NOTICE OF APPEAL FROM COMMON PLEAS REGARDING A

POST CONVICTION RELIEF

RECEIVED

Oct 21 2024

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In the Supreme Court

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APPEAL FROM LEXINGTON COUNTY

Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

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Case No. 2019-CP-32-03166

The State,.....Respondent,

Matthew R. Darazs,.....Appellant,

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Notice of Appeal

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Matthew R. Darazs appeals the order of the Honorable Jocelyn Newman, dated September 19th, 2024, which denied his application for Post-Conviction Relief with prejudice. Appellant received written notice of the order on October 19, 2024.

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| STATE OF SOUTH CAROLINA ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF LEXINGTON ) | FOR THE ELEVENTH JUDICIAL CIRCUIT |
| Matthew Roland Darazs, SCDC #[redacted] | Case No. 2019-CP-32-3166 |
| Applicant, ) | |
| v. ) | **ORDER OF DISMISSAL** |
| State of South Carolina, ) | |
| Respondent. ) | |

This matter comes before the Court by way of a post-conviction relief (PCR) action commenced by Matthew Roland Darazs (Applicant) on August 8, 2019, alleging he is entitled to post-conviction relief based on ineffective assistance of counsel. The State filed a Return and Motion for a More Definite Statement on March 4, 2020. Applicant filed an Amended Return on June 16, 2021. A hearing into the matter convened before the undersigned on June 8, 2022, at the Lexington County Courthouse. Applicant was present at the hearing and represented by Ola Johnson, Esquire. Assistant Attorney General Taylor Z. Smith appeared on behalf of the State. At the hearing, testimony was heard from three witnesses: Applicant; Applicant's trial counsel, David Mauldin; and the prosecuting solicitor, Kate Usury. In addition to testimony from those individuals, this Court had before it: (1) the transcript from Applicant's March 27, 2018 guilty plea (hereafter "Tr."); (2) records from the Lexington County Clerk of Court regarding Applicant; (3) Applicant's inmate records from the South Carolina Department of Corrections; and (4) the pleadings filed in the instant post-conviction relief action.

Following a thorough review of the record and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant failed to meet the high burden required for a grant of post-conviction relief pursuant to Rule 71.1, SCRCP, and the Uniform Post-Conviction

Procedure Act[1]. For the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

## I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Lexington County Clerk of Court. Applicant was arrested in July of 2016, following an investigation into a series of chronic sexual abuses that occurred in Lexington County between 2012 and 2016. (Tr. pp. 4-7; Tr. pp. 9-19.)

On March 27, 2018, Applicant appeared before the Honorable William P. Keesley, and pleaded guilty to 3 counts of criminal sexual conduct with a minor second degree (2017-GS-32-3161; 2017-GS-32-3453; and 2017-GS-32-3454); assault and battery first degree (2017-GS-32-3462); and incest (2017-GS-32-3460). (Tr. p. 1, l. 1 -p. 7, l. 15.) At the time of his plea Applicant had four outstanding warrants, two for unlawful conduct towards a child; one for possession of a controlled substance, first offense; and one for possession of a controlled substance with intent to distribute, first offense. All four of these charges were dropped in exchange for Applicant's guilty pleas. (Tr. p. 10, l. 19-21; see also PCR, p. 4.)

Following the plea and mitigation arguments, the Court sentenced Applicant to a term of twenty years for CSC with a minor in the second degree (3453), a term of twenty years consecutive for CSC with a minor in the second degree (3454), ten years consecutive for the incest, five years concurrent for the Assault and Battery in the first degree, and twenty years concurrent for the CSC with a minor between ages 11 and 14 (3161), for an aggregate total of fifty years. (Tr. p. 45, l. 21 – p. 47, l. 19.)

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

Applicant filed a timely notice of appeal. On August 15, 2018, the Court of Appeals gave Applicant twenty days from the date of Counsel's transmittal letter to inform the Court of any arguable basis that there were issues preserved for appeal. Applicant failed to respond and the Court of Appeals dismissed the appeal on September 26, 2018 under SCACR Rule 203(d)(1)(B)(iv) due to an insufficient explanation. (PCR, p. 5, l. 15-21.) Applicant was notified of the dismissal and this PCR followed.

## II. FACTUAL HISTORY

According to the factual basis set out in the plea record, on July 25th, 2016, one of Applicant's daughters, Maria, called law enforcement. Maria told the officers who arrived that Applicant had been sexually abusing her for a long time, and that the abuse continued until the point when Applicant was kicked out of the house in February of 2016. Maria told law enforcement that Applicant was the father of her one-year-old baby and that although she wasn't sure if her siblings were ready to tell, she believed that Applicant also had been abusing her brother Michael, her sister Margaret, and her sister Megan. (Tr. p. 11, l. 6- p. 13, l. 2.)

The following day, July 26th, 2016, law enforcement began investigating the case, starting with a formal interview of Maria at the West Columbia Police Department. During that interview, Maria disclosed that Applicant began abusing her around the age of 2 and continued up until the age of 16. She indicated, at the height of the abuse, sexual intercourse would occur up to four times a week. She disclosed that Applicant took nude photos of her and that he would have her watch porn with minors in it. She told law enforcement that she became pregnant with Applicant's baby around October of 2014. That child was ultimately born in June of 2015. At the same interview, Maria allowed a buccal swab of her and a buccal swab of her baby. Maria told law enforcement that she had discussed the abuse with her older brother Michael and her sister Margaret, and that

she had caught her dad twice with her younger sister. When Maria confronted her dad, Applicant pulled out a handgun and a knife and threatened her with it. (Id.)

On July 27th, law enforcement interviewed Applicant's other daughter, Margaret, at the West Columbia Police Department. Margaret told law enforcement, among other things, that Applicant was physically abusive to all the children. She indicated the sexual abuse for her started around age three or four and continued until February of 2016 when Applicant was kicked out of the house in West Columbia. She indicated to law enforcement that Applicant would perform oral sex on her and would touch her breasts and private area two or three times a week. Margaret also indicated that she knew about the abuse with Maria because they talked and she had witnessed the gun and knife incident described by Maria. (Tr. p. 13, l. 3-23)

The same day, July 27th, law enforcement obtained arrest warrants for two CSCs, one for each girl, and served them on Applicant. He was taken to the West Columbia Police Department where he was interviewed, mirandized, and confessed on video and in writing. (Tr. p. 14, l. 6-12.) In his written confession on July 27th of 2016, Applicant wrote:

> I started home-schooling because of the behavior Maria and Margaret were exhibiting, desires of sexual promiscuity at public school. I could not condone them being involved in that manner with immature boys whose affection would be ingenuine. During home-schooling, a relationship progressed that developed into intercourse. [Maria] would wear sexually revealing clothing around the house. And I told her that if she continued, she would provoke a sexual response from me. She ignored my warnings and even went as far as to intentionally provoke a sexual response from me on a regular basis. It started as oral sex and progressed to vaginal intercourse. This occurred around the 9th grade for Maria . . . Around the same time, I also had a similar relationship with Margaret. We also had a consensual sexual relationship. They knew about the relationship I had with each other.

(Tr. p. 15, l. 7- p. 16, l. 3.) Applicant also admitted to pulling the knife on Maria and telling her if she didn't have an abortion, he would cut the baby out of her. (Tr. at p. 14, l. 19-24.) During that interview, Applicant's DNA was obtained to conduct a paternity test on Maria's baby. (Id.)

During the July 27th interview, law enforcement asked Applicant how old Maria was when he first started having sexual intercourse with her, and he said 15. Law enforcement also asked Applicant how old Margaret was when he began his sexual relationship with her, and he indicated 14. Applicant also admitted to sexual intercourse with Maria about once a week and sexual encounters with Margaret "maybe once a month." (Tr. pp. 15-17.)

The following day, July 28th, law enforcement interviewed Applicant again and he provided conflicting testimony from the previous day's interview. In the second interview, Applicant admitted to sexual abuse with Maria at age four, an earlier age than his confession the previous day when he stated that the intercourse started at 15. (Tr. p. 17, l. 24- p. 18, l. 6.) Applicant also stated that the sexual abuse with Margaret started around nine years of age in the second interview, which differs from the day before where he indicated that the abuse with Margaret started at age 14. (Id.)

On August 2nd, the SLED DNA analysis came back confirming that Applicant is the biological father of Maria's daughter. The State then presented an incest indictment because during the time that Maria became pregnant, she would have been just past the age of the CSC second, and just past the age of 16. Per the solicitor, the incest indictment was intended to cover the period from after Maria's 16th birthday up until when Applicant was ultimately kicked out of the house. Both Maria and Margaret indicated that Applicant's sexual abuse of them continued until he was kicked out of the house. (Tr. p. 18, l. 16- p. 19, l. 2.)

## III. ALLEGATIONS BEFORE THE COURT

On August 8, 2019, Applicant filed a post-conviction relief application, alleging he is being held in custody unlawfully because he "was denied effective assistance of counsel" and his "right to the due process of law was violated." (PCR Application, 8/8/2019 at p. 3.) In support of the

alleged violations, Applicant claimed that he was "misinformed by [his] attorney as to the outcome of [his] guilty plea, and would have never plead guilty had [he] been properly informed." (PCR Application, 8/8/2019 at page 3 attachment.)

On March 4, 2020, the State filed a return and motion for a more definite statement. On June 16, 2021, an "Amendment to Application for Post Conviction Relief" was filed by Applicant. The Amendment adopted the grounds of Applicant's original filing and further alleged as additional grounds supporting his claim of ineffective assistance of counsel that:

(1) Applicant's counsel failed to request to withdraw the plea or to object during the guilty plea when the State violated the terms of the plea agreement, after the Applicant was informed that there was not supposed to be a recommendation by the State for a sentence and the following persons argued:
   a. Investigator Turner, for "a consecutive sentence and the max punishment;"
   b. Investigator Morris, for "the max consecutive sentence on these charges;" and
   c. Assistant Solicitor Kate Usry, for "a consecutive max sentence, so a total of 80 years."

(2) Applicant's request to relieve his counsel (following the court's denial of a previous motion) was denied and as a result, Applicant felt coerced into pleading guilty.

(3) Applicant's Counsel failed to interview Applicant's daughter and other witnesses to offer mitigation in response to the State's witnesses.

(4) Applicant's counsel failed to file a motion to reconsider the sentence or to discuss this with Applicant following his plea.

(5) Applicant's counsel failed to properly investigate the case and prepare Applicant for his plea.

(6) Applicant's counsel failed to review evidence with Applicant.

(Amendment to Application for Post Conviction Relief, 6/16/2021.)

At the PCR Hearing on June 8, 2022, the grounds in Applicant's original Application and Amendment to Application for Post Conviction Relief were argued by Applicant's PCR Counsel. Findings have been made on each of the points argued at the hearing.

## IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

## Standard of Review

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). It is common that post-conviction relief allegations are centered upon an allegation that the applicant did not receive the effective assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation 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 hearing, 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, 466 U.S. at 687. To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) 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 "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

As aforementioned, the Applicant has the burden of establishing both deficiency and prejudice

in order to be entitled to relief. Hughes v. State, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); Rule 71.1(e), SCRCP. To prove deficient performance, the applicant must establish that, in light of all the circumstances, the acts or omissions complained of "were outside the wide range of competence" demanded of attorneys in criminal cases. Strickland, 466 U.S. at 688. To prove prejudice, the applicant must establish that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Id. Significantly, "the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." Id. at 696.

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart, 474 U.S. 52 (1985), extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel. See Padilla v. Kentucky, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). When reviewing a guilty plea, the analysis of counsel's performance under the first prong of Strickland remains unchanged—the applicant must show that counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56. The second, or "prejudice" prong, however, "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Id. at 58–59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must

show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59.

This inquiry "focuses on a defendant's decision-making" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. 357, 364-365, 137 S. Ct. 1958, 1966 (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).

The test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." North Carolina v. Alford, 400 U.S. 25, 31 (1970). It is "well established that a guilty plea is not rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment." United States v. Cox, 464 F.2d 937, 942 (6th Cir. 1972) (citing Brady, 397 U.S. 742).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual . . ., a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977); see also Jamison v. State, 410 S.C. 456, 469–71, 765 S.E.2d 123, 129–30 (2014)). Admissions made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements. Id. at 137–38, 654 S.E.2d at 874; see also Blackledge, 431

U.S. at 73–74 (pointing out that representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a "formidable barrier in any subsequent collateral proceedings").

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 [plea] counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the [applicant] would not have pled guilty, but would have insisted on going to trial." Roscoe, 345 S.C. at 20, 546 S.E.2d at 419 (citations omitted).

In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. Wolfe, 326 S.C. at 165, 485 S.E.2d at 370; cf. Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that, where the transcript of the guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant's claim his lawyer misadvised him).

Surmounting Strickland's high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." Lee, 582 U.S. 356, 371, 66, 137 S. Ct. 1958, 1967 (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 58 ("[R]equiring a 'prejudice' showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.'"). Reviewing "[c]ourts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies." Lee, 582 U.S. 356, 371, 137 S. Ct. 1958, 1967. Rather, judges should

"look to contemporaneous evidence to substantiate a defendant's expressed preferences." Id. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the guilty plea and the evidence presented at the PCR hearing. Harres v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

## V. FINDINGS AS TO CLAIMS RAISED

Applicant has alleged six specific claims of ineffective assistance of trial counsel and asks that as a result of Counsel's purported errors, this court overturn his conviction (by vacating his plea) and grant him a new trial. This Court finds Applicant has failed to meet his requisite burden of proof as to each allegation. Each allegation is addressed below:

***Allegation #1: Applicant's counsel was ineffective for failing to object to or request to withdraw the plea when the State violated the terms of the plea agreement by arguing at sentencing.***

Applicant first asserts that Counsel was constitutionally ineffective because Applicant was under the impression that there would be no recommendations as to sentencing and on three separate occasions the State made recommendations during the sentencing hearing. Specifically, Applicant points to the plea transcript where at pages 35 and 36, Investigator Turner requested "a consecutive sentence and the max punishment;" Investigator Morris requested "the max consecutive sentence;" and the Solicitor asked for "a consecutive max sentence, so a total of 80 years." (Tr. pp. 35-36.)

While Applicant's statements regarding the sentences the witnesses above requested appear correct, I do not find Counsel's failure to object to or to request to withdraw the plea constitute ineffective assistance of counsel. Before the plea was accepted, the Court specifically covered with Applicant that any plea bargain, "[t]hat includes any agreements about dropping charges,

recommending a sentence, [or] reducing charges", had to be discussed in open court or it was lost. (Tr. p. 19, l. 18 – p. 21, l. 7; see also Tr. p. 7, l. 16 – p. 9, l. 22.) Then, after being informed that if any plea bargain had been made or there was any external agreement regarding a sentence it needed to be on the record or he would lose whatever may have been promised, Applicant was asked if he understood. (Tr. p. 19, l. 23 – p. 20, l. 13.) Applicant indicated that he understood and that he was promised nothing other than what was on the record, which was that, in exchange for the plea straight up to the five charges, four other charges would be dropped. (Id.)

Applicant's possible exposure as a result of pleading guilty was covered again when, after individually covering the possible sentences, the Court asked "you understand you're facing up to 80 years in prison?" (Tr. pp 21-26 (generally); Tr. p. 27, l. 1-3 (Court's specific questioning.)) Applicant responded "Yes, sir." (Tr. p. 26, l. 23-25.) After this, the Court then asked, "Have you understood everything I've been over with you?" To this, Applicant also responded "Yes, sir." (Tr. p. 27, l. 1-3.) At the plea, Applicant clearly indicated that he understood the potential sentences for the crimes he was pleading guilty to and that if there was an agreement to reduce his exposure it needed to be put on the record. (Tr. p. 21, l. 6 - p. 27, l. 3.)

Further colloquy occurred between the trial court and Counsel, and Applicant and Counsel, and all parties agreed they understood the extent of the plea agreement was the dismissal of charges, as stated by the solicitor. (Tr. p. 9, l. 24- p. 10, l. 21; Tr. p. 19, l. 23- p. 20, l. 13.)

Not only was sentencing covered by the trial judge, I found credible Counsel's testimony at the evidentiary hearing that he went over the possible sentencing range and made no promises to the Applicant. (PCR, p. 24, l. 15-20; see also PCR, p. 26, l. 17-21 (Responding to the question, "So what did you tell Mr. Darazs about the terms of the plea deal?", Counsel testified "That the Judge could give him up to 80 years and that the hope was that he wouldn't get it that bad"); see

also PCR, p. 32, l. 18-22 (Counsel was asked "Did you properly explain all the potential sentences to [Applicant]?" and he responded affirmatively. Counsel was then asked, "And you felt he understood everything?" and replied "Yes, I do."))

The Applicant's apparent assertion is that as a part of the plea bargain that the state had agreed to make no recommendation at all during the proceedings. However, the record reflects that this was a "straight up" plea with no agreed recommendation as part of the negotiation between the State and the defense. Thus, when the prosecution made its request for the maximum sentence, it was not in violation of the agreement. The sentencing judge was free to sentence up to the maximum of eighty years and the prosecution was unrestricted to make any recommendation it chose to do. PCR, p. 38, l. 1-8. Prosecutor Usry testified that it was a "straight-up" plea deal. She indicated that under a straight up plea deal, either the prosecution or the defense for what they want in there case. Usry credibly indicated that both counsel Mauldin and her had been in practice long enough to understand a what a straight up plea was. Id. This Court concurs in her understanding of a straight-up plea as not muting either side from freely making a request or recommendation. (The individual sentencing sheets were consistent and had checked : "without negotiations or recommendation" as opposed to either "negotiated sentence" or "recommendation by the State." ) . See State v. Rikard, 371 S.C. 295, 297, n. 4, 638 S.E.2d 72, 73, n.4 (Ct. App. 2006) (straight up plea and State requests maximum sentence, distinguishing in Jordan v. State, 297 S.C. 52, 374 S.E.2d 683 (1988)).

Ultimately the choice and the decision to plead were the Applicant's. He was advised of the potential maximum sentences he could face and freely, voluntarily, knowingly, and intelligently chose to plead guilty. This Court concludes as a matter of law and fact that there was no broken plea agreement. This Court finds Applicant has not established any deficiency of Counsel regarding not

objecting to or asking to withdraw the plea during the plea hearing. Applicant has not shown Counsel's decision not to object or withdraw the plea was not within the competence demanded of attorneys in criminal cases. Moreover, Applicant, who was also advised by the court regarding the possible sentence and indicated he understood and then voluntarily chose to go forward with the plea, has not established that, but for the alleged error, there is a reasonable probability that he would not have pled guilty and, instead, would have insisted on going to trial.

Accordingly, this Court denies and dismisses this allegation with prejudice.

***Allegation #2: Applicant's request to relieve his counsel was denied, resulting in the Applicant feeling coerced to plead guilty.***

Applicant next asserts that he felt coerced into pleading guilty as a result of the court denying his motion to relieve counsel David Mauldin. Applicant's testimony on this point at the evidentiary hearing was brief. Applicant was asked if he attempted to have Counsel relieved as his attorney and responded "Yes, sir." When asked what happened when he made that effort, he responded that Counsel brought him in front of the Judge McMahon earlier and "he refused to relieve my counsel." (PCR, p. 10, l. 10-15.) This motion, according to Applicant, was made after the court denied a different and earlier motion that Applicant felt should have been granted. (See Amendment to Application for PCR, at p. 2, item 4.) However, the reasons for the request and how it negatively impacted on the Applicant's decision were never developed before this Court.

To the extent Applicant is alleging that a motion to relieve counsel was improperly denied, a PCR proceeding is not the appropriate forum to raise this issue. See Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (noting that allegations of trial court error are not cognizable on PCR); Stepney v. State, 278 S.C. 47, 292 S.E.2d 41 (1982) (explaining that issues that could have been raised on direct appeal cannot be considered on PCR application absent claims of ineffective assistance of appellate counsel); State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494 499

(2005) ("Circuit courts obviously have subject matter jurisdiction to try criminal matters.").

To the extent that Applicant is claiming the denial of the motion made him feel coerced into pleading, the record does not support this allegation. At the plea, Applicant clearly indicated that was both guilty of the crimes he was pleading to, and that no one forced him, threatened him, or coerced him in any way to plead against his will. (Tr. p. 19, 16-22; see also Tr. p. 7, l. 16- p. 9, l. 21.)

Later, after covering sentencing and other consequences of a plea and reminding Applicant he was facing up to eighty years in prison, the Court again asked Applicant "Are you sure you want to give up your rights and enter these pleas of guilty?" (Tr. p. 25, l. 24- p. 27, l. 5.) Applicant responded "Yes, sir." (Tr. p. 27, l. 6.) The Court then asked, "You're pleading guilty because you are, in fact, guilty?", and "You're pleading guilty of your own free will and accord?" (Tr. p. 27, l. 7-12.) Applicant again replied "Yes, sir" to the Court's questions. (Id.) With these affirmative answers on the record, the Court then acknowledged that "Mr. Darazas [sic] has made a free, knowing, voluntary, and intelligent decision to waive his rights and plead guilty. He's done so upon the advice of counsel with whom he's fully satisfied. There's a factual basis for each plea." (Tr. p. 27, l. 13-17.)

I find the evidence and proceedings, as contained in the plea transcripts and evidentiary hearing, refute Applicant's claim that Counsel coerced him into pleading guilty and thus rendered ineffective assistance. I also found no prejudice resulting from Applicant's decision to plead has been established.

Accordingly, this Court denies and dismisses this allegation with prejudice.

***Allegation #3: Applicant's Counsel was ineffective for failing to interview Applicant's daughter and other witnesses to offer mitigation in response to the State's witnesses.***

Applicant next asserts that Counsel was ineffective because he failed to interview appropriate witnesses for the mitigation phase of sentencing. In support of this claim, Applicant alleged in his amended Application for PCR that Counsel did not interview his daughter Madison or other witnesses that he requested, and that Counsel offered "[b]asically no defense." (PCR, p. 10, l. 16-23.) When asked what witnesses Applicant wanted Counsel to interview that Counsel did not interview, Applicant was not initially forthcoming but later indicated "people" who were living in the house, other than those he had molested, who "could have verified the living conditions weren't as hostile as the victims stated in their testimony." (PCR, p. 17, l. 16-21.) Applicant was asked if any of the people were present in the courtroom at the PCR hearing and did not point anyone out. (PCR, p. 17, l. 22- p. 18, l. 1.)

At the same hearing, Counsel testified that he both prepared Applicant for the plea and also discussed what he (Counsel) was going to say and who he'd call at mitigation. (PCR, p. 28, l. 2-5.) This included calling certain family members. (Id.) Applicant's daughter Madison was not one of the witnesses called. Counsel testified he did not recall Applicant asking him to interview Madison, and that he did things Applicant asked him to. (PCR, p. 23, l. 11-21.) The record of the plea proceeding shows Counsel did argue for Applicant and put-up certain family members at mitigation. (Tr. p. 37, l. 8- p. 44, l. 16.)

The record reflects Counsel's strategy for mitigation during sentencing involved showing that Applicant was also a victim of abuse, that he cooperated with law enforcement from the first request, and that he accepted responsibility, as demonstrated by his pleading. (Id.) Counsel specifically put on the record that he felt Applicant's cooperation from the start, acceptance of responsibility, and decision to not put his family through a trial should be considered and "was worth something." (Tr. p. 37, l. 8 – p. 41, l. 17.) Counsel also retained the assistance of Dr. Geoffry

McKee, a forensic psychologist who performed a psychosexual examination for the defense. However, in light of the unfavorable results, counsel decided not to present the matter in his mitigation for the Applicant. PCR, p. 25, l.1-7.

In light of the overwhelming evidence of Applicant's guilt, including both the written and oral confession, Counsel's strategy is not one that is outside the competence demanded of attorneys in criminal cases. Hill, 474 U.S. at 56. Further, Applicant indicated to the trial court at the time that he was fully satisfied with Counsel; that there was not anything Applicant wanted Counsel to do on the case that Counsel had not done; and that Applicant had no complaint with Counsel or anyone who had dealt with his case. (Tr. p. 20, l. 14-23.) As stated previously, the Applicant's statements made during a guilty plea carry a presumption of verity and should be considered conclusive unless Applicant presents credible and cogent reasons why he should not be held to the truth of his statements. Blackledge, 431 U.S. at 73–74. Applicant further, has provided no credible evidence of 6th Amendment prejudice resulting from Counsel's alleged failures. He has failed to show either deficient performance or prejudice under Strickland.

Accordingly, this Court denies and dismisses this allegation with prejudice.

***Allegation #4: Applicant's Counsel was ineffective for failing to file a motion to reconsider his sentence or to discuss such a motion with Applicant following his plea.***

Applicant next asserts that Counsel was ineffective because he failed to discuss with Applicant and then file a motion to reconsider Applicant's sentence following his plea. At the PCR hearing, Applicant testified he was not sure if he requested Counsel file a motion to reconsider the sentence. (PCR, p. 11, l. 11-24.) On this point, Counsel testified at the hearing that he had no notes about discussing a motion for reconsideration with Applicant, but that "[h]e did ask for an appeal and I did file that. So if he would have asked for [a motion to reconsider], I would have done it."

(PCR, p. 29, l. 2-6.) On redirect, Counsel testified affirmatively when asked if it is his habit to file a motion to reconsider if a client asks for it. (PCR, p. 33, l. 13-15.) On recross, Counsel further testified that this would be in keeping with his normal practice as it is his habit to file a motion to reconsider if a client asks for it. (PCR, p. 33, l. 13-15.)

When Counsel was asked if he ever advised Applicant about the possibility of a motion to reconsider, he responded "probably not." (PCR, p. 34, l. 9-11.) Counsel's rationale for not filing a motion to reconsider Applicant's sentence was based on his conclusion there was nothing new to present. The trial court had before it the relevant and important factors when it sentenced Applicant. With no new information to present, Counsel saw no reason to file a motion to reconsider. (PCR, p. 33, l. 16- p. 34, l. 3.) Counsel did file a motion for appeal and, further, indicated that if asked, he would have filed a motion to reconsider. (PCR, p. 29, l. 2-6.)

Counsel's performance, in terms of deciding which post-trial motions to file and then filing a motion to appeal instead of a motion for reconsideration of Applicant's sentence, was within an objective standard of reasonableness. The aggregate 50 year sentence the Applicant received was within the statutory limits, consistent with the terms of the negotiations and less than the maximum sentence and the prosecution's request. Moreover, in this case where the evidence against Applicant was so overwhelming and Applicant presented no reason (in terms of new evidence) for such a motion to be made, Applicant has not established that Counsel's decision to file a notice of appeal instead of filing a motion to reconsider prejudiced Applicant. See Brooks v. State, 325 S.C. 269, 271, 481 S.E.2d 712, 713 (1997) ("A trial [court] is allowed broad discretion in sentencing within statutory limits."); State v. Conally, 227 S.C. 507, 510, 88 S.E.2d 591, 593 (1955) (holding an appellate court "has no jurisdiction to disturb, because of alleged excessiveness, a sentence which

is within the limits prescribed by statute, unless: (a) the statute [is unconstitutional], or (b) the sentence is the result of partiality, prejudice, oppression, or corrupt motive").

Accordingly, this Court denies and dismisses this allegation with prejudice.

***Allegation #5: Applicant's Counsel was ineffective for failing to properly investigate the case and prepare Applicant for the plea.***

Next, Applicant asserts that Counsel was ineffective for allegedly failing to properly investigate the case and prepare Applicant for his plea. At the PCR hearing, Applicant testified that Counsel came to visit him to talk about the case "two to three times in the 20 months [he] was in the County" and he did not feel like he (Applicant) was adequately prepared for the plea. (PCR, p. 12, l. 9-17.)

Counsel credibly testified very differently on this point. This Court finds Counsel met with Applicant on nine specific dates and credibly gave a brief statement about what was discussed each time. (PCR, p. 20, l. 2- p. 22, l. 24.) Counsel also communicated with Applicant by phone. (Id.) Counsel met with Applicant to discuss discovery multiple times, the plea multiple times, and regarding having Applicant psychosexually evaluated "to see if there would be anything to argue in mitigation on the report." (PCR, p. 20, l. 2-9.) Discovery was discussed with Applicant by counsel, including the fact it contained Applicant's written and oral confessions and the damaging results of the DNA test indicating he had fathered a child with one of his daughters. (PCR, p. 22, l. 8-14.) During Counsel's meetings with Applicant, Applicant did not indicate that he did not understand the evidence and never denied the authenticity of it. (PCR, p. 22, l. 15-20.) This Court finds Counsel's testimony on these points credible.

Regarding Applicant's allegation that Counsel failed to properly investigate the case, the law is clear. "[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Strickland v. Washington, 466 U.S.

668, 691, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984). A decision "not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." (Id.) In the present case, the evidence included the testimony of two of applicant's daughters, one of whom a DNA test proved had been impregnated by him. Applicant had also given both written and oral confessions during interviews with law enforcement. The evidence was overwhelming. (Tr. p. 9, l. 24- p. 19, l. 15.) Regarding further investigation, Counsel testified there wasn't much factual investigation to do when Applicant confessed and the DNA corroborated the confession. (PCR, p. 23, l. 2-3.) Also of significance is that Applicant agreed there was nothing he had asked Counsel to do that Counsel had not done. (Plea, p. 20, l. 14-19.)

This Court finds Counsel's performance, both in terms of meeting with and discussing the case with Applicant and in terms investigating Applicant's case and considering various defenses, was within an objective standard of reasonableness. Applicant has not established Counsel's actions were "not within the competence of attorneys demanded in criminal cases." Applicant also has not established "prejudice occurred as a result of counsel's (deficient) performance."

Accordingly, this Court denies and dismisses this allegation with prejudice.

***Allegation #6: Applicant's Counsel failed to review evidence with Applicant.***

Applicant's remaining allegation is that Counsel was ineffective for allegedly failing to sit down with him and review the discovery in this case. (PCR, p. 15, l. 14.) The Court concludes that there is no credible factual support for his claim. As noted above, on this point, Counsel testified he met with Applicant initially on August 19th of 2016, then met with Applicant for discussion or to attend hearings no less than five times before the initial plea offer was received on January 4th of 2018. (PCR, p. 20, l. 2-15.) Counsel had specific notes that he reviewed discovery with the client on May 16th of 2017, and that he again reviewed the case on September 22nd of 2017. (Id.)

Further, Counsel testified that the Applicant never indicated that he didn't understand the evidence or the significance of the evidence. (PCR, p. 22, l. 15-19.)

There is no established "minimum number of meetings between counsel and client prior to trial necessary to prepare an attorney to provide effective assistance of counsel." United States v. Olson, 846 F.2d 1103, 1108 (7th Cir.1988) (there is no constitutional minimum number of meetings between attorney and client and observes that an experienced attorney may get more out of a single meeting than a neophyte); Moody v. Polk, 408 F.3d 141, 148 (4th Cir. 2005); Campbell v. Polk, 447 F.3d 270, 279, n.2 (4th Cir. 2006) ("we cannot conclude that the fact that Campbell's counsel only met with him five times before trial made them ineffective."). "'[B]revity of consultation time between a defendant and his counsel, alone,' 'cannot support a claim of ineffective assistance of counsel.'" Davis v. State, 44 So. 3d 1118, 1130 (Ala. Crim. App. 2009) (*quoting* Murray v. Maggio, 736 F.2d 279, 282 (5th Cir. 1984)); White v. Godinez, 301 F.3d 796, 800 (7th Cir. 2002) ("A brief consultation does not by itself establish that counsel's performance was inadequate."); Chavez v. Pulley, 623 F. Supp. 672, 685 (E.D. Cal. 1985) ("brevity of consultation time between a defendant and his counsel alone cannot support a claim of ineffective assistance of counsel," especially where the defendant "fails to allege what purpose further consultation with his attorney would have served and fails to demonstrate how further consultation with his attorney would have produced a different result").

This Court finds Counsel's testimony on this point credible. This Court further finds Counsel's performance, including in terms of meeting with Applicant a sufficient number of times and reviewing the evidence, was within an objective standard of reasonableness. This Court finds Applicant has not shown Counsel's behavior was not within the competence demanded of attorneys

in criminal cases. Moreover, Applicant has not established either a 6th Amendment deficiency by Counsel or the requisite 6th Amendment prejudice as a result.

Accordingly, this Court denies and dismisses this allegation with prejudice.

## VI. CONCLUSION

After careful consideration of Applicant's Application and Amended Application for Post-Conviction Relief, the Record of the case, and the testimony at the evidentiary hearing, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. To satisfy the two prongs of Strickland, Applicant must show that Counsel was deficient and also show the deficiency resulted in prejudice. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984). Applicant's Counsel was not deficient, but rather, offered "reasonably effective assistance" under "prevailing professional norms." Cherry v. State, 300 S.C. at 317 (1989). Further, I do not find any presumptions of prejudice. See Cronic v. U.S., 446 U.S. 648 (1984); Nance v. Ozmint, 367 S.C. 547 (2006). This case was "fact heavy" and I find Counsel's actions and decisions were based upon strategic decision. See Roseboro v. State, 317 S.C. 292 (1996); see also Solomon v. State, 347 S.C. 635 (2001) regarding strategic trial management. Applicant has not met his burden on any of the allegations made. Therefore, the Court denies Applicant's requested relief in this matter.

This Court notes if Applicant desires to appeal this Order, he must file and serve a notice of appeal within thirty days from the receipt of this Order through his counsel of record. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the Applicant wishes to seek appellate review, post-conviction relief

counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. This application for post-conviction relief is denied and dismissed with prejudice; and

2. Applicant shall remain in the custody of the State.

**AND IT IS SO ORDERED** this 19th day of September, 2024.

JOCELYN NEWMAN
Presiding Judge
Eleventh Judicial Circuit

Columbia, South Carolina