**THE STATE OF SOUTH CAROLINA**
**In The Court of Appeals**

Jamal Hakeem, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2018-001116

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Appeal From Greenwood County
J. Mark Hayes, II, Circuit Court Judge

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Unpublished Opinion No. 2024-UP-355
Submitted September 1, 2024 – Filed October 16, 2024

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**AFFIRMED**

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Tommy Arthur Thomas, of Irmo, for Petitioner.

Attorney General Alan McCrory Wilson and Assistant Attorney General Ambree Michele Muller, of Columbia, for Respondent.

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**PER CURIAM:** This court granted certiorari to review the post-conviction relief (PCR) court's finding that Petitioner failed to demonstrate trial counsel was ineffective for failing to place on the record a fifteen-year plea offer made by the trial judge to Petitioner during jury deliberations, and for failing to file a motion for

reconsideration of Petitioner's sentence, which was ten years longer than the plea offer. We affirm.

We find probative evidence supports the PCR court's finding that trial counsel was not deficient for failing to put the trial judge's alleged plea offer on the record or failing to file a motion for reconsideration. *See Smalls v. State*, 422 S.C. 174, 180, 810 S.E.2d 836, 839 (2018) (the appellate court will uphold the factual findings of the PCR court "if there is evidence in the record to support them."). First, the only evidence that the trial judge directly offered Petitioner a fifteen-year sentence was Petitioner's self-serving testimony. Petitioner's wife and trial counsel both testified that during jury deliberations, the trial judge came to the back room where they were discussing Petitioner's case, but neither recalled the judge entering the room or making Petitioner a fifteen-year offer. *See Speaks v. State*, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008) ("In [PCR] proceedings, the burden of proof is on the applicant to prove the allegations in his application."). Second, trial counsel's decision not to move for reconsideration was reasonable when Petitioner's sentence of twenty-five years' imprisonment fell within the statutory range for armed robbery, trial counsel testified he did not believe such a motion would have been granted, and Petitioner never testified he asked counsel to file such a motion. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984) (stating that to prove deficiency, "[a PCR applicant] must show that [trial] counsel's representation fell below an objective standard of reasonableness"); S.C. Code Ann. § 16-11-330(A) (2015) (providing a person convicted of armed robbery "must be imprisoned for a mandatory minimum term of not less than ten years or more than thirty years"); *Garrett v. State*, 320 S.C. 353, 356, 465 S.E.2d 349, 350 (1995) ("A sentence is not excessive if it is within statutory limitations and there are no facts supporting an allegation of prejudice against [the defendant].").

We also find probative evidence supports the PCR court's finding that Petitioner failed to demonstrate prejudice. *See Smalls*, 422 S.C. at 180-81, 810 S.E.2d at 839 (the appellate court will uphold the factual findings of the PCR court "if there is evidence in the record to support them."). As discussed above, there was no basis upon which to move for reconsideration. Petitioner failed to present evidence, aside from his own speculation, that the trial judge would have granted a motion for reconsideration, or that the trial judge inappropriately considered Petitioner's exercise of his trial rights when it sentenced him to twenty-five years. *See Strickland*, 466 U.S. at 694 (to prove prejudice, "[a PCR applicant] must show that there is a reasonable probability that, but for [trial] counsel's unprofessional errors, the result of the proceeding would have been different"); *State v. Hicks*, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008) ("A judge or other sentencing authority is to be accorded very wide discretion in determining an appropriate

sentence . . . ."); *Castro v. State*, 417 S.C. 77, 83, 789 S.E.2d 44, 47 (2016) ("When a trial judge considers the fact that the defendant exercised his or her constitutional right to a jury trial as a factor in sentencing the defendant, it is an abuse of discretion."). Unlike the trial judge in *Castro*, the trial judge here did not reference Petitioner's refusal to enter a guilty plea when it sentenced him. 417 S.C. at 83, 789 S.E.2d at 47. Ultimately, the record reflects that Petitioner was adamant about proceeding to trial—against the advice of counsel—all the way through jury deliberations. Accordingly, Petitioner failed to show that, but for counsel's alleged errors, the result of the proceeding would have been different. *See Strickland*, 466 U.S. at 694.

**AFFIRMED.**[1]

**WILLIAMS, C.J., and KONDUROS and GEATHERS, JJ., concur.**

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.