Kumar Patel. He provided this surveillance video to law
2 enforcement.

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

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

21 Based on that information, law enforcement got a search
22 warrant for that car and the apartment. They executed the
23 search warrant. The defendant was inside. He was the only
24 person there. Inside the trunk of the car, they found a gun
25 case for the .40 caliber handgun. On the inside, he had

1 multiple receipts for cash purchases, over \$100 worth for a
2 few hours after the robbery took place from Walmart. Also,
3 the .40 caliber handgun was found by Andron Brown, who is
4 seated in the courtroom, in a laundry basket covered up with
5 clothing.

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

15 Meanwhile, while Investigator -- Investigator Cantey is
16 working this case the hard, good old-fashioned ways, Tim
17 Matthews with the City -- he's a crime scene technician. He
18 also reported to the store that night. He -- he noticed on
19 video the no gloves and that the defendant was picking up the
20 cash tills looking under the drawers.

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

25 We knew that the fingerprint card that was used in

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

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

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

19 In terms of plea offers that were made, the defendant
20 turned down an 8-year offer earlier this year on attempted
21 armed robbery and then turned down a 15-year offer last week,
22 and we're here before you today without any offers.

23 And yes, sir, the victim is present. I don't know if
24 he'd wish to speak to you, but I think 700-and-some-odd
25 dollars were stolen. I need to put that on the record.

1 That's what was taken in the -- in the robbery. The victim
2 does not wish to speak, Judge.

3 THE COURT: Okay. All right. Anything further from the
4 State at this time?

5 MR. RICHARDSON: No, sir.

6 THE COURT: All right. Mr. McClain, you heard the facts
7 as stated by the prosecutor as it relates to these charges.
8 Do you agree with those facts?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Sir?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Are you guilty of these charges?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And how do you plead to each of these
15 charges? Guilty or not guilty?

16 THE DEFENDANT: Guilty.

17 FINDINGS/ACCEPTANCE OF PLEA

18 THE COURT: All right. I find that there is a
19 substantial factual basis for this defendant's plea to each of
20 these two charges. That his decision to plead guilty has been
21 entered into freely, voluntarily, knowingly, and
22 intelligently. That he's had the advice and counsel of an
23 attorney with whom he's indicated he's completely satisfied.
24 I'll accept his plea to these two charges.

25 Happy to hear from you, Mr. Floyd.

MITIGATION

MR. FLOYD: Thank you, Your Honor.

Your Honor, Mr. McClain is 22 years old now. This case has been pending for several years. He was 19 when this occurred. Most recently, Your Honor, he's been working over at Darlington Veneer.

He has a two-month-old child at home, and he also has a four-year-old. I think that that child lives with -- with his -- with her mother. Right? The two-month-old actually lives in the household with Mr. McClain. And, Your Honor, part of his struggles, certainly you can see he's very emotional. As you know, he understands he's going to be separated from his child for a very extended period of time. He understands that. He's got a lot of struggles with that, Your Honor.

That being said, Your Honor, I've always found Zachary to be very polite to me, to my staff. I've never had -- as I told you earlier, I've never had any trouble, you know, getting him to comply, to come to court or anything like that. He's always been, you know, very compliant with whatever I've asked, Your Honor. It's just -- you know, I see -- see that screen there, and it's just very hard for me to imagine Mr. McClain doing that, but here we are.

We -- he did two days in jail on this charge, Your Honor, and, Judge, I would just ask if you would consider a minimum sentence for him on this charge and be as lenient as you can

1 with him. Obviously, he's got some pending things that he's
2 still got to face yet, but I would ask, Your Honor, if you
3 would consider just giving him the minimum that you can.

4 Your Honor, in addition to the two-strike rule, I also
5 went over the three-strike rule with Mr. McClain because, you
6 know, this is a most serious offense, and I also explained to
7 him if he accumulated two more serious that he could also be
8 served life without parole notice on that as well.

9 Other than that, Your Honor, I think we -- we covered
10 everything else in regards to this plea. And, Your Honor, I
11 would ask if you would hear from Mr. McClain's family. His
12 mother is here, his grandmother, and his girlfriend. They're
13 all here, Your Honor, and I think one or maybe all of them
14 would like to speak to you at the appropriate time.

15 THE COURT: All right. I'd be happy to hear from them.

16 MR. FLOYD: Thank you, Your Honor.

17 Do you want -- Your Honor, this is his mother, and I'll
18 just ask her if she would introduce herself.

19 MS. MCCLAIN: How are you doing today, Judge, Your Honor?

20 THE COURT: Yes, ma'am.

21 MS. MCCLAIN: This is my son, Zachary. He's my --

22 THE COURT: Tell me your -- tell me your name first,
23 please, ma'am.

24 MS. MCCLAIN: Oh, I'm so sorry. My name is Latasha
25 Sherry McClain.

1 THE COURT: Yes, ma'am, Ms. McClain.

2 MS. MCCLAIN: And we are originally from Darlington
3 County. I'm a mother of four, a single mother of four. Zach
4 lost his brother back in 2014 to murder. I've been going in
5 and out of the courtroom for eight years, and then I started
6 going through this three years ago with Zachary.

7 I talked to him. I tried to raise him right. I never
8 had any problems out of Zach, you know, until his son --
9 until my son got killed in 2014, and then Zach began to, you
10 know, hang with a group of people and things started happening
11 in his life.

12 I asked him did he need any kind of counseling or
13 anything like that. This was before these charges occurred
14 because I felt like he did, but he told me that he didn't need
15 any counseling and he was trying to cope with things on his
16 own.

17 And he's got two beautiful daughters, one two months old,
18 one four years old. They love their dad. I got my mom here.
19 She helped me raise my four kids. Three of them went through
20 college. Zach dropped out of school in the 11th grade. That
21 was right after my son got killed.

22 But every time I ask him something, you know, he's not
23 disrespectful to me. And just like the public defender was
24 saying, any time I called and told him to come or asked him
25 what was going on, I thought he was being honest and faithful

1 to me, you know. So I tried to believe what he said. And
2 like I told him, I can't say what he did do or didn't do in
3 this situation, but I'm just like the public defender.

4 I mean, I feel like -- as his mother, I feel like he
5 deserves a second chance in life. And if he did something
6 wrong, I feel like he deserves to pay for it just like anybody
7 else, because I have a son that's dead from murder, three
8 people convicted of murder, and I want them to be convicted
9 for what they did. But I've been going to court for eight
10 years and nothing has happened yet, you know, but just me
11 going to the courtroom. I'm going to try to be here for
12 Zach's kids no matter what happens to him because I'll always
13 be here for them as much as I can.

14 I just wish that you would take that into consideration.
15 He has a whole family that loves him and is willing to back
16 him in whatever he does, but we don't approve of him doing no
17 wrong. And if he did do this, we want to apologize to whoever
18 he did it for because he didn't have to do it because anytime
19 Zach would come to us and ask us for something, we tried our
20 best to give him whatever.

21 So we see no reason for him to have to have robbed a
22 store. And after they said that he did that, I never saw him
23 with anything, but I just heard today that he took \$700. You
24 know, I'm glad nobody was hurt or harmed in the situation, but
25 he didn't have to do that because every time he came to me and

1 my mama or anybody in the family, we went all out of our way
2 to make sure that he had what he needed.

3 I'm a single mother. I clean up for a living. I work
4 for Nucor Steel. I've been working all my life in motels,
5 convenience stores, just doing whatever I could to take care
6 of my family. And my mother, she always had his back too, so
7 she helped me raise him. So, I mean, I felt like if anybody
8 could say anything about him, it would be me or my mother
9 because we know him best.

10 But he's not a bad person. He -- he did something bad.
11 And if he did, I know he got to pay for it, but I'm just
12 asking you to please take into consideration that I don't feel
13 like he would harm a fly. His nephews love him. He got two
14 sisters at home. And we just want to -- if he got to go do
15 some time, we just want him to be able to touch the ground
16 again.

17 And I don't think that he'll ever, you know, go this
18 route again. I just feel like in my heart that he learned his
19 lesson. That's just what I wanted you to hear. That's all I
20 can say. You know what I'm saying? I can't stop you from
21 making your decision, but I just hope that you will take that
22 into consideration. I've been praying and praying and asking
23 the Lord to give a just, you know, fair trial for him, and
24 that's all that I can ask.

25 And I love him, and I'm going to be here for him. And

1 also, if he have to go to jail, I wish that he could be
2 somewhere, you know, where we can visit him or that he doesn't
3 have to go too far away from us. That's all I ask from the
4 Court today, and I appreciate you for listening at me.

5 THE COURT: Thank you, Ms. McClain.

6 MS. MCCLAIN: Yes, sir.

7 MR. FLOYD: Your Honor. This is Mr. McClain's
8 grandmother.

9 THE COURT: Tell me your name, please, ma'am.

10 MS. PRICE: Bernice Damon Price.

11 THE COURT: Yes, ma'am, Ms. Price.

12 MS. PRICE: Judge, Your Honor, Zachary is a good boy. He
13 done fell in with the wrong crowd. We've been asking him what
14 is -- you know, what's going on? And by him robbing that
15 store, Judge, he didn't have to do that. We don't know what
16 led him to go into that store to present himself to that,
17 because I've been on my job for 16 years and whenever they
18 come to me, like his mom said, I've always been there for all
19 of my grandkids.

20 And Zachary is not a bad child. He's got plenty of good
21 manners. He was raised with manners. He knows the church.
22 He knows the Lord. But after his brother got killed,
23 murdered, he turned to the wrong crowd because he felt like
24 nothing was being done about the people who took his brother's
25 life. So he just got out there and got with the wrong crowd,

1 Judge, Your Honor.

2 So I'm asking that you have mercy upon him at this time,
3 and I ask the store clerk to please forgive him for what he
4 done, and we also ask for forgiveness because he didn't have
5 to do nothing like that, Judge, and I just ask the mercy of
6 the Court for Zachary.

7 THE COURT: Thank you, Ms. Price.

8 MR. FLOYD: Thank you, Your Honor.

9 THE COURT: Thank you.

10 Mr. McClain, anything you want to tell me, sir?

11 THE DEFENDANT: I want to say -- I just want to say I'm
12 sorry for wasting all y'all time or whatever today, but I just
13 -- I just really, really, really -- I know I got to go to
14 jail, and I know I got to go to jail. I just want to see my
15 babies one last time so I can have my mind to sit for when I
16 go because I know I won't see them again until they're grown.
17 So I -- I already know that for a fact. So I just wanted to
18 ask can you just spare me a night, one more night with them?
19 That's it.

20 THE COURT: Ms. Price, Ms. McClain, I want to thank you
21 all for being here. As a parent myself, I can't imagine what
22 you're dealing with. Too often -- well, probably about -- you
23 know, I don't know what the percentage is, but it is a very
24 high percentage of individuals that stand before me or other
25 judges that -- that has no one in support of them.

1 And I respect what you've tried to do, Ms. McClain, as a
2 single mother. I can't imagine the challenges that you've had
3 as a single parent. I feel certain that listening to you and
4 your mother here today that you've taught your son the
5 difference between right and wrong.

6 And it's something I've always taught my kids and I've --
7 one of my kids in particular, I've told -- told him on more
8 than one occasion when you get out from under my roof, you can
9 go out there and do what you want to and get in trouble if you
10 want to, but you're not ever going to look at me and say you
11 didn't teach me any better.

12 You talk about your son being part of the wrong crowd.

13 Mr. McClain, not one of those individuals, not one of
14 them that you ran with out there on the streets is in here
15 today that's got your back.

16 You know, I'm the type of person I always like to look at
17 the positives in things. When I see in the news it's a 50
18 percent chance of rain, I look at it like it's a 50 percent
19 chance of sunshine. I like those odds.

20 If anything positive from this is that your son was --
21 was a trigger pull away from facing the death penalty, a slip
22 of the finger. As our kids get older, we can't -- kids are a
23 lot easier when they're little because you can control them,
24 control who they're hanging out with, what they're doing, know
25 where they are 24 hours a day, seven days a week. And as they

1 get older, that gets tougher.

2 I say this and I've said this more than once. I think
3 it's tougher today to be a parent than it's ever been, and I
4 think it's tougher to be a kid today than it's ever been, but
5 one thing that doesn't change is what's right and what's
6 wrong. I've said this more than once. It pains me to see
7 young people such as your son make decisions that they've made
8 here that bring them into this court or any other court facing
9 such tremendous consequences. So again, thank you all for
10 being here today.

11 MS. MCCLAIN: Yes, sir.

12 MS. PRICE: Yes, sir.

13 SENTENCE

14 THE COURT: On Indictment 2019-GS-21-01001 as it relates
15 to the possession of a weapon during the commission of a
16 violent crime, the defendant is committed to the State
17 Department of Corrections for a period of 5 years.

18 Under that same indictment number on the armed robbery,
19 the defendant is hereby committed to the State Department of
20 Corrections for a period of 17 years, given credit for two
21 days, and they're to run concurrent.

22 Thank you.

23 (WHEREUPON, the proceedings ended at 2:21 p.m.)

24

25 --- END REQUESTED TRANSCRIPT ---

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

Court Reporter

Florence, South Carolina
September 18, 2023

FORM 5

STATE OF SOUTH CAROLINA

FILED

IN THE COURT OF COMMON PLEAS

County of Florence

2022 SEP -2 PM 12:13

Zachary Dean McClain

Full name and prison number (if any) of Applicant

JUDITH ROULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

2022 CP 21 1826**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 Kirkland Reception & Evaluation
2. Name and location of Court which imposed sentence Florence County Courthouse
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) _____
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) July 18th 2022
- (b) _____
- (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?
no / Wasn't aware that I had 30 days to appeal.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Wasn't told that I could appeal.
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Wasn't offered a promise plea.
- (b) Wasn't offered VOA
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____
- (b) _____
- (c) _____
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) neither was offered and I was unaware ~~at~~
~~no~~ until incarceration by the different offers.
~~let~~

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

- (a) your arraignment and plea? Public Defender Scott Floyd
 (b) your trial, if any? no
 (c) your sentencing? Public Defender Scott Floyd
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? no
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
no

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. Scott Floyd 180 N. Irby St. #703 Florence, SC
29501

ii.

iii.

- (b) the proceedings at which each such attorney represented you:

i. Scott Floyd 180 N Irby St. #703 Florence, SC
29501

ii.

iii.

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

Getting a lesser sentence being a first time offender. Also trying to get the VOA sentence.

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

NO.

STATE OF SOUTH CAROLINA)

County of Florence)

VERIFICATION

I, Zachary McClain, 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.

Zachary McClain

SWORN to and subscribed before me this 29th
day of August, 2022.

[Signature] (L.S.)
Notary Public

My Commission Expires: 07/02/2028

FILED
2022 SEP -2 PM 12:13
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

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

I, Zachary M^cClain, 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.

Zachary M^cClain
Applicant

SWORN or affirmed to and subscribed before me this
29th day of August, 2022.

[Signature]
Notary Public

My Commission Expires: 07/02/2028

FILED

2022 SEP -2 PM 12: 13

DORIS FOLLOWS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

2022 NOV 23 PM 2:52

004101-1205 O'HARA

05CP 6 89
FLORIDA COUNTY CO

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II. Allegations

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

- (a) Wasn't offered a promise plea.
- (b) Wasn't offered YOA

Attached to this Return and incorporated herein are the Florence County Clerk of Court records for the subject conviction, Applicant's records from the South Carolina Department of Corrections, the records of Applicant's current pending appeal, and the current application for relief. Respondent reserves the right to amend this Return upon receipt of additional relevant material.

III. Motion for More Definite Statement

Respondent moves for a more definite statement on Applicant's allegations.¹ The Uniform PCR Act requires applicants to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50. In an application for PCR, the applicant must make a prima facie showing of entitlement to relief before an evidentiary hearing will be held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965). Where a PCR applicant fails to adequately set forth the grounds upon which he seeks relief, the court may at any time prior to entry of judgment "issue orders for amendment of the application or any pleading or motion." S.C. Code Ann. §17-27-70(a); see also Rule 12(e), SCRCRCP (permitting the Court to order a more definite statement if a pleading "is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading"). The Court may, in its discretion, fix the time for which a more definite

¹ As stated, these allegations are not cognizable claims under the Uniform PCR Act. See S.C. Code Ann. § 17-27-20(A). Respondent is construing them broadly as claims of ineffective assistance of counsel.

statement shall be made. Rule 12(e), SCRCP. Appointed PCR counsel “shall insure that all available grounds for relief are included in the application and shall amend the application if necessary. Rule 71.1(d), SCRCP. Furthermore, Rule 8(a), SCRCP, requires all civil pleadings to include “a short and plain statement of the facts showing that the pleader is entitled to relief.”

Here, Applicant has failed to state with specificity the facts giving rise to his allegations. Therefore, the State moves pursuant to Rules 12(e) and 71.1(d), SCRCP, to have Applicant, through PCR counsel, provide a more definite statement of his allegations. Specifically, the State moves to require Applicant to file an amended application in advance of any hearing scheduled in this matter. If Applicant fails to timely file a responsive amended application setting forth specific allegations for relief, the State reserves the right to move for summary dismissal of this application for failure to state a claim.

V. Ineffective Assistance of Counsel

To the extent Applicants claims can be construed as allegations of ineffective assistance of counsel, the State contends they lack merit. To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice because of counsel’s deficient performance. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). “The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases.” Watson v. State, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To establish prejudice, the applicant must prove “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.

Applicant cannot satisfy either requirement of Strickland. However, the record likely does not refute or disprove Applicant's allegation of ineffective assistance of counsel;. Therefore, the State requests an evidentiary hearing to resolve the issues once Applicant has filed an amended application. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

VI. Any Future Amendments and Invocation of Discovery

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney (and not Applicant) is the only individual authorized to file amendments to this applicant. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to Love v. State, 428 S.C. 231, 834 S.E.2d 196 (2018), or, alternatively, the State will request a continuance. See id. at 245, 834 S.E.2d at 203 (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.").

Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon showing of good cause. S.C. Code Ann. § 17-27-150. Further, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State reserves the right to request a continuance and

oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. See Love, 428 S.C. 231, 834 S.E.2d 196.

VII. All Other Claims

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

VIII. Conclusion

WHEREFORE, the State respectfully requests Applicant, through PCR counsel, be required to provide a more definite statement of his allegations that counsel was ineffective for failing to investigate and call witnesses. Once a more definite statement is provided, the State requests an evidentiary hearing. Should Applicant fail to timely file a responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss the application for failure to state a claim.

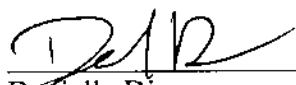
Respectfully Submitted,

ALAN WILSON
Attorney General

MEGAN HARRINGAN JAMESON
Senior Assistant Deputy Attorney General

DANIELLE DIXON
Assistant Attorney General

By:


Danielle Dixon

ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

November 18, 2022

FILED

2022 NOV 23 PM 2:52

STATE OF SOUTH CAROLINA

DOUGLAS MILES DHARA
DEPT. 2, 200
FLORENCE COURT IN THE COURT OF COMMON
PLEAS

COUNTY OF FLORENCE

Zachary Deon McClain

2022-CP-21-1826

VS

AFFIDAVIT OF SERVICE BY
MAIL

State of South Carolina,

Respondent,

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 a More Definite Statement in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Zachary D. McClain, #388467
(C2B-0034-X)
Kirkland Correctional Institution
4344 Broad River Rd.
Columbia, SC 29210**

DATED this the 21st day of November, 2022.

Euler

Erik Marcusson, Legal Assistant
for Respondent

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF FLORENCE)

COURT OF COMMON PLEAS NONJURY

3
4 ZACHARY D. McCLAIN,)

5 APPLICANT,)

6 vs.)

7 STATE OF SOUTH CAROLINA,)

8 RESPONDENT.)

TRANSCRIPT

OF

RECORD

2022-CP-21-1826

9
10 october 31st, 2023

11
12 B E F O R E :

13 THE HONORABLE WILLIAM A. MCKINNON, Judge.

14
15 A P P E A R A N C E S :

16 MICHAEL H. LIFSEY

17 ESQ.

Attorney for the Applicant

18 D. RUSSELL BARLOW, II

19 ASSISTANT ATTORNEY GENERAL

20 Attorney for the Respondent

21
22
23 Transcribed by Pamela E. Green, from
24 DCRP
25

1	<u>I N D E X</u>	
2	<u>WITNESSES</u>	<u>PAGE</u>
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P R O C E E D I N G S

THE COURT: Yes, sir.

MR. BARLOW: Thank you, Your Honor.

May it please the Court.

Russ Barlow on behalf of the State of South Carolina.

This is the post-conviction relief matter of Zachary D. McClain versus the State. Case Number 2022-CP-21-1826 out of Florence County.

In August of 2019 the Florence County Grand Jury indicted applicant for armed robbery and possession of a weapon during the commission of a violent crime, 2019-GS-21-1001.

On July 18th, 2022, applicant pled guilty as indicted before the Honorable D. Craig Brown and Twelfth Circuit Assistant Public Defender Scott E. Floyd represented applicant and Twelfth Circuit Assistant Solicitor David A. Richardson, Junior represented the State. Judge Brown sentenced applicant concurrently to 17 years imprisonment for armed robbery and five years imprisonment for the weapons charge.

On August 1st, 2022, applicant filed a notice of appeal. That was Appellate Case Number 2022-001071. In September 29th of 2022, the Court of Appeals dismissed the appeal for failure to provide an explanation for appealing a

1 guilty plea. The remittitur was returned on October 18th,
2 2022.

3 Applicant commenced this PCR action on September 2nd,
4 2022. In his application, he alleged that he was being held
5 in custody unlawfully on the following grounds:

- 6 1. He wasn't offered a promised plea.
- 7 2. He wasn't offered the youth offender act.

8 Applicant requests relief in the form of seeking a
9 lesser sentence being a first time offender also trying to
10 get the YOA sentence.

11 Before this Court is the Florence County Clerk of Court
12 records, applicant's records from South Carolina Department
13 of Corrections, applicant's plea transcript, and the records
14 of this PCR action.

15 And, Your Honor, today, on the 31st, October 31st, we
16 received the amended PCR application from applicant's
17 counsel at this time and the State wish the allegations he
18 intends to move forward on.

19 THE COURT: Yes, sir.

20 MR. LIFSEY: Thank you, judge.

21 And, once again, I, I begin by saying I apologize for
22 the lateness of this amended application. It's usually my
23 habit to do these earlier.

24 This was one, and the attorney general can correct me
25 if I'm wrong, but I think there was an issue with the

1 transcript and it seems like we only received it a few
2 months ago. And, and then, when we got the docket, for
3 various and sundry reasons, it just took a while. So, I was
4 only able to see him substantively. I had seen him one time
5 before. Actually seen him twice. But this most recent time
6 with the transcript. So, that's why it's at the last
7 minute.

8 Your Honor, if you -- I believe I've handed up for Your
9 Honor a copy of the amended application which alleges that
10 he received in excess -- ineffective assistance of counsel
11 for not meeting with the applicant a sufficient number of
12 times, not discussing the elements, the strengths, and
13 weaknesses of the case, the elements of the crimes charged,
14 potential trial strategies, not moving for a continuance,
15 some advice. There was -- client contends was improper
16 regarding the plea colloquy and a failure to review all of
17 the discovery which led him to reject the plea offer.

18 So, we're ready to proceed when the Court is on this
19 issue.

20 THE COURT: You may proceed.

21 MR. LIFSEY: Thank you, Your Honor.

22 I'd call Zachary McClain to the witness stand please.

23 Y'all show him -- go right there where that -- part
24 right there.

25 THE CLERK: You can stop at the Bible and place your

1 left-hand on the Bible and raise---

2 THE WITNESS: Yes, ma'am.

3 THE CLERK: ---raise your right-hand as much as you
4 can.

5 ZACHARY McCLAIN, being first duly
6 sworn, testified as follows:

7 THE CLERK: You can have a seat in the witness chair.
8 State your name for the record.

9 THE WITNESS: It's Zachary McClain.

10 DIRECT EXAMINATION

11 BY MR. LIFSEY:

12 Q. Mr. McClain, make sure you -- now you speak up so the
13 court reporter and everybody can hear you.

14 Okay?

15 A. Yes, sir.

16 Q. Mr. McClain, where are you right -- being held right
17 now?

18 A. Florence.

19 Oh, you talking about what---

20 Q. No.

21 A. ---institution?

22 Q. Yeah.

23 What institution in SCDC are you being held?

24 A. Lee County.

25 Q. All right. And you are in Lee County because of a

Zachary McClain - Direct examination
by Mr. Lifsey

1 conviction.

2 Is that right?

3 A. Yes, sir.

4 Q. What conviction was that for?

5 A. Armed robbery and possession of a firearm---

6 Q. All right.

7 A. --- (indiscernible).

8 Q. Who represented you at that -- first of all, did you
9 plead or go to trial?

10 A. I went to trial and then pleaded at trial.

11 Q. Okay. So, ultimately you're saying -- did y'all start
12 to pick a jury and then you entered your plea?

13 Is that your understanding of what happened?

14 A. Yes, sir.

15 Q. All right. Who represented you?

16 A. Mr. Scott Floyd.

17 Q. All right. Tell me about your representation by
18 Mr. Floyd.

19 How many times did you talk to him or when did you get
20 to see him and, and all that sort of thing if you would?

21 A. Well actually sat down and talked to him, I maybe
22 talked to him about two times. I met with him and talked to
23 him maybe two times. But besides that, I only saw him in
24 appearances.

25 Q. Okay. What do you mean -- tell me what would happen to

Zachary McClain - Direct examination
by Mr. Lifsey

1 you?

2 You had some conversations with him at appearances.

3 Is that correct?

4 A. Yes, about---

5 Q. What were those conversations about or --?

6 A. About pleading.

7 Q. Okay. Do you mean whether or not you should plead or
8 what?

9 What was the conversation like?

10 A. Basically when we got there, he had tell me my next
11 court date for one or he tell me he'll been in touch with me
12 for my next court date and he'll, he'll -- he -- I think
13 they came with two pleas. They only -- he only a lot -- he
14 only talked to me about pleading twice and, at trial, he
15 talked to me about pleading again.

16 Q. All right. Did you ever have any lengthy -- how many
17 like lengthy, long discussions of your case did you have
18 with him?

19 A. Length -- lengthy?

20 Q. Like a long -- how many long discussions did you have
21 with him?

22 Detailed discussions.

23 A. None. We, we, we -- no, none. No, not, not long. Not
24 no long conversation or none. He, he sat me down to show me
25 the video to -- that, that they said they had against me.

Zachary McClain - Direct examination
by Mr. Lifsey

1 Q. Okay.

2 A. But besides that, no---

3 Q. Oh, what was---

4 A. ---lengthy conversation.

5 Q. I'm gonna talk -- let me ask you about the video since
6 you mentioned it.

7 Does the video show the faces of the people?

8 A. No, sir.

9 Q. Okay. Okay. Other than showing the video, did he
10 review discovery with you, other discovery, statements,
11 anything like that?

12 A. No, sir.

13 Q. All right. Did he explain to you how strong the
14 case -- State's were -- case was or what weaknesses the
15 State's case had?

16 A. No, sir.

17 Q. How about -- if he had done -- well, first of all,
18 how -- did he, did he explain the elements of the crime you
19 were charged with?

20 You were charged with what, armed robbery --

21 A. Yes, sir.

22 Q. -- and possession of a weapon during a violent crime?

23 Did he explain to you what all the State had to prove
24 at those two in order to, to prove those elements of the
25 crime?

Zachary McClain - Direct examination
by Mr. Lifsey

1 A. No, sir.

2 Q. Did he discuss strategies or things you could do if you
3 went to trial?

4 A. No, sir.

5 Q. He didn't discuss potential witnesses you might could
6 of called or anything like that?

7 A. No, sir, I actually told him I had witnesses. But we
8 never discussed them coming up and about.

9 Q. Okay. How did that make you feel that that -- that
10 level of conversation and detail you had with him?

11 A. How did it make me feel?

12 Can you explain?

13 Can you, sir---

14 Q. Well, did you -- did it, did it give you confidence in
15 your representation?

16 A. No, sir.

17 Q. Did it lead you to decide to plead guilty in this case?

18 A. Yes, sir, I felt like -- I felt like -- I really felt
19 like that was the only -- the best -- the only -- I don't
20 know. I ain't felt like I had nobody representing me. We
21 never talked about how we was gonna go about defending this
22 trial, none of this, and we -- we're at trial at this point.

23 So, we, we here now. It was, it was -- we was there.

24 It was like we ain't never talked about how -- none, you
25 know.

Zachary McClain - Direct examination
by Mr. Lifsey

- 1 Q. Well, let, let me ask you.
2 I mean if he had met with you as often as you wanted,
3 okay, and if he had the level of discussion you feel
4 necessary, would you have still pled guilty or would you
5 have asked for a jury trial?
6 A. A jury trial. I actually asked for a jury trial.
7 Q. If he had discussed potential defenses or trial
8 strategies you could use in a manner that you desired him
9 to, would you have pled guilty or would you have asked for a
10 jury trial?
11 A. A jury trial.
12 Q. All right. Talk to me about a continuance.
13 Did you want him to ask for a continuance?
14 A. Yes, sir, I actually told him I needed more time. I
15 told him I was looking into getting an actual lawyer instead
16 of the public defender --
17 Q. Uh-huh. (Affirmative).
18 A. -- and with that being said, he told the judge that I
19 was looking into getting a, a lawyer. He did tell the judge
20 that, and with that being said, the judge set a date for a
21 trial.
22 Q. That was at one of your pretrial hearings?
23 A. Uh-huh. (Affirmative).
24 Q. Did you---
25 A. Yes, sir.

Zachary McClain - Direct examination
by Mr. Lifsey

1 Q. Did, did you ever, at any point, the day -- cause you
2 pled you said the day they were picking a jury, right?

3 A. Yes, sir.

4 Q. Do you know if that day, instead of picking the jury,
5 did he ever ask for a continuance in this matter?

6 A. No, sir, he didn't.

7 Q. Okay. If he had asked for a continuance, which would
8 of given you hot -- time to hire a private lawyer, would you
9 have pled guilty still or would you have asked for a jury
10 trial?

11 A. I would of went to trial.

12 Q. All right. Well, you -- I showed you -- I gave you a
13 copy I think of your transcript, right?

14 A. Right.

15 Q. All right. Did you, at the cop -- at the -- during --
16 you read your transcript, right?

17 A. Yes, sir.

18 Q. All right. You answered the judge in a way where you
19 said you didn't have complaints or anything like that.

20 Is that right?

21 A. Yes, sir.

22 Q. All right. Why did you answer the judge's questions
23 the way you answered them if you're saying something
24 different here today?

25 A. To be honest, I really felt like it was the best thing

Zachary McClain - Direct examination
by Mr. Lifsey

1 for me to do cause I felt like I was in it by myself. I
2 ain't had nobody to defend me really and I know I couldn't
3 go to trial by myself. We never really -- I know I couldn't
4 go to trial by myself and, and talk by myself. So, I really
5 feel like it was the best thing for me to do at that point
6 in time.

7 Q. All right. Let me ask you this.

8 Did Mr. Floyd give you advice on how to answer those
9 questions during the judge's questioning of you to plead
10 guilty?

11 A. He said just yes, yes, yes and no question -- yes. She
12 (sic) said just say yes and --.

13 Q. So you answered the way he told you?

14 A. Yes, sir.

15 Q. So you---

16 A. Yes.

17 Q. ---could get the plea done.

18 Is that right?

19 A. Yes, sir.

20 Q. If he had not done that, would you have, and, and not
21 told you how to answer, would you of had a jury trial or
22 would you have still gone ahead and pled guilty?

23 A. A jury trial.

24 Q. All right. I want to discuss some fingerprints. You
25 asked me, at some point, about fingerprint evidence.

Zachary McClain - Direct examination
by Mr. Lifsey

1 Do you remember that?

2 A. Yes, sir.

3 Q. All right. And there was a report discussed by the
4 solicitor in the plea transcript that said your fingerprints
5 were found at the scene.

6 Is that right?

7 A. Yes, sir.

8 Q. All right. And that -- did that, presence of those
9 fingerprints, help influence your decision to enter a plea
10 of guilty in this case?

11 A. Yes, sir. But, then again, no, sir, cause I really
12 wanting to know where the fingerprints came from cause I
13 came to the store and I -- which, which I didn't hear about
14 the fingerprints until a couple weeks before trial. A
15 couple weeks---

16 Q. Well, talk to me about -- let's talk about plea offers.
17 Did you get plea offers in this case?

18 A. Yes, sir, my first plea was eight years nonviolent.

19 Q. All right. And did you take that plea?

20 You didn't take that plea, did you?

21 A. No, sir.

22 Q. All right. Were you aware of the fingerprint evidence
23 at the time?

24 A. No, sir.

25 Q. If you had been aware of that fingerprint evidence at

Zachary McClain - Direct examination
by Mr. Lifsey

1 the time, would that have influenced you to go ahead and
2 just take that eight years nonviolent?

3 A. Probably not. I'm -- I probably wouldn't of took -- I
4 probably wouldn't of took it.

5 Q. Okay. All right. Do you have any other complaints you
6 want to make about how Mr. Floyd represented you or anybody
7 with the, with the Public Defender's Office in Florence
8 County?

9 A. No, I just felt like we could of went over the case and
10 I feel like we could of went over the case and then he, he
11 could of actually told me how he, how he was gon' defend me
12 and I really, I really just wanted a continuance so I could
13 of gotten me a lawyer that actually wanting to go over the
14 case with me.

15 Q. All right. I want to ask you about PCRs in general.
16 Do you remember me and you talking about what you win
17 at a PCR hearing?

18 A. Yes, sir.

19 Q. And I explained -- didn't I explain to you or you -- do
20 you understand that, if you win this PCR hearing, you go
21 back to square one, right?

22 A. Yes, sir.

23 Q. Is that what you want to do?

24 A. Yes, sir, I want a full trial.

25 Q. And if you go back to square one, are you pleading

Zachary McClain - Direct examination
by Mr. Lifsey

1 guilty or you having a jury trial?

2 A. A jury trial.

3 MR. LIFSEY: Okay. I don't believe I have any further
4 questions.

5 THE COURT: I've got just a couple before I -- we
6 cross-examine.

7 Mr. McClain, I -- as I understood your testimony, you
8 said when the judge asked you were you happy with your
9 attorney, Mr. Floyd, you said yes but that was not the
10 truth.

11 THE WITNESS: It wasn't. I was in tears saying it.

12 THE COURT: Okay. So why did you lie to the judge
13 about whether you were happy with your attorney or not?

14 THE WITNESS: Cause me being honest, I felt like it was
15 my best thing to do with it, with it.

16 THE COURT: But I thought you just said you wanted to
17 go to trial and you were ready to get enough -- you were
18 ready to hire a private attorney, right?

19 THE WITNESS: Yeah, I did go to trial.

20 THE COURT: But why, why didn't you tell the judge you
21 needed -- you weren't -- you were ready to go to trial and
22 you weren't happy with Mr. Floyd?

23 THE WITNESS: I was -- you said why didn't I tell the
24 judge that I wasn't happy---

25 THE COURT: Right.

1 THE WITNESS: ---with Mr. Floyd?

2 THE COURT: And that you wanted to hire a private
3 attorney to take the case to trial.

4 THE WITNESS: Mr. Scott actually did tell Mr. Scott
5 that I was looking to hire the private lawyer and I wanted
6 more time.

7 THE COURT: Yeah.

8 THE WITNESS: So --.

9 THE COURT: But why didn't you tell the judge that on
10 the day of the plea -- you pled guilty instead of saying
11 that you were happy with Mr. Floyd?

12 THE WITNESS: I don't know. It was all -- I was all --
13 to be honest, I was all emotional and I had just asked Scott
14 what it -- what the, what the case was looking like to him.
15 Was it looking like high end, low end. He say he don't
16 know. I asked him how we was fixing to go about it. He
17 never gave me a response on how we was fixing to go about
18 defending this.

19 So, I really didn't know. I never been in the court
20 before. And if you watch the video, when I, when I, when I
21 said yes and no, like I say, I was actually in tears saying
22 to no. They did tell me about when we get up there then
23 he -- I can't remember his exact words but --.

24 THE COURT: Well, I mean the question -- I mean the,
25 the judge -- I'm reading from the transcript. The judge

1 said do you have any complaints about your lawyers cause
2 you, you had two, right?

3 You had Mr. Floyd and another, another attorney, Ms.
4 Mc -- Neyle in --?

5 THE WITNESS: Oh, I never spoke with her. I was just
6 speaking with Mr. Floyd.

7 THE COURT: Okay. But the, the judge asked if you had
8 any complaints about them and you said no, right?

9 THE WITNESS: Right.

10 THE COURT: Even though you just testified in court
11 that he never discussed trial strategy with you, had never
12 talked about what was gonna happen at trial, never -- you,
13 you know, why'd you tell the judge you were happy?

14 THE WITNESS: I really don't know.

15 THE COURT: Okay. Cross-examination.

16 MR. BARLOW: Thank you, Your Honor.

17 May it please the Court?

18 THE COURT: Yes, sir.

19 CROSS-EXAMINATION

20 BY MR. BARLOW:

21 Q. All right, Mr. McClain. Good morning.

22 How are you doing?

23 A. I'm all right and you?

24 Q. Good. Thank you.

25 I know that your lawyer's gone over this. But I just

Zachary McClain - Cross-examination
by Mr. Barlow

1 want to walk through the PCR process with you real quick.

2 You understand that, that what this Court can grant you
3 is a new trial, correct?

4 A. Yes, sir.

5 Q. And what did you receive in your sentence?

6 A. You talking about how much time did I receive?

7 Q. Yes, sir.

8 A. Seventeen years.

9 Q. Seventeen.

10 A. Yes, sir.

11 Q. And do you know what the maximum sentence is for --?

12 A. Thirty years.

13 Q. Okay. And you're, you're willing to risk 30 -- getting
14 30 years at a trial if you're found guilty?

15 A. A fair trial, yes, sir.

16 Q. Okay. All right. So let's jump right into your
17 allegations.

18 How many times did you say applicant or, I'm sorry,
19 Mr. Floyd met with you?

20 A. As at court appearances or just sitting down and, and
21 calling me to his office to talk?

22 Which -- together?

23 Q. All -- how many times did he meet with you?

24 A. We met at court appearances. I can't really -- Court.
25 I don't know how many exact court appearances I had. But I

Zachary McClain - Cross-examination
by Mr. Barlow

- 1 know as far as him calling me over to there his office, two.
2 Q. Were you out on bond?
3 A. For the armed robbery?
4 Q. Right.
5 A. Yes, sir.
6 Q. You were?
7 A. Yes, sir.
8 Q. Okay. And so you only met him at his office twice?
9 A. Yes, sir.
10 Q. Did you ever meet him at the jail?
11 A. No, sir, I was -- I wasn't in jail. I, I bonded out
12 after two days. So, I didn't stay in jail.
13 Q. All right. And it's your testimony that he did not
14 explain the strengths and weaknesses to your case?
15 A. No.
16 Q. But you knew about the video?
17 A. I did know about the video. But I didn't see the video
18 until maybe three weeks before trial. Three---
19 Q. So---
20 A. ---four weeks---
21 Q. ---would that be in the one---
22 A. ---before trial.
23 Q. ---or the first time or second time you met with him?
24 A. That'll be when he showed me the video. That probably
25 be the second time I would say.

Zachary McClain - Cross-examination
by Mr. Barlow

1 Q. So, he did show you some of your discovery.

2 But is it your testimony that he, he didn't go over all
3 of your discovery?

4 A. He didn't go over all of my -- he didn't go over my
5 discovery with me. He, he sent me a, a copy of my -- what
6 is it?

7 My motion. I want to say that's what it's called.

8 Q. Okay. But your testimony is you reviewed the video
9 when you met with him which would be part of your discovery,
10 correct?

11 A. Right.

12 Q. Okay. And you also -- he did not explain the elements
13 of the crime?

14 A. Meaning?

15 Q. Of what the State had to prove.

16 A. No, sir.

17 Q. Okay. And how long did Mr. Floyd represent you prior
18 to trial?

19 A. Meaning?

20 You say---

21 Q. Before you went to trial, how long did he represent
22 you?

23 A. So, since this case was going on?

24 He was appointed to me -- I don't know the exact date
25 that my public defender was appointed to me.

Zachary McClain - Cross-examination
by Mr. Barlow

1 Q. Do you have a -- kind of a, a rough timeline of maybe
2 did he represent you -- we know he at least represented you
3 three weeks prior to trial cause that's when you viewed the
4 video, correct?

5 A. Right.

6 Q. Okay. So about how long did he represent you prior to
7 that?

8 Rough figure.

9 A. Represent, you mean -- when you say represent, you mean
10 how long has he been my public defender?

11 Q. Right.

12 A. Since this case in 2000 -- I want to say 2019, right?

13 Q. Did he represent you though -- what I'm trying to get
14 at was it two months before you pled, three months before
15 you pled?

16 A. I don't understand the question you're asking me---

17 Q. Okay.

18 A. ---when you say represent me.

19 Q. All right. My question is what -- why didn't you hire
20 a private attorney prior to him representing you like prior
21 to your plea?

22 A. Oh, okay, okay, okay.

23 You're saying why didn't I get a -- why didn't I get a
24 new attorney prior to my plea?

25 Cause I actually told him I was gonna go get -- going

Zachary McClain - Cross-examination
by Mr. Barlow

1 to get a new attorney. I was saving up some funds. We was
2 putting some, putting some funds together to go hire a
3 lawyer. I actually went and talked to another lawyer and I
4 told him that as well. I told him who the lawyer was.

5 Q. So, when your case was called for trial, you didn't
6 have the money to hire a private attorney at that time?

7 A. At that time, yes, sir. I -- that's why I was asking
8 for a continuance.

9 Q. All right. And you say that -- I know the judge went
10 over this with you but you said that you answered the
11 questions and the plea -- that the plea judge asked you
12 according to how he told you to answer?

13 A. Basically, yes, sir.

14 Q. Okay. So, were you lying to the Court at that time?

15 A. Lying?

16 I wouldn't say lying -- yeah. Yes, sir.

17 Q. So you were lying to the Court at that time?

18 A. I wouldn't say lying. I was answering how I was told
19 to answer.

20 Q. Are you lying now?

21 A. No, sir.

22 MR. BARLOW: Okay. Thank you, Your Honor. That's --
23 no further questions.

24 THE COURT: Any redirect?

25 MR. LIFSEY: Judge, very briefly on redirect.

Zachary McClain - Redirect examination
by Mr. Lifsey

1 THE COURT: Certainly.

2 REDIRECT EXAMINATION

3 BY MR. LIFSEY:

4 Q. The, the attorney general asked you about meetings you
5 had with Mr. Floyd.

6 Do you remember him asking about that?

7 A. Yes, sir.

8 Q. And you described some of those meetings being at
9 appearances?

10 A. Yes, sir.

11 Q. Were those long meetings or just short---

12 A. Short.

13 Q. ---hey, how you doing meetings?

14 A. Short -- hey, how you doing meetings. He tell me the
15 next court date and I be on my way back to work or whatever.

16 Q. So you didn't have any long, substantive discussions at
17 these appearances?

18 A. The longest sit down we had is when he showed -- set me
19 down to show me the video.

20 Q. Okay.

21 A. Besides that, no, sir.

22 Q. All right. And the attorney general asked you about
23 discovery and reviewing discovery.

24 Did you ever get to review the entirety of your
25 discovery?

Zachary McClain - Redirect examination
by Mr. Lifsey

1 A. No, sir.

2 Q. Specifically let me ask you about the fingerprint
3 report.

4 Until I gave it to you a week or two ago, had you ever
5 even seen that document?

6 A. No, sir, that was my first time ever seeing it when you
7 showed it to me.

8 Q. So that was clearly never reviewed with you?

9 A. No, sir.

10 MR. LIFSEY: Okay. Thank you, judge. I don't have
11 anything further.

12 THE COURT: Recross?

13 MR. BARLOW: Nothing.

14 THE COURT: Okay. Thank you, sir. You can step down.

15 THE WITNESS: Okay.

16 MR. LIFSEY: Your Honor, if I could have just a minute?
17 I want to ask his family something---

18 THE COURT: Certainly.

19 MR. LIFSEY: ---before I tell you if I have another
20 one.

21 THE COURT: We'll be at ease.

22 (Pause.)

23 MR. LIFSEY: Your Honor, I have one additional witness.

24 THE COURT: Yes, sir.

25 MR. LIFSEY: Call Shelly Dolford please.

1 THE COURT: Okay.

2 MR. BARLOW: Your Honor, if I could have just a moment?

3 I had no notice of this witness and I -- I'd just like

4 10 minutes to do a little research on this real quick.

5 THE COURT: I'll be happy to take a recess, yeah.

6 MR. BARLOW: Thank you, Your Honor.

7 THE COURT: We'll take a 10 minute---

8 (WHEREUPON, a short recess was taken at this time.)

9 MR. LIFSEY: Thank you, Your Honor.

10 I'd call Shelly Dolford to the stand please.

11 THE CLERK: Place your left-hand on the Bible and raise
12 your right-hand.

13 SHELLY DOLFORD, being first duly
14 sworn, testified as follows:

15 THE CLERK: You can have a seat in the witness chair.
16 Please state your full name for the record.

17 THE WITNESS: Shelly Dolford.

18 DIRECT EXAMINATION

19 BY MR. LIFSEY:

20 Q. MS. Dolford, how are you related to my client, Mr.
21 McClain?

22 A. That's my son-in-law.

23 Q. All right. And you were his -- were you his son-in-law
24 (sic) back when all this happened?

25 A. I was and I wasn't. It was off and on.

Shelly Dolford - Direct examination
by Mr. Lifsey

1 Q. Okay. Have you been involved in his case and were you
2 around his case though the whole---

3 A. Yes.

4 Q. ---time?

5 All right. Are you better with dates and things like
6 that---

7 A. Yes.

8 Q. ---than he is?

9 Okay. So, did you try to help him keep up with
10 appointments and things like that?

11 A. Yes, sir.

12 Q. All right. He never was in jail a long time, was he?

13 A. No, sir.

14 Q. All right. Do you remember about when he got out of
15 jail?

16 A. After the armed robbery happened. It was at least two
17 days after.

18 Q. Okay.

19 A. He never stayed in any longer than three days for
20 anything.

21 Q. So about how long was he out from when he got out to
22 when this case actually got called for trial and ended up
23 pleading?

24 A. He was out for four years.

25 Q. Four years.

Shelly Dolford - Direct examination
by Mr. Lifsey

1 Okay. During that four year period or, or multi year
2 period, however long it was, was this -- did that encompass
3 some of COVID and all that stuff too?

4 Wasn't that some of that time period?

5 A. Yes.

6 Q. Okay. All right. Were you -- what do you know about
7 contact between Mr. Floyd, the Public Defender's Office, and
8 Mr. McClain?

9 A. Okay. From my understanding, he did not receive a call
10 or anything from Mr. Floyd until three months prior to this
11 trial date.

12 Q. All right. So, in other words, you're saying that
13 Mr. -- as far as you know, Mr. Floyd did not contact him in
14 any way other than routine court appearances up until a few
15 months prior to trial?

16 A. That's correct.

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

19 A. I was here the date of the trial.

20 Q. Uh-huh. (Affirmative).

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

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

24 A. From my understanding, Richardson was the head
25 investigator on the case. I want to say McKenzie, I'm not

Shelly Dolford - Direct examination
by Mr. Lifsey

1 sure if he's with the public defenders or who he's with.

2 But I had everything written down.

3 Q. Let he---

4 A. We met -- go ahead.

5 Q. Let me stop you just a second though.

6 You said McKenzie and Reese -- so McKenzie was the head
7 investigator?

8 A. No, Richardson.

9 Q. Richardson.

10 Do you mean he was the head investigator for the Public
11 Defender's Office?

12 A. For the State.

13 Q. For the State.

14 Okay. So, he met with you and somebody from the Public
15 Defender's Office?

16 A. His name is McKenslie (phonetic).

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

19 A. Okay.

20 Q. Continue on.

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

Shelly Dolford - Direct examination
by Mr. Lifsey

1 Before Zachary came out, Richardson stated that---

2 MR. BARLOW: Your Honor, I'm gonna object to hearsay.

3 THE WITNESS: Hearsay?

4 THE COURT: Hold on, ma'am, one sec.

5 Mr. Lifsey.

6 MR. LIFSEY: I'm, I'm not so sure she intend -- I, I
7 don't intend to induce it for the truth of the matter
8 asserted.

9 THE COURT: What's the purpose you're eliciting
10 testimony for?

11 MR. LIFSEY: To show that discussions that led to the
12 client pleading guilty were not initiated by his trial
13 counsel.

14 MR. BARLOW: Your Honor, my response to that would be
15 that she -- she's testifying to statements that people made
16 that are not here. I have no ability to cross them. I had
17 no notice of this witness even being called. So, this is
18 kind of a surprise to the State.

19 THE COURT: Okay. So, she's --.

20 (Pause.)

21 THE COURT: I'll allow it.

22 Go ahead.

23 MR. BARLOW: Thank you, Your Honor.

24 MR. LIFSEY: Okay.

25 Would you go ahead and say what happened?

Shelly Dolford - Direct examination
by Mr. Lifsey

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

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

11 A. Correct.

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

15 A. Not to my knowledge.

16 Q. Okay. I don't -- anything else you need to tell us
17 today?

18 That cover it?

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

20 Q. If you would answer any questions the attorney general
21 has for you---

22 A. Okay.

23 Q. ---or, or the judge. I'm sorry.

24 THE COURT: Just one question, ma'am.

25 Your testimony was that Mr. McClain and you met with

1 the State's investigator without Mr. Floyd present?

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

4 THE COURT: The day of the trial?

5 THE WITNESS: The day of the trial.

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

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

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

12 THE WITNESS: Correct.

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

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

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

19 THE WITNESS: They did.

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

22 THE WITNESS: I asked---

23 THE COURT: ---happen?

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

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

2 THE WITNESS: He came---

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

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

6 THE COURT: Okay.

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

9 THE COURT: Okay.

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

12 THE COURT: Okay.

13 THE WITNESS: That's when---

14 THE COURT: But you---

15 THE WITNESS: They---

16 THE COURT: You initiated all of that?

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

18 THE COURT: Okay. That was my---

19 THE WITNESS: -- not knowing who they were.

20 THE COURT: ---concern?

21 Okay. Yes, sir.

22 MR. BARLOW: Thank you, Your Honor.

23 May it please the Court.

24 CROSS-EXAMINATION

25 BY MR. BARLOW:

Shelly Dolford - Cross-examination
by Mr. Barlow

1 Q. Good morning.

2 A. Hi.

3 Q. Just a couple questions for you.

4 will you clarify again for me who the people were that
5 you met with in that room?

6 A. It was McKenslie (phonetic) and Richardson.

7 Q. And Mr. Richardson, who was he?

8 A. He stated that he was the head detective for the State.

9 Q. Okay. And that -- would that be David Richardson?

10 A. Yes, it's written down in my book. I want to say it's
11 David Richardson.

12 Q. And are you aware that Mr. Richardson is the assistant
13 attorney or assistant, excuse me, assistant solicitor?

14 A. No, sir, that's not what he stated.

15 Q. Okay. And your testimony is that you only have
16 knowledge of him receiving a call three months prior to the
17 trial?

18 A. That is correct.

19 Q. But he was out four years?

20 A. Correct.

21 Q. Did he have a phone?

22 A. Yes.

23 MR. BARLOW: Okay. Nothing further, Your Honor.

24 THE COURT: Redirect?

25 MR. LIFSEY: I don't have anything.

Scott Floyd - Direct examination
by Mr. Barlow

1 THE COURT: Okay. Thank you, ma'am. You can step
2 down.

3 MR. LIFSEY: I don't have any further witnesses, judge.

4 THE COURT: Okay. Mr. Barlow.

5 MR. BARLOW: Thank you, Your Honor.

6 We would call Mr. Scott Floyd.

7 SCOTT FLOYD, being first duly
8 sworn, testified as follows:

9 THE CLERK: Thank you. If you'll have a seat and state
10 your name for the record.

11 THE WITNESS: My name is Scott Floyd.

12 DIRECT EXAMINATION

13 BY MR. BARLOW:

14 Q. Mr. Floyd, how are you doing today?

15 A. I'm well.

16 How about you?

17 Q. Thank you, sir. I'm doing well.

18 How long have you been practicing law?

19 A. I was sworn in in '88. So 30 something years.

20 Q. How much of that has been criminal law?

21 A. well, to some extent, just about all of it. I mean I
22 was in private practice at one time in my life and I did
23 other things as well. But --.

24 Q. And you -- were you appointed or retained?

25 A. Appointed.

Scott Floyd - Direct examination
by Mr. Barlow

1 Q. And roughly how long before trial or the plea were you
2 appointed?

3 A. Oh, it would of been several years before in 2019.

4 Q. And, during that time, did you receive discovery?

5 A. I did.

6 Q. And did you review the discovery with the applicant?

7 A. I did.

8 Q. And could you give us a brief overview of your
9 understanding of the State's evidence in this case?

10 A. Well, after the robbery was reported, the police came.
11 The owners of the store had a video surveillance system
12 which actually shot from multiple angles. The owner of the
13 store who was present during the robbery, I believe he told
14 the police that he recognized some shoes that the defendant
15 was allegedly wearing at the time and that he had seen that
16 person in his store before kind of dressed in the same
17 manner.

18 He pulled up video before that when the person would of
19 actually been in there unmasked. He alleged that was the
20 same or might be the same person who robbed him.

21 Also, they had video surveillance of a vehicle that was
22 parked outside the store and it had some anomaly on -- I
23 can't remember exactly what it was. But in any event,
24 they -- the hurt -- the -- one of the investigators started
25 driving around neighborhoods close to the store and he

Scott Floyd - Direct examination
by Mr. Barlow

1 spotted what he thought was the same car.

2 He ended up, I believe, getting a search warrant, ran
3 who the car belonged to, that sort of thing, or who it was
4 registered to. Ended up, I think, executing the search
5 warrant. There were -- it was the apartment where Mr.
6 McClain was living at the time. Found some clothing items
7 that were similar to what was in the video, some -- I think
8 some bags like are used in that convenience store, maybe,
9 you know, things like that. I mean it was circumstantial.

10 However, the video showed that the person who did the
11 robbery, when the cash drawer was opened, reached down and
12 pulled the cash up. The person was not wearing gloves. So,
13 they dusted that portion for fingerprints and then they say
14 that that fingerprint came back as a match to Mr. McClain.

15 Q. Well, based on the State's evidence, let me ask you,
16 were you able to -- the -- did you -- were you able to craft
17 a defense strategy if you were to go to trial?

18 A. Well, I mean clearly I -- we were gonna argue that the,
19 you know, the shoes, the clothes, that was just, you know,
20 circumstantial. You know, plenty of people could of bought
21 the same shoes, bought the same clothes, you know. The fact
22 that he was wearing those things doesn't necessarily mean he
23 was the person who walked in there and committed the
24 robbery.

25 As far as the -- you know, the, the fingerprint

Scott Floyd - Direct examination
by Mr. Barlow

1 obviously was, was troublesome because it was taken from the
2 inside of that cash drawer where the person appeared to, to,
3 to pick it up in the video.

4 That being said, you know, we -- I actually had Ms.
5 Neyle call the person who -- at SLED who did the fingerprint
6 report and she interviewed her about her methodology and
7 what she did and, and so forth. I reviewed all of that and,
8 you know, we were gonna have to cross-examine about the, you
9 know, the fingerprint and whether or not there could of been
10 a mistake, you know, and that sort of thing.

11 Q. Let -- let's jump right in though. Let me ask you.
12 Applicant claims that or Mr. McClain claims that you did not
13 meet with him a sufficient number of times.

14 Do you know how many times you met with him?

15 A. You know, I'm not a, I'm not a wonderful note taker.
16 But I can tell you the times that I did meet with him that
17 I'm, I'm sure of.

18 He had an initial and a docket appearance that would of
19 been scheduled after he bonded out. The initial appearance
20 would of been in May of '19 and then July of 2019. He came
21 and appeared at, at both of those. So, I did speak to him
22 at those appearances.

23 Sometime after that, you know, we kind of went into the
24 COVID shutdown period some time in 2020 which lasted a
25 while. So, there was really nothing happening, you know,

Scott Floyd - Direct examination
by Mr. Barlow

1 as, as insofar as trials for, for a good while. So, there
2 was a, you know, period there where I didn't -- I don't
3 recall talking to him. But he -- if he called me, I would
4 of have spoken to him. But I don't, I don't have any
5 specific recollection of it. He was out on bond.

6 So, if he called me I would of spoken to him. If he
7 didn't, I probably didn't.

8 So, it was probably shortly after the first of the, the
9 year in 2022 kind of when we started getting kind of back to
10 normal and Mr. Richardson indicated that he was, you know,
11 starting to pull some of his cases and that were -- had a
12 little bit of age on them and trying and move on those.

13 So, I called -- it was in March of, of '22. I called
14 Mr. McClain and asked him to, to come to court on the -- I
15 think the 7th of March, which we did. He came over. He and
16 I talked out here. I asked him to come over to the, to the
17 office so we could go over the videos and file and
18 everything together and we did.

19 After, after we spoke that day, I believe he, he left
20 and then in -- let's see. I don't have any record of him
21 coming until it was in April. I called him. He came to
22 court on the 14th of April. I met with him that day.

23 Mr. Richardson had an offer he wanted to discuss and it
24 was for -- he offered him a plea to attempted armed robbery
25 for eight years and said that he was gonna leave that offer

Scott Floyd - Direct examination
by Mr. Barlow

1 open until June the 13th of 2022. He did that on the
2 record. Mr. Richardson did.

3 So, it was done out here in the courtroom when that
4 offer was made and then I had Mr. McClain to make an
5 appointment to come over to my office across the street so
6 we could sit down and, and go over that. He was suppose to,
7 to come on Friday, April the -- I guess it would of been the
8 29th to go over everything. He did not make it that day.

9 So, I called Mr. McClain and he was suppose to come the
10 following Monday, which would of been May the 2nd to go over
11 his file. I -- he didn't make it that day. So, I called
12 him again that Monday and he told me he wouldn't be able to
13 make it until the -- that coming Friday, which would of been
14 May the 6th after he got off of work on that day.

15 And so I let him know, you know, look, kind of
16 important that we get together and do this. But then, on
17 the 6th of May, I called him, I don't know, twice. He was
18 suppose to come obviously that day and he stated he couldn't
19 get to the office that day. But he did ask me to mail him
20 the -- another copy of the Rule 5 material and he gave me an
21 address in Lamar to mail it to, which was 933 West Lynches
22 River Road, Lamar, which I did. I mailed that and --.

23 Q. Let me ask you this.

24 It -- did you ever get an in-person meeting with him
25 prior to trial?

Scott Floyd - Direct examination
by Mr. Barlow

1 A. I did.

2 Q. Okay.

3 A. So after the -- after I talked to him on the 6th of May
4 and mailed him the material, he ended up -- he came, he came
5 in on May the 27th of 2022 and I met with him in my office
6 over there. We watched the video from the different angles.
7 We reviewed the pictures of items that were taken from the
8 search warrant, went over the police reports at -- I did,
9 did have the fingerprint card at that point. We went over
10 that.

11 Discussed the offer of eight years again for attempted
12 armed robbery. It was not nonviolent. It was no parole
13 offense. So we went all -- over all of that. Although it
14 only -- it carried up to 20. So, we went over the, you
15 know, the parameters of that offense as opposed to the armed
16 robbery, which is what he was indicted for and then I
17 made -- well, I, I gave him an extra copy of the, of the
18 video cause he said he wanted it. So, I gave -- so I had
19 two, two copies. So I gave him one. So that was pretty
20 much what we did on the 27th.

21 And so we -- he told me he would, you know, kind of let
22 me know what he wanted to do insofar as accepting the offer
23 or not later.

24 So, then he had to be back here on the 13th of June
25 of '22 cause they were gonna have him on the list to be in

Scott Floyd - Direct examination
by Mr. Barlow

1 court cause that was the day that his, his offer expired for
2 the attempted armed robbery.

3 So, he came that day and he, he told me he was gonna
4 reject the offer, that he planned on hiring another lawyer,
5 and I, you know, asked him if he had, you know, a lawyer in
6 mind. I think he said he had talked to somebody. But I, I
7 don't think they'd -- obviously hadn't been retained.

8 But, in any event, I just -- I told him if that's what
9 he was going to do, that was fine. But, you know, they
10 needed to know that obviously the case was gonna be up for
11 trial very soon.

12 And so we, we actually appeared on the record in front
13 of Judge Seals that day, and after the offer was not
14 accepted, Mr. Richardson revoked the offer on the record
15 that day, on the 13th of June, and Judge Seals signed an
16 order setting the case for trial on July the 18th of 2022.
17 And I believe that order was filed with the court. I -- I'm
18 pretty sure it was. I have a -- I think I had a copy of it
19 on -- in my file.

20 Q. And what was the date that he rejected the plea offer?
21 Was that June 13th?

22 A. June the 13th.

23 Q. And he went to trial July 18th, correct?

24 A. Correct. Yeah.

25 Q. Okay.

Scott Floyd - Direct examination
by Mr. Barlow

1 A. July the 18th was -- that was the day that it was, it
2 was set for a date certain on July the 18th.

3 Q. Well, let me ask you this.

4 It -- did you have any reason to request a continuance?

5 A. No. And, and, in fact, I -- Judge Seals ordered, when
6 he set the case for trial, that it, that it not be continued
7 and that hiring private counsel was not a reason for it to
8 be continued. That was put in the order. So, basically he
9 said, if a private attorney's hired, they need to be ready.
10 So --.

11 Q. All right. Did you tell Mr. McClain how to answer the
12 questions to the judge?

13 A. I didn't tell him how to answer the questions. I, I
14 went over generally what the questions -- what questions he
15 could expect to be asked, which, you know, if he understood
16 his rights to have a jury trial or remain silent and, you
17 know, all the usual pretrial questions.

18 Q. Did you do a plea affidavit with Mr. McClain?

19 A. I don't think I did --

20 Q. Okay.

21 A. -- that I recall. If I did, it would of been placed in
22 the clerk's file. But I don't, I don't think I did one.

23 Q. And just to -- I, I know you testified to this but
24 it -- just to be clear.

25 You reviewed all of his discovery to include his

Scott Floyd - Direct examination
by Mr. Barlow

1 fingerprints?

2 A. I did.

3 Q. Were you aware of Ms. Dolford's meeting with
4 Mr. Richardson?

5 A. No. Now, she mentioned another name, Mr. McKenzie.
6 Thomas McKenzie is my investigator.

7 Q. Okay.

8 A. I mean David Richardson, absolutely not. I mean I
9 don't -- if, if I had found him in the room alone with my
10 client, I would of -- he and I would of had problems. But I
11 don't remember seeing him in a room alone with my client.

12 Now, if there was somebody else there named Richardson,
13 I'm not aware of it and I don't recall seeing David
14 Richardson alone with anyone. But I mean I wasn't aware of
15 it.

16 Q. A couple more questions.

17 Did applicant ever indicate to you that he wanted to go
18 to trial and did not want to plea?

19 A. Excuse me?

20 Q. Did Mr. McClain ever indicate that he wanted to go to
21 trial and did not want to plead guilty?

22 A. Well, the -- on, on the 13th of June, he rejected his
23 offer and said he was going to trial and he wanted to hire a
24 private lawyer. I mean that was on the 13th of June.

25 Q. The day of his plea hearing though, did he ever

Scott Floyd - Direct examination
by Mr. Barlow

1 indicate to you that he wanted to---

2 A. Oh, you talking on, on July when he actually pled?

3 I mean that day he, he told me he had decided to enter
4 a plea.

5 Q. Were you prepared to go to trial if you needed to?

6 A. Yes.

7 Q. Do you stand by your representation?

8 A. Yes.

9 MR. BARLOW: No further questions, Your Honor.

10 THE COURT: Cross-examination.

11 MR. LIFSEY: Just a handful of things.

12 CROSS-EXAMINATION

13 BY MR. LIFSEY:

14 Q. So you said there was not a plea affidavit in this
15 case, Mr. Floyd?

16 A. I don't recall doing one. I -- if I did, it -- it's in
17 the -- it should be in the court's file.

18 Q. You mentioned times that you met or discussed with Mr.
19 McClain --

20 A. Right.

21 Q. -- and you mentioned to the attorney general a number
22 of those were at appearance dates.

23 Is that correct?

24 A. That's -- yeah, that's right.

25 Q. I, I would presume, at least comparing to appearances

Scott Floyd - Cross-examination
by Mr. Lifsey

1 in my circuit, those were not lengthy, formal discussions
2 probably?

3 A. No, not -- I mean generally your initial and your
4 docket appearances are not generally that lengthy. I mean
5 if someone wants to ask me, you know, questions, obviously
6 I'll take as much time as I can and, and answer them. But,
7 no, as a general rule, they're not, they're not lengthy.

8 Q. And, and Mr. McClain was out on bond, right?

9 A. That's right.

10 Q. So, it wasn't like a person in jail who is kind of a
11 captive audience?

12 A. Right.

13 Q. And, and some of those jail cases I presume get some
14 priority because they're sitting in the jail.

15 Is that right?

16 A. Right. Well, I'm -- you know, I try to be on a regular
17 schedule at the jail and go down there at least, you know,
18 once a month, twice a month and see everyone that I have
19 that's in there. That's my general practice. But, but, but
20 obviously folks who are out on bond, I have to kind of
21 leave. That's a two---

22 Q. They kind of get---

23 A. It's a two way street, right.

24 Q. Is it fair to say they kind of get out of sight, out of
25 mind a little bit?

Scott Floyd - Cross-examination
by Mr. Lifsey

- 1 A. That -- that's certainly possible.
- 2 Q. And it -- and then, of course, to make, and this is
3 certainly not in your control, but in the middle of all
4 this, you got COVID, right?
- 5 A. Correct.
- 6 Q. And everything kind of shuts down. We quit having
7 court for at least some period of time, for six months or so
8 probably at least?
- 9 A. Yeah, it was, it was a good while. I can't remember
10 exactly how long it was. But it was -- yeah, it was a --
- 11 Q. So, is it---
- 12 A. -- a good period---
- 13 Q. Is it---
- 14 A. ---of time.
- 15 Q. ---fair to say though that his case didn't really come
16 back on the front burner until a few months prior to his
17 trial date?
- 18 A. It was in I think---
- 19 Q. March or April---
- 20 A. The beginning---
- 21 Q. ---or---
- 22 A. The beginning of -- yeah, it was, it was either the end
23 of February, beginning of March when Mr. Richardson told me
24 that he was gonna try and move that case within the next few
25 terms of court at least and that's when I called Mr. McClain

Scott Floyd - Cross-examination
by Mr. Lifsey

1 on March the 3rd.

2 Q. So it's fair to say y'all really didn't have any
3 substantive discussions until the Spring of 2022?

4 A. That's correct. Probably, yeah.

5 Q. Now, you mentioned reviewing discovery.

6 A. Uh-huh. (Affirmative).

7 Q. Wasn't there an issue -- tell me -- would you relate to
8 the Court what the issue was with the fingerprints?

9 A. Yeah. So, in the police report, you know, the -- they
10 noted in there that the print was taken and it was submitted
11 to, to SLED. Well, when Mr. Richardson called, or I don't
12 know if he called me or told me in person, but when he
13 mentioned to me late February or March that he -- this was
14 one of the cases he wanted to, to get moved, you know,
15 during the next number of terms that we had, I went back and
16 started looking through the file again to make sure that I
17 had everything and I realized I did not have the actual
18 fingerprint card or report in my file.

19 So, I called Mr. Richardson and brought that to his
20 attention and told him that I needed the, the -- you know,
21 the results -- the card.

22 Now, he called me back and verbally told me, you know,
23 there was a match probably within a couple weeks after that.
24 But I didn't, I didn't get the report until -- the actual
25 copy of it until it would of been in April.

Scott Floyd - Cross-examination
by Mr. Lifsey

1 Q. Okay. So, it sounds like you're saying that in your --
2 if you had had a -- any, any discussions you had prior to
3 your conversation with the solicitor, which would of been in
4 February, March, you wouldn't -- the, the, the, the
5 fingerprint evidence would not have been something that was
6 part of your discussions?

7 A. Until -- right. Until April.

8 Q. Until April?

9 A. Yeah.

10 Q. Okay. So---

11 A. Which is when I had them, right.

12 Q. Sure.

13 And, yeah, you can't provide him something you were
14 not---

15 A. Right.

16 Q. ---provided yourself I guess.

17 A. Right.

18 Q. Is that right?

19 So, but you're saying the, the solicitor didn't even
20 give it to you until April?

21 A. Yeah. And I, and I, I don't think the solicitor had it
22 either. I think it was, it was sent to the City of Florence
23 and they just put it in a file and---

24 Q. I got you.

25 A. ---didn't turn it over. But --.

Scott Floyd - Cross-examination
by Mr. Lifsey

1 Q. Okay. And that fingerprint evidence was pretty
2 important?

3 A. Sure.

4 Q. I mean it was the -- I mean you could probably say the
5 icing on the cake as far as his guilt.

6 Is that right?

7 A. Yes, I mean it was troublesome, yes.

8 Q. I would say---

9 A. Absolutely.

10 Q. Would you, would you agree is the strongest piece of
11 evidence?

12 A. There's no question.

13 Q. And in deciding whether or not to enter a plea, it
14 obviously would of been important for him to, to know that
15 that existed and to weigh that into his decision making
16 process?

17 A. Correct.

18 Q. And, of course, you've represented plenty of defendants
19 over the years and I know we don't control these kind of
20 things. But last minute evidence showing up that tends to
21 really make them look really guilty is often a source of
22 friction and difficulty with clients who don't tend to
23 accept that pretty readily.

24 Is that fair to say?

25 A. That can happen sometimes, yes.

Scott Floyd - Cross-examination
by Mr. Lifsey

1 Q. Yes.

2 Now, you said there was an appearance in June where he
3 rejected a plea offer.

4 Is that correct?

5 A. June the 13th.

6 Q. Okay. And Judge Seals, was he the chief administrative
7 judge?

8 A. I don't recall if he was at the time or not. who -- he
9 was presiding that day.

10 Q. I'm trying to get at what authority Judge Seals had in
11 a case that ultimately he would not---

12 A. Uh-huh. (Affirmative.)

13 Q. ---preside over to set a trial.

14 A. Well, he was the chief administrative judge. It says
15 so in the order.

16 Q. Okay.

17 A. Yeah.

18 Q. All right. So he was the chief administrative judge?

19 A. Uh-huh. (Affirmative).

20 Q. And ordered a trial date of July?

21 A. The 18th.

22 Q. Did you object to that trial date?

23 A. No, I didn't.

24 Q. Okay. Obviously, once the case was called, it was
25 called in front of Judge Brown.

Scott Floyd - Cross-examination
by Mr. Lifsey

1 Is that correct?

2 A. That's right.

3 Q. Did you move for a continuance in front of Judge Brown?

4 A. I did not.

5 MR. LIFSEY: Okay. May I have just a moment?

6 THE COURT: Sure.

7 (Pause.)

8 Q. You mentioned a plea offer of eight -- to eight years
9 on attempted armed robbery.

10 A. Correct.

11 Q. Wasn't there also another plea offer?

12 I direct you to the transcript at some point.

13 A. There -- yeah, there may have been one for --

14 Q. Okay.

15 A. -- 15 maybe or something like that --

16 Q. Yes.

17 A. -- I think. Right.

18 Q. Okay. Do you---

19 A. That was after the first offer expired I believe.

20 Q. I'm trying to get at -- I mean what, what, what -- you
21 said he was pretty definite.

22 when you pled him, it was a straight up plea, right?

23 A. Correct.

24 Q. So he turned down eight?

25 A. Right.

Scott Floyd - Cross-examination
by Mr. Lifsey

1 Q. And ended up pleading -- and, and, and presumably
2 turned down 15 I guess.

3 Do you have any recollection of how that went down, the
4 15 -- rejection of the 15?

5 A. I mean other than he just -- the client did it. I mean
6 I don't --.

7 Q. Well, what, what---

8 THE COURT: It's Page 14 of the transcript if you want
9 to take a quick look.

10 THE WITNESS: Right. I, I may need to, to see. I
11 don't have the -- I have the---

12 Q. I'll hand---

13 A. ---transcript in front of me. I'm sorry.

14 Okay.

15 Q. I'm, I'm trying to get -- I mean what changed his mind?
16 what was the conversation you had with him to convince
17 him that he should take a plea on a case where he was gonna
18 get a minimum of 10 and a maximum of 30?

19 A. well, look, I mean quite often, you know, when you come
20 up here and pick a jury, people -- things change. I mean
21 people's minds change and that's what we did.

22 We came up here that Monday. We actually went through
23 the jury selection process and I assumed that the closer it
24 got, the -- he decided it wasn't a good idea to go through
25 with it. I, I mean I'm speculating but that's --.

Scott Floyd - Cross-examination
by Mr. Lifsey

1 Q. You don't have any---

2 A. That was his decision. Not mine.

3 Q. You don't have any specific memories of y'all having a,
4 I mean for lack of a better word, look, Mr. McClain, you've
5 got to plead guilty to this or you're gonna get convicted at
6 trial?

7 You don't remember a conversation like that that you
8 had with him?

9 A. Well---

10 Q. On, on at least the day of trial or the -- that, that
11 convinced him to plead.

12 A. Well, I mean, you know, when we met in -- on May the
13 27th in my office, 2022, we were discussing the eight
14 years, we had that discussion because certainly, by that
15 time, he and I both had seen the fingerprint report and I
16 told him that day that, in my opinion, he should accept that
17 offer. But, you know -- and he told me he would think about
18 it and, and certainly I didn't paint a rosy picture of what
19 that would entail if they introduced that at trial. But---

20 Q. I guess what I'm getting at is something happened to
21 cause him to plead guilty and you're -- your, your, your
22 current speculation is it was just the fact that it was --
23 the jury was being picked?

24 A. Well, I mean I -- I'm speculating.

25 Q. Sure.

Scott Floyd - Cross-examination
by Mr. Lifsey

- 1 A. He only knows why he decided to plead. Not me.
- 2 Q. What I'm getting at is though---
- 3 A. I mean---
- 4 Q. ---is what role this conversation between -- that was
5 testified to, and, and obviously if you don't know about it
6 you don't know about it. But between you said a Mr.
7 McKenzie from your office, who's an investigator from your
8 office --
- 9 A. Correct.
- 10 Q. -- and someone else and my client.
- 11 Do you know about that---
- 12 A. Ms.---
- 13 Q. ---conversation?
- 14 A. Ms., Ms. Neyle was with me that day. She was gonna sit
15 with me. She's an attorney.
- 16 Q. Uh-huh. (Affirmative).
- 17 A. She was there. I was there. Mr. McKenzie is usually
18 available in, in the event that I need something he can go
19 get it for me. Richardson, I have no idea what that's
20 about. I wasn't aware of anybody in that room with him.
- 21 Q. Gotcha.
- 22 A. I have no idea.
- 23 Q. Did -- do you -- are you aware of any occasions where
24 the solicitor -- obviously we don't want the solicitor
25 meeting with our clients without us being present.

Scott Floyd - Cross-examination
by Mr. Lifsey

1 But do you -- are you aware of any occasions where an
2 assistant solicitor would be meeting with a client of yours
3 with say an investigator from your office present?

4 Has that ever happened?

5 A. I mean the -- not -- well, they wouldn't have my
6 permission to do it without me being there. I mean I can't
7 say it's never happened.

8 Q. Sure.

9 A. But if they asked me permission to do it, I would say
10 no---

11 Q. Gotcha.

12 A. ---unless I was there but --.

13 MR. LIFSEY: Just one moment, judge.

14 THE COURT: Yeah.

15 (Pause.)

16 MR. LIFSEY: Thank you, judge. I don't have any
17 further questions.

18 THE COURT: Any redirect?

19 MR. BARLOW: No, Your Honor.

20 THE COURT: Thank you, sir. You can step down.

21 THE WITNESS: Thank you.

22 THE COURT: Any further witnesses from the State?

23 MR. BARLOW: No further witnesses, Your Honor.

24 THE COURT: Okay. Would you like argument?

25 MR. LIFSEY: Your Honor, I, I, I, I, I would just say

1 this. I think most of these are credibility issues, and as,
2 as you know, Your Honor's sitting as the finder of fact.
3 And on behalf of the applicant, I urge you to find the
4 credibility issues in his favor and, and, and rule them --
5 rule so. Beyond that, I think you're capable of analyzing
6 the case.

7 THE COURT: Thank you.

8 Any -- Mr. Barlow, any argument from the State?

9 MR. BARLOW: Your Honor, I would agree that, that, in
10 part, that this is a credibility finding heavy case and I --
11 the state would just ask that Your Honor -- that the
12 applicant's not met his burden of proof and dismiss this
13 application with prejudice.

14 THE COURT: Okay. I'll take the matter under
15 advisement.

16 Thank you, counsel.

17 MR. BARLOW: Thank you, Your Honor.

18

19 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Florence County, South Carolina, on the 31st day of October, 2023.

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

December 6th, 2023

PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Zachary D. McClain, #388467,

Applicant,

v.

State of South Carolina,

Respondent.

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

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

**ORDER OF DISMISSAL
WITH PREJUDICE**

2024 MAY -9 PM 1:03
DONIS FLOYD OTTANA
CLERK OF COURT
FLORENCE COUNTY, SC

FILED

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

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

On October 31, 2023, an evidentiary hearing was held at the Florence County Courthouse before the Honorable William A. McKinnon. Assistant Attorney General D. Russell Barlow, II, represented Respondent. Applicant was present and represented by Michael H. Lifsey, Esquire (PCR Counsel). At the hearing, Applicant proceeded on the claims in his amended application. In support of these claims, Applicant testified on his own behalf, and Respondent presented testimony from Assistant Public Defender Scott P. Floyd (Plea Counsel).

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any

constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently incarcerated according to an order of commitment of the Florence County Clerk of Court. In August 2019, the Florence County Grand Jury indicted Applicant for Armed Robbery and Possession of a Weapon During the Commission of a Violent Crime (2019-GS-21-1001).

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

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

FACTS GIVING RISE TO THE CONVICTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Plea Tr. pp. 11-14)

CURRENT ACTION BEFORE THIS COURT

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

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

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

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

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

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act¹ (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based on the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

¹ S.C. Code Ann. §§ 17-27-10 to -160.

5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. Strickland v. Washington, 466 U.S. 668 at 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687-88; Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[without proof of both deficient performance and prejudice to the defense... it could not be

said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

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

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

This inquiry "focuses on a defendant's decisionmaking" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. 357, 367 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances.

Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—**not** whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999) (emphasis added).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility.

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), SCRPC (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

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

INITIAL FINDINGS

As a matter of general impression, this Court finds Plea Counsel's testimony at the evidentiary hearing credible and persuasive, where he presented well-recalled testimony of relevant background, facts, and discussions leading up to and during the plea hearing. This Court finds Applicant's testimony at the evidentiary hearing generally not credible or persuasive. This Court further finds applicable the strong presumption that at all stages of Plea Counsel's representation of Applicant, he rendered adequate assistance and exercised reasonable professional judgment in his representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

This Court makes the following findings from the record: 1. Applicant understood the charges and sentences he faced at his plea hearing (Plea Tr. pp. 4-8); 2. Applicant was not under the influence of drugs or alcohol, which may affect his ability to understand the plea proceedings (Plea Tr. p. 6); 3. Applicant understood the sentencing range (Plea Tr. pp. 4-8); 4. Applicant understood his right to a jury trial and that he waived those rights by pleading guilty (Plea Tr. pp. 8-9); 5. Applicant clearly indicated he was satisfied with Plea Counsel (Plea Tr. pp. 9-10); 6. Applicant indicated he had enough time with Plea Counsel (Plea Tr. pp. 9-10); 7. Applicant indicated he had enough time with Plea Counsel to decide to plea or go to trial (Plea Tr. p. 10); 8. Applicant indicated no one was forcing him to plead guilty, and his decision to plead guilty was voluntary (Plea Tr. p. 10); 9. Applicant did not disagree with the facts surrounding the State's case (Plea Tr. p. 15); 10. Applicant's plea was qualified as freely, knowingly, and voluntarily entered into (Plea Tr. p. 15).

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS ON THE MERITS

Allegation: Failure to Meet a Sufficient Number of Times

Applicant alleges Plea Counsel was constitutionally ineffective for failing to meet with his a sufficient number of times, failing to explain the strengths and weaknesses of the case, failing to discuss trial strategies, and failing to explain the elements of the charged crimes. This Court finds these allegations are without merit.

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

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

prejudicial. See Harris v. State, 377 S.C. 66, 659 S.E.2d 140 (2008), abrogated by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

At the evidentiary on direct examination, Applicant testified that he only met with Plea Counsel two times.

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

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

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

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

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

A. I did.

Q. Okay.

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

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

Q. And what was the date that he rejected the plea offer? Was that June 13th?

A. June the 13th.

Q. And he went to trial July 18th, correct?

A. Correct. Yeah.

(PCR Tr. pp. 38-42).

This Court finds Plea Counsel's well recollected testimony credible and Applicant's testimony not credible. This Court further finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland). Plea Counsel's credible testimony indicates he met with Applicant several times and reviewed Applicant's charges and the evidence against him. Notably, Applicant failed to present "any evidence of how additional preparation or communication would have resulted in a different outcome." Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012); see Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (finding that, when there is evidence counsel met with a defendant in preparation for trial

and there is no evidence additional preparation on the part of counsel would have affected the outcome at trial, counsel cannot be said to have been ineffective), abrogated on other grounds by *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018).

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

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

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

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

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

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

This Court finds Applicant's testimony on these matters **not credible**. Moreover, this Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland). Plea Counsel's **credible** testimony indicates he met with Applicant several times and thoroughly informed Applicant of his charges, reviewed the discovery, explained the outcome of a trial if he lost, and his potential trial strategy. Applicant failed to present "any evidence of how additional preparation or communication would have resulted in a different outcome." Smith v. State, 404 S.C. 500, 745 S.E.2d at 382; see Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998) (explaining that, where an applicant failed to present any evidence of what counsel could have discovered or what other defenses he would have requested counsel pursue had counsel more fully prepared for the trial, applicant failed to show his counsel's lack of preparation prejudiced him); Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (finding that, when there is evidence counsel met with a defendant in preparation for trial and there is no evidence additional preparation on the part of counsel would have affected the outcome at trial, counsel cannot be said to have been ineffective), **abrogated on other grounds by Smalls v. State**, 422 S.C. 174, 810 S.E.2d 836 (2018).

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

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

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

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

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

Allegation: Plea Counsel Failed to Review Discovery

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

An applicant who alleges his or her defense attorney was ineffective in failing to spend more time preparing or providing a copy of the discovery materials must demonstrate prejudice by showing what evidence could have been discovered or what other defenses could have been pursued. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by Smalls, 422 S.C. 174, 810 S.E.2d 836. Furthermore, an applicant must also show how the new evidence

or defenses would have resulted in a different outcome. Id. (citing David v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

At the evidentiary hearing on direct examination, Applicant testified that Plea Counsel only reviewed the video with him and no other discovery items. (PCR Tr. p. 9). Applicant testified that "he heard about the fingerprints" a "couple weeks before trial." (PCR Tr. p. 14).

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

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

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

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

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

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

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

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

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

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

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

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

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

Moreover, to whatever extent Applicant was not entirely satisfied with Plea Counsel and indicated that he wanted to hire private counsel, Applicant was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to avail himself of the benefit of his guilty plea.

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

Allegation: Plea Counsel Told Applicant to Answer the Plea Judge's Questions in a Manner That Would Result in the Judge Accepting the Plea

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

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

Q. All right. You answered the judge in a way where you said you didn't have complaints or anything like that. Is that right?

A. Yes, sir.

Q. All right. Why did you answer the judge's questions the way you answered them if you're saying something different here today?

A. To be honest, I really felt like it was the best thing for me to do cause I felt like I was in it by myself. I ain't had nobody to defend me really and I know I couldn't go to trial by myself. We never really -- I know I couldn't go to trial

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

(PCR Tr. pp. 12-13).

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

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

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

ALLEGATIONS NOT PLEADED BUT RAISED AT THE EVIDENTIARY HEARING

Allegation: Plea Counsel Failed to Call A Witness

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

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

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

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

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

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

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

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

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

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

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

Allegation: Involuntary Guilty Plea

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

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a complete understanding of the consequences of the plea and the charges against him or her. Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991); see also Boykin v. Alabama, 395 U.S. 238, 244 (1969) (Courts must make sure defendants have "a full understanding of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought and forestalls the spin-off of collateral proceedings that seek to probe murky memories."). In determining guilty plea issues, it

is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984) (finding the voluntariness of a guilty plea "is not determined by an examination of the specific inquiry made by the sentencing judge alone but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.").

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

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

The following colloquy occurred during direct examination:

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

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

A. That's correct.

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

A. I was here the date of the trial.

Q. Uh-huh. (Affirmative).

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

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

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

Q. Let he---

A. We met -- go ahead.

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

A. No, Richardson.

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

A. For the State.

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

A. His name is McKenslie (phonetic).

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

A. Okay.

Q. Continue on.

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

....

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

- Q. All right. So, you're saying that the discussion that led your son-in-law to plead guilty was, was actually not a discussion with his lawyer but was discussion with investigators?
- A. Correct.
- Q. To the best of your knowledge, was there ever -- are you aware of lengthy discussions of the case between your son-in-law and Mr. Floyd?
- A. Not to my knowledge.
- Q. Okay. I don't -- anything else you need to tell us today? That cover it?
- A. That's -- that sums it up.

(PCR Tr. pp. 28-31).

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

- THE COURT: Just one question, ma'am. Your testimony was that Mr. McClain and you met with the State's investigator without Mr. Floyd present?
- THE WITNESS: That is correct. We met in one of these conference rooms here.
- THE COURT: The day of the trial?
- THE WITNESS: The day of the trial.
- THE COURT: And did Mr. Floyd know you were doing that?
- THE WITNESS: I'm not sure. I just asked -- I was asking a question and Mr. McKenslie (phonetic) came in and then that's when he brought Richardson in.
- THE COURT: Okay. And they, they, they were law enforcement officers that were investigators for the State?
- THE WITNESS: Correct.
- THE COURT: And they met with you and, and your son-in-law without his attorney present?
- THE WITNESS: Correct, along with his mother, grandmother, and wife.
- THE COURT: Ma'am, that just strikes me as highly unusual.
- THE WITNESS: They did.
- THE COURT: And did you ask for that meeting or how did, how did that meeting---
- THE WITNESS: I asked---
- THE COURT: ---happen?

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

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

THE WITNESS: He came---

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

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

THE COURT: Okay.

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

THE COURT: Okay.

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

THE COURT: Okay.

THE WITNESS: That's when---

THE COURT: But you---

THE WITNESS: They---

THE COURT: You initiated all of that?

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

THE COURT: Okay. That was my---

THE WITNESS: -- not knowing who they were.

THE COURT: ---concern?

(PCR Tr. pp. 31-33).

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

On cross-examination, the following colloquy occurred:

Q. I guess what I'm getting at is something happened to cause him to plead guilty and you're -- your, your, your current speculation is it was just the fact that it was -- the jury was being picked?

A. Well, I mean I -- I'm speculating.

Q. Sure.

A. He only knows why he decided to plead. Not me.

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

(PCR Tr. pp. 54-56).

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

Further, this Court finds the combination of the record and Plea Counsel's credible

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

Notably, Applicant did not allege any facts tending to prove he was prevented from informing the plea court that he was not happy with Plea Counsel. Thus, based on the evidence presented at the plea proceeding and the evidentiary hearing, this Court finds Applicant freely, knowingly, and voluntarily pled guilty.

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

|CONCLUSION PAGE FOLLOWS|

CONCLUSION

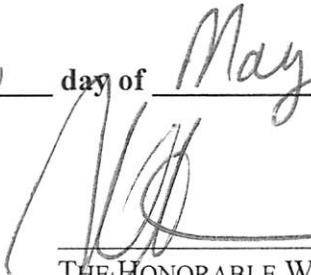
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be **DENIED and DISMISSED WITH PREJUDICE**.

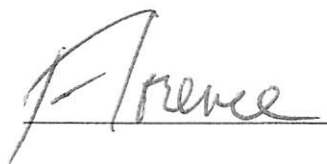
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991),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

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 6 day of May, 2024.


 THE HONORABLE WILLIAM A. MCKINNON
 Presiding Judge
 Twelfth Judicial Circuit

, South Carolina

CERTIFIED: A TRUE COPY


 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

FILED

2024 MAY -9 PM 1:04

CLERK OF COURT
 FLORENCE COUNTY, S.C.

127

WITNESSES

Jimmy Cantey

Florence Police Department

David A Richardson

ARREST WARRANT NUMBER

2019A2120200445

2019A2120200446

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 8/22/2019

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2019-GS-21-01001

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

AUGUST

TERM

2019

THE STATE

vs.

ZACHARY DEON MCCLAIN

Indictment for

ARMED ROBBERY &
POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME

FILED
2019 AUG 22 PM 3:27
CLERK OF COURT
JIMMY CANTLEY
JIMMY CANTLEY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)

INDICTMENT FOR
 ARMED ROBBERY &
 POSSESSION OF A WEAPON DURING THE
 COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on AUGUST 22, 2019 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- ARMED ROBBERY

CDR: 0139 16-11-0330(A)

That Zachary Deon McClain did in Florence County on or about March 11, 2019, while armed with a deadly weapon, to wit: a gun, or while alleging, either by action or words, that he was armed while using a representative of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, take and carry away personal property of Breakers Gas Station from or in the immediate presence of store clerk Rakeshehendra Patel with intent to deprive him of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

**COUNT TWO- POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT
 CRIME**

CDR: 0549 16-23-0490

That Zachary Deon McClain did in Florence County, on or about March 11, 2019, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. 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.



E.L. Clements, III
 TWELFTH CIRCUIT SOLICITOR