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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

Honorable Jocelyn J. Newman, Circuit Court Judge

KEVIN LAWRENCE PEARSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000233

APPENDIX

JOANNA K. DELANY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General
1000 Assembly Street, Room 519
Columbia, SC 29201
(803) 734-3737

S. R. HUBBARD, III
Solicitor, Eleventh Judicial Circuit
205 East Main Street
Lexington, SC 29072
(803) 785-8352

ATTORNEYS FOR RESPONDENT

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1 State of South Carolina) In the Court
) Of General Sessions
2 County of Lexington) Indictment No.: 2019-GS-32-02886
)
3 State of South Carolina,)
)
4 Plaintiff,)
)
5 vs.) Transcript of Record
)
6 Kevin Lawrence Pearson,)
)
7 Defendant.)
____________________________)
8

9

November 21 and 22, 2019
10 Lexington, South Carolina

11

12 BEFORE:

13 The Honorable Frank Addy, Judge

14

15 APPEARANCES:

16

Sutania Fuller, Assistant State Solicitor
17 Attorney for the State

18

19 David Mauldin, Assistant Public Defender
Attorney for the Defendant
20

21 ALSO PRESENT:

22 Kevin Lawrence Pearson

23

24

25

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EXHIBITS

NO.	DESCRIPTION	ID	EVDS.
NONE			

1 Thereupon, the following proceedings were had,
2 THE COURT: Let's do the murder. And let's make
3 sure your client doesn't have a superfluous third nipple
4 please.
5 MS. FULLER: Thank you, Your Honor. You had this
6 matter I want to say last week or maybe the term before.
7 THE COURT: Okay. The gentleman's name is?
8 MS. FULLER: Kevin Pearson. Your Honor, we had come
9 before you previously to place an offer and revocation on
10 the record. After that moment, you indicated we weren't
11 too far away. Defense counsel and I engaged in further
12 conversations and we agreed on a negotiated plea to 25
13 years on voluntary manslaughter. That was slated for
14 schedule today at 3:00. The victims were present. At
15 that point I was told that the defendant has changed his
16 mind again and is now rejecting that plea offer and
17 wishes to fire his attorney. So we are here to, at his
18 request to put this on the record and he wishes to be
19 heard. I'm not sure if there's any valid grounds for
20 relief of counsel at this point.
21 Just some minor history in this case, Your Honor.
22 The defendant, of course, was arrested back in June of
23 2018. He had an appearance in August of '18. On August
24 6th Judge Griffith handled an attorney matter and gave
25 the defendant 10 days to obtain counsel. He had

1 expressed in those two months that he was gonna retain
2 counsel and he didn't. Then on August 27th, that's when
3 the Public Defender's Office was appointed and discovery
4 began on September 26th of 2018. So now we are here.
5 We've been trying to work towards the resolution.
6 THE COURT: Clearly you have been.
7 MS. FULLER: And at this point there's nothing
8 more I can do. I can tell him now whoever he hires,
9 there is no offer less than murder so it was good through
10 today. I don't like wasting victims' time. I don't like
11 wasting court time. And I don't like defendants who play
12 with the system. So that is where we are and I know he
13 wishes to be heard.
14 THE COURT: I'm assuming this was the homicide plea
15 that was set for this afternoon --
16 MS. FULLER: That's correct, Your Honor.
17 THE COURT: -- that I wasn't expecting to take right
18 now.
19 MS FULLER: That's correct, Your Honor.
20 THE COURT: Okay. Well, Mr. Mauldin, the ball is in
21 your court so basically I assume that he's changed his
22 mind which, of course, is his right.
23 MR. MAULDIN: Yes, sir.
24 THE COURT: Anything that you feel like you need to
25 put on the record about the situation?

1 MR. MAULDIN: Well, no. No, Your Honor. I just
2 discussed it with him when he was brought over today and
3 I let him know, I dropped a letter off at the jail
4 earlier in the week that he would be brought over today.
5 We discussed plea arrangements last week and he told me
6 today that he did not wish to accept it and that also he
7 wished to have me relieved. I said we can see what we
8 can do about it.
9 THE COURT: All right. Did he explain to you the
10 grounds that he sought to get you relieved --
11 MR. MAULDIN: No, Your Honor.
12 THE COURT: -- or what he's talking about? Mr.
13 Pearson, what's the situation here? Don't talk about the
14 facts, but I do understand that you have chosen to reject
15 the offer for a negotiated 25 year sentence on the charge
16 of voluntary manslaughter; is that correct?
17 KEVIN PEARSON: I never, uhm, I never agreed to it
18 in the first place.
19 THE COURT: Okay. All right. Well, apparently
20 there was some discussion and some direction given to
21 your attorney that you had agreed to a 25 year offer. Am
22 I wrong here or --
23 KEVIN PEARSON: I told him, I told him I wasn't, I
24 wasn't sure yet so I would need more time to think about
25 it because it was like, he came to me and he was like I

1 need a decision by the end of the day.
2 MR. MAULDIN: And then I got him an extra day and
3 then came back and here we are today, Your Honor.
4 THE COURT: I understand. Okay. Mr. Pearson, you
5 understand if you reject this -- Let's deal with these
6 two different things. You understand that by rejecting
7 this offer of voluntary manslaughter, the State is
8 pulling everything. Your option will be in the future --
9 And understand your lawyers cannot force the State to
10 make any offer. You're not entitled to anything other
11 than a jury trial. That's the only thing that you're
12 promised under the law. You're not promised an offer,
13 you're not guaranteed anything other than a fair jury
14 trial.
15 KEVIN PEARSON: Yes, sir.
16 THE COURT: If they pull this offer today,
17 Mr. Pearson, I just want you to be totally, totally clear
18 on what's gonna happen. You will be looking at going to
19 trial for murder. It is entirely possible that if you
20 are convicted of murder, the penalty in that case is 30
21 years to life, okay, sir? You would have to serve that
22 day for day.
23 KEVIN PEARSON: Yes, sir.
24 THE COURT: A voluntary manslaughter conviction
25 you'd have to serve 85 percent of whatever it is that you

1 get convicted of, okay?
2 KEVIN PEARSON: Yes, sir.
3 THE COURT: So 85 percent is what you would have to
4 serve. It's entirely possible that the Court may
5 conclude that you are entitled to a lesser included
6 charge of voluntary manslaughter or maybe even an
7 involuntary manslaughter. I don't know if that's
8 something that you've talked to your lawyer about. Could
9 be that you're entitled to a self defense charge. Could
10 be that you're entitled to the defense of accident or for
11 that matter suicide, all right? But you understand, Mr.
12 Pearson, what I'm getting at is that you're gonna be
13 between a rock and a hard place going forward if you
14 choose to decline to accept this offer. Do you
15 understand that?
16 KEVIN PEARSON: Yes, sir.
17 THE COURT: In your professional judgment, Mr.
18 Mauldin, do you feel like or did you suggest any course
19 of action to Mr. Pearson as it relates to the offer after
20 looking at the facts?
21 MR. MAULDIN: I just discussed basically the same
22 thing you did.
23 THE COURT: The benefits and the risks?
24 MR. MAULDIN: Right. There was, I think we were
25 talking about 22 years a couple of weeks ago and this

1 like two more years service versus a potential for the
2 rest of his life.
3 THE COURT: Right. All right. Mr. Pearson, do you
4 have any prior experience in the criminal justice system?
5 KEVIN PEARSON: Yes, sir.
6 THE COURT: Did they involve trials or did they
7 involve pleas?
8 KEVIN PEARSON: Pleas.
9 THE COURT: Pleas. Were they the result of plea
10 bargains or did you plead straight up or can I ask you?
11 KEVIN PEARSON: Plea bargain.
12 THE COURT: Well, so you understand somewhat about
13 how the system works, Mr. Pearson. There are risks and
14 rewards to every action that you choose to take. I've
15 got a very simple question for you. Do you want to plead
16 guilty to voluntary manslaughter and receive a guaranteed
17 25 year sentence or would you rather go to trial and see
18 what happens at trial? What's your choice?
19 KEVIN PEARSON: I would rather to go to plea.
20 THE COURT: You would rather go to plea?
21 KEVIN PEARSON: Yes, sir.
22 THE COURT: Okay. That's the best it's gonna get is
23 25 years. You want the 25 years or no?
24 KEVIN PEARSON: Yes, sir.
25 THE COURT: All right. Sign right here on the

1 dotted line, let your attorney sign next to you and we'll
2 go ahead and take this plea, okay, sir?
3 MS. FULLER: Your Honor, if I may, the victims are
4 not here. They left because --
5 THE COURT: Right. May I suggest that what we could
6 do is I simply go through a colloquy and then they would
7 be welcome to join at some later point tomorrow and we
8 can finalize it then.
9 MS. FULLER: Okay.
10 THE COURT: Because I'm hearing that the offer
11 expires today so --
12 MS. FULLER: It does.
13 THE COURT: -- if we don't do it today, then it's
14 off the table so...
15 MS. FULLER: Okay. Thank you, Your Honor.
16 THE COURT: Okay. We're going back on the record on
17 the case 19-GS-32-* 2886, State of South Carolina versus
18 Kevin Lawrence Pearson. Mr. Pearson is indicted for
19 murder, however, after the colloquy that we had just had
20 with him, it's apparent that he wants to enter a plea of
21 guilty to the offense of voluntary manslaughter.
22 Mr. Mauldin, you are representing Mr. Pearson on
23 these charges and I assume that you have explained that
24 this carries up to 30 years, I think a minimum of one
25 year; is that correct?

1 MR. MAULDIN: Yes, sir, Your Honor.
2 THE COURT: And you've also reviewed with him the
3 fact that this is an 85 percent offense and it is
4 classified as a violent and a most serious offense?
5 MR. MAULDIN: That's correct, Your Honor. It's a
6 strike and it's a violent crime.
7 THE COURT: All right. Per what we were discussing
8 just a few moments ago, the sentence in this case would
9 be a negotiated 25 year sentence. You've explained to
10 Mr. Pearson that if I accept his plea, I cannot go above
11 25 years and at the same time I cannot go below it. Of
12 course, he'll receive credit for any time that he's
13 accumulated pre-trial, but again, the sentence which
14 would have to be imposed would be a 25 year sentence. Is
15 that your understanding?
16 MR. MAULDIN: That's correct, Your Honor.
17 THE COURT: Now, have you reviewed with Mr. Pearson
18 all his constitutional rights including his right to a
19 jury trial and the attendant ramifications of this plea?
20 MR. MAULDIN: Yes, sir, Your Honor.
21 THE COURT: And do you believe his decision to plead
22 guilty is a proper one, sir?
23 MR. MAULDIN: Yes, sir.
24 THE COURT: Mr. Mauldin, from your investigation of
25 the facts and circumstances surrounding this case, do you

1 believe that the State has sufficient and credible
2 evidence to prove Mr. Pearson's guilt to a jury beyond a
3 reasonable doubt and if he were to proceed to trial his
4 conviction would be likely?
5 MR. MAULDIN: Yes, sir.
6 THE COURT: Mr. Pearson, if you could just raise
7 your right hand, I need to put you under oath, okay?
8 Thereupon,
9 KEVIN LAWRENCE PEARSON
10 after having been first duly sworn, testified as follows,
11 THE COURT: Sir, are you Kevin Lawrence Pearson?
12 KEVIN PEARSON: Yes, sir.
13 THE COURT: Mr. Pearson, I'm told that you want to
14 plead guilty to voluntary manslaughter. Our conversation
15 a few moments ago, there was some hesitation, there were
16 some questions, but you understand that you told me a few
17 minutes ago you would rather take the 25 years on the
18 voluntary than risk going to trial; am I correct?
19 KEVIN PEARSON: Yes, sir.
20 THE COURT: Do you understand, Mr. Pearson, that
21 you'll have to serve 85 percent of whatever that
22 translates into. Of that 25 year sentence you'll have to
23 serve 85 percent of that time. Do you understand that?
24 KEVIN PEARSON: Yes, sir.
25 THE COURT: However long you've been in jail

1 obviously you'll get credit for that jail time against
2 the 25 years, but you're still looking at serving 85
3 percent. Do you understand, sir?
4 KEVIN PEARSON: Yes, sir.
5 THE COURT: Additionally, this is classified as a
6 most serious crime meaning if in the future if you were
7 convicted of another most serious offense after doing
8 this 25 years, the State could seek life without the
9 possibility of parole against you. Do you understand
10 that, sir?
11 KEVIN PEARSON: Say that again.
12 THE COURT: It's a two strike sort of situation. So
13 if in the future you were convicted of another most
14 serious offense like voluntary manslaughter or armed
15 robbery, rape, murder, second time around, second
16 conviction that you have, let's assume you commit another
17 voluntary manslaughter in the future, the second time the
18 State can seek life without the possibility of parole
19 against you. Do you understand that?
20 KEVIN PEARSON: Yes, sir.
21 THE COURT: That's not discretionary. It's a
22 sentence the Court would have to impose if that were to
23 come to pass. Do you understand, sir?
24 KEVIN PEARSON: Yes, sir.
25 THE COURT: Of course, this is also classified as a

1 violent offense. That will limit the availability of
2 rehabilitative programs for you while in the Department
3 of Corrections.
4 Mr. Pearson, in the last 24 hours have you taken any
5 medication or any substance that affects your thinking?
6 KEVIN PEARSON: No, sir.
7 THE COURT: Have you ever been treated for any
8 mental illness type issues?
9 KEVIN PEARSON: No, sir.
10 THE COURT: Mr. Pearson, were you in any kind of
11 special education classes when you were in school?
12 KEVIN PEARSON: No, sir.
13 THE COURT: Are you, in fact, guilty of voluntary
14 manslaughter?
15 KEVIN PEARSON: Yes, sir.
16 THE COURT: The Solicitor is gonna give me the
17 facts. I need you to pay very close attention to what
18 Ms. Fuller alleges. When she's done speaking, I'll then
19 ask you if that's what took place, okay, sir? Solicitor,
20 if you would please.
21 MS. FULLER: Thank you, Your Honor. I'll give just
22 the basic facts for the accepting the plea. This
23 incident occurred back on February 8th of 2017. Law
24 enforcement received a call approximately 11:17 that
25 morning. The 911 call was able to give law enforcement

1 the vehicle description of the shooter in this case which
2 was driving a Honda Accord and provided a tag number.
3 Law enforcement -- And also told law enforcement that the
4 shooter had a dog in the car with him. They were able to
5 run that tag. The tag came back registered to the
6 defendant's sister in this case. When law enforcement
7 questioned the sister shortly after the shooting, she
8 indicated that her brother had just dropped off the dog
9 and the car. She had told law enforcement that the
10 defendant said he had done something bad. The mother,
11 Pearson's mother told law enforcement that he left that
12 morning with the dog and the sister's car. An eyewitness
13 was able to identify Pearson as the individual that
14 actually shot Rodney on Princeton Road that day and that
15 the incident location was ████ Princeton Road in West
16 Columbia. I think that's basic enough for the plea and I
17 can present a full presentation when we have the victims
18 here.
19 THE COURT: Mr. Pearson, you heard what the State
20 alleges happened back on February the 8th of 2017. Is it
21 true that you were responsible for this homicide and that
22 you're guilty of voluntary manslaughter, sir?
23 KEVIN PEARSON: Yes, sir.
24 THE COURT: And I need to go over with you rights
25 that you're giving up by pleading guilty. If you have

1 any question about anything I say, I want you to stop me
2 and I'll let you talk to Mr. Mauldin and you can ask him;
3 is that fair?
4 KEVIN PEARSON: Yes, sir.
5 THE COURT: Mr. Pearson, you understand that, of
6 course, you do not have to plead guilty to this charge.
7 You could have a jury trial on it. Do you understand,
8 sir?
9 KEVIN PEARSON: Yes, sir.
10 THE COURT: We were talking about that a moment ago.
11 In a jury trial the State, you and your attorney would
12 help pick 12 people from Lexington County and the State
13 would have the burden of proving your guilt beyond a
14 reasonable doubt to the unanimous satisfaction of all 12
15 of those jurors. So all 12 of them would have to agree
16 that you are guilty of this before you could ever be
17 punished. Do you understand, sir?
18 KEVIN PEARSON: Yes, sir.
19 THE COURT: In a trial the State would try to meet
20 that burden by calling witnesses. They would come
21 forward, they would be sworn, and you and Mr. Mauldin
22 would have the chance to see, confront and cross examine
23 those witnesses. You could ask them any question
24 relevant to any issue involved in these cases and they
25 would have to answer those questions. Do you understand,

1 sir?
2 KEVIN PEARSON: Yes, sir.
3 THE COURT: At the trial you have no burden of
4 proof. The burden is always on the State to prove your
5 guilt beyond a reasonable doubt. However, if you wanted
6 to, you could call your own witnesses to testify. If you
7 had witnesses who refused to come to court, you could
8 subpoena them, you could force them to come to court. Do
9 you understand, sir?
10 KEVIN PEARSON: Yes, sir.
11 THE COURT: They wouldn't have a choice. They would
12 have to show up. At trial, Mr. Pearson, you could also
13 take the stand in your own defense. Understand though
14 that no one can force you to be a witness against
15 yourself in any case where you are facing criminal
16 charges. Do you understand that, Mr. Pearson?
17 KEVIN PEARSON: Yes, Your Honor.
18 THE COURT: So if you chose not to testify, I would
19 instruct the jury that they could not use that as
20 evidence of guilt, they couldn't hold it against you,
21 they couldn't even discuss it in the jury room. That's
22 your Fifth Amendment Right against self incrimination.
23 By pleading guilty you waive that in that you admit guilt
24 to these charges. Do you understand, sir?
25 KEVIN PEARSON: Yes, sir.

1 THE COURT: Additionally, at trial you would be
2 presumed innocent. The way presumption of innocence
3 works, Mr. Pearson, is quite simple. I describe it to a
4 jury as being like a robe of righteousness that's placed
5 about your shoulders and stays with you until the jury
6 takes it from you. If you plead guilty, obviously you
7 waive that presumption of innocence. Understand right
8 now, Mr. Pearson, in the eyes of the law you're
9 considered an innocent man because I have yet to accept
10 your guilty plea and you have yet to face trial on this
11 charge. Do you understand that, sir?
12 KEVIN PEARSON: Yes, sir.
13 THE COURT: If you plead guilty though, you waive
14 that presumption of innocence. You also waive your right
15 to challenge any evidence that the State may have against
16 you.
17 The Solicitor gave me only a very brief recitation
18 of the facts so I don't know if you gave any statements
19 that might be incriminating to law enforcement. I don't
20 know if there was any search conducted of your property
21 or your person, where they found evidence. I don't know
22 exactly what it is that they have evidence wise against
23 you. By pleading guilty you're waiving your right to
24 challenge any and all evidence. Do you understand that,
25 sir?

1 KEVIN PEARSON: Yes, sir.
2 THE COURT: Finally, Mr. Pearson, at trial you could
3 present any defense. I'm sure that you and Mr. Mauldin
4 have discussed possible defenses to this charge,
5 correct?
6 KEVIN PEARSON: No, sir.
7 THE COURT: You haven't talked about any defenses?
8 KEVIN PEARSON: No, sir.
9 MR. MAULDIN: We talked about possible alibis at the
10 beginning.
11 THE COURT: Alibis. Well, understand, Mr. Pearson,
12 defenses to this charge could be something like
13 Mr. Mauldin said, alibi. If you weren't present at the
14 scene, obviously somebody else had to kill this person,
15 it wasn't you, all right?
16 KEVIN PEARSON: Yes, sir.
17 THE COURT: Unless it's some sort of hand of one
18 hand of all kind of a thing, but alibi is one defense you
19 can present. At trial you could also present maybe a
20 self defense type defense. If you plead guilty though,
21 the important thing for you to understand is that if you
22 plead guilty, you waive your right to present any and all
23 defenses. Do you understand, sir?
24 KEVIN PEARSON: Yes, sir.
25 THE COURT: Mr. Pearson, all these are very

1 important rights. Are you sure that you want to give
2 them up and plead guilty?
3 KEVIN PEARSON: Yes, sir.
4 THE COURT: I understand that we started this off
5 with maybe some discord between you and Mr. Mauldin and
6 you were looking to have him fired. I'll tell you that
7 typically I do not relieve counsel if they've been
8 appointed. If you wanted to retain somebody else, that
9 might be your business, but it would not delay the
10 resolution of this case and obviously wouldn't result in
11 a better offer from what the Solicitor is telling us so I
12 realize that maybe you and Mr. Mauldin may have disagreed
13 at times about this case, but are you satisfied with the
14 way he's represented you?
15 KEVIN PEARSON: Yes, sir.
16 THE COURT: He's talked to you enough? You
17 understood all your conversations with him?
18 KEVIN PEARSON: Yes, sir.
19 THE COURT: Do you have any other complaints to make
20 against Mr. Mauldin other than you couldn't get a better
21 deal?
22 KEVIN PEARSON: No, sir.
23 THE COURT: And do you have any complaints to make
24 against the Solicitor's Office, law enforcement, court
25 personnel or anyone involved in this case?

1 KEVIN PEARSON: No, sir.
2 THE COURT: Aside from the 25 year sentence has
3 anyone promised you anything else or held out any other
4 hope of reward to get you to plead guilty?
5 KEVIN PEARSON: No, sir.
6 THE COURT: Anyone try to threaten you, force you,
7 coerce you in any way to get you to plead guilty?
8 KEVIN PEARSON: No, sir.
9 THE COURT: You're pleading guilty of your own free
10 will then?
11 KEVIN PEARSON: Yes, sir.
12 THE COURT: Have you understood all of my
13 questions?
14 KEVIN PEARSON: Yes, sir.
15 THE COURT: Is there anything that you want to ask
16 me about anything that we have gone over?
17 KEVIN PEARSON: No, sir.
18 THE COURT: You have understood everything we have
19 talked about?
20 KEVIN PEARSON: Yes, sir.
21 THE COURT: You're sure you want to do this,
22 correct?
23 KEVIN PEARSON: Yes, sir.
24 THE COURT: I do find there's a substantial factual
25 basis for this plea. It is freely, voluntarily,

1 knowingly and intelligently made. Mr. Pearson is
2 satisfied with the assistance of Mr. Mauldin who has
3 provided very good representation on this case in the
4 opinion of this Court. The Court will accept his plea.
5 Mr. Pearson, I'm going to - I have accepted your
6 plea and what we will do is we'll defer sentencing until
7 such time as the family of the decedent can be present
8 some time tomorrow probably, okay? Then we'll proceed at
9 that point in time. If you have any relatives that you
10 need Mr. Mauldin to get here, just give him their phone
11 numbers or whatever and he'll make every effort to make
12 sure that they're here sometime tomorrow when me finalize
13 this, okay, sir?
14 KEVIN PEARSON: Yes, sir.
15 THE COURT: Have a good night. We will be at ease
16 on this plea.
17 MS. FULLER: Thank you, Your Honor.
18 (Whereupon, court was adjourned for the evening.)
19
20
21
22
23
24
25

1 NOVEMBER 22, 2019
2 * * * * *
3 THE CLERK: Kevin Pearson.
4 MR. MAULDIN: The clerk wants to know if he needs to
5 be sworn in. I think we've already done that
6 yesterday.
7 THE COURT: Madam clerk, let me go ahead and get the
8 indictments back and all of that, if I could.
9 THE CLERK: (Proffering.)
10 THE COURT: Okay. Back on the record in the State
11 versus Kevin Lawrence Pearson. Mr. Pearson is present
12 with counsel.
13 Yesterday for the benefit of the victim's family who
14 is present, I'm sure that the Solicitor has already
15 briefed you on this, but the Court when presented with
16 Mr. Pearson's change of heart about accepting the
17 negotiated sentence of 25 years, when the Court learned
18 that that matter or that that offer expired at the close
19 of business yesterday, the Court had to go ahead and
20 accept his plea and so I went through just a very basic
21 colloquy which I assure you is not at all interesting.
22 It's just a review of Mr. Pearson's constitutional rights
23 including his right to a jury trial and the Court
24 ultimately accepted Mr. Pearson's plea of guilty, but
25 that is all that we conducted yesterday and again we had

1 to do that because it was about 5:30, 5:45 yesterday
2 afternoon and as I said earlier, the 25 year negotiated
3 sentence was going to expire if he did not enter that
4 plea so the Court had to take that plea yesterday, and I
5 know that y'all had been up here earlier yesterday
6 anticipating being able to see that plea when you were
7 informed by the Solicitor that Mr. Pearson had changed
8 his mind and decided on trial instead. So I just wanted
9 to bring you all up to speed and explain why it was
10 necessary that we go forward without your presence here
11 late last evening.
12 Where we left off, I had accepted his plea.
13 Solicitor, I think you had given me just a very brief
14 recitation. Obviously this is a negotiated sentence of
15 25 years so the Court has absolutely no discretion and
16 I'm very anxious to hear or allow the victim's family to
17 place anything on the record in terms of how this has
18 obviously affected them deeply, but if you want to
19 supplement your initial factual presentation yesterday
20 briefly, then go ahead and feel free to, okay?
21 MS. FULLER: Yes, Your Honor. I'll do so briefly
22 just to make sure the entire facts are on the record.
23 Your Honor, you heard yesterday the incident
24 occurred on February 8th of 2017. You heard about the
25 Honda that he was driving, the tag that was registered

1 that came back to him. His family members saying that he
2 drove that Honda and had that dog with him when he came
3 and left and an eye witness identified him as being the
4 shooter.
5 For basically some more background, what we can
6 tell, the defendant in this case by review of his cell
7 phone records and his Facebook, he had in this case
8 motive. We don't have the proof, but we have that in
9 this case in terms of why he would have shot Rodney. He
10 believed that Rodney was involved in a drive-by shooting
11 that he had been involved in. So the investigation led
12 us to believe that Pearson believed that he was involved,
13 but law enforcement didn't believe that Rodney was the
14 shooter as it relates to Pearson's case.
15 How that's relevant is while Pearson was in the
16 hospital, he was unable to talk because he was shot in
17 the throat and that's when he sent messages out putting
18 hits out on Rodney and some of those text messages
19 actually had Rodney's name listed out, listed out his
20 grandmother's house and so we know that he knew where
21 Rodney was living at the time which was at his
22 grandmother's house and that's where he was actually
23 staying the night before he died.
24 In reviewing those messages as well as speaking with
25 law enforcement it was evidently clear which is important

1 for Your Honor for the record is the defendant was a
2 validated gang member at that time so when he was
3 ordering people to actually shoot up these houses, it was
4 actually getting done and those messages confirmed it
5 when they responded. One message that the defendant
6 said, he said he's so mad right now, he wants to kill
7 somebody. He also indicated that he tells this other
8 individual that he doesn't care about doing 15 years in
9 terms of shooting. One individual reached out
10 specifically saying Rodney wasn't involved and he said,
11 he did. I ain't slow. He later learned. And he says I
12 can't wait till I get out. I'm going pack mode. And
13 this is all evidence that I told defense counsel we would
14 use in trial and we prepared exhibits for already in this
15 case.
16 One specific message is please let Rodney's
17 grandma's house tonight, Your Honor. The day before the
18 shooting, 12 hours prior to this occurred, a co-defendant
19 messaged him stating where Rodney was which was on that
20 Princeton Road address. He had been there the day before
21 and he says, I'm gonna say something when I pull up
22 tomorrow. And 12 hours later Rodney was actually dead
23 and that's when 911 was being called. After the
24 shooting, messages confirmed he's trying to get away.
25 There's one particular message that he sends out to

1 someone saying I need to go to Tennessee ASAP. And this
2 is within an hour of the shooting, Your Honor. Then
3 someone text him. He says they're coming your way. Park
4 your car and walk. So obviously people knew what was
5 going on and those are the messages that were revealed.
6 One particular message says, F, I ain't ready for
7 20. And we took that to mean 20 years in prison in that
8 message. And in response to when he says I'm gonna do
9 something when I pull up and this is 12 hours prior to
10 the shooting, the response was DOA, which we know means
11 dead on arrival. Another individual told law enforcement
12 that Pearson made a statement saying he didn't mean to
13 shoot Rodney in the head and in looking at the autopsy
14 and the crime scene that's exactly where he was shot.
15 And that's not something that someone who wasn't involved
16 would know happened because that wasn't even released
17 specifically where he was shot at the time that the
18 statement was made.
19 Your Honor, those are the additional facts that I
20 think would be necessary for the record so there is more
21 evidence. The text messages, the evidence of flight. I
22 don't know if you remember this, but he actually fled and
23 he was on the run for about 16 or 18 months. This
24 happened February 8th. He wasn't arrested until June
25 21st of 2018 and so he was actually gone. His cell phone

1 records, one of the maps that we made and provided to
2 defense report, showed him actually going all the way to
3 the northern part of the country and then eventually
4 coming back where he was caught in Richland County. So
5 he did leave the state after this happened.
6 His prior record, for the Court, is a 2011 assault
7 high and aggravated, a 2014 discharging firearms into a
8 dwelling, public disorderly conduct, and in 2015 he had a
9 parole revocation. In both years '11 and '14, Your
10 Honor, other charges were dismissed in exchange for the
11 plea. That's the extent of the factual presentation and
12 enough I think for the full acceptance of the plea, Your
13 Honor.
14 The victim's family, they did want to be here. I
15 don't believe that - I don't know if there's anything
16 specifically that they want to share, but I know in my
17 speaking with them, they wanted him to be held
18 accountable and that's what they sought. You know, I
19 know in speaking to the grandmother numerous times it
20 just scared her that hits were put out to shoot up her
21 house and so I know that was something and so they're in
22 agreeance with the negotiations here and I believe that's
23 all they wanted. They just wanted to be present for it.
24 THE COURT: Certainly. I just want to double check.
25 Anybody want to say anything to me or address the Court

1 in any way? I appreciate you being here. Okay. Thank
2 you all very much. Mr. Mauldin, happy to hear anything
3 that you may want to say, sir.
4 MR. MAULDIN: Thank you, Your Honor. Kevin has 519
5 days jail credit. He's 27, from West Columbia. Just has
6 a GED level of education. He's worked for a place called
7 Personal Care Plus. It's a nursing home I think a couple
8 years ago as office work filing. He worked there for
9 about a year. He does have a child that was born last
10 December while he was incarcerated. The child soon to be
11 one year old. He's got a lot of family in the area. His
12 sister Diamond. His brother-in-law Christopher Hall, his
13 grandmother Ella Dudley, cousin Randall Smith, they've
14 all come to prior bond hearings and that sort of thing
15 and his father Robert Dudley.
16 A bunch of family live in the Cayce/West Columbia
17 area. He did not want them to be here today and have
18 them go through this. He wanted to kind of spare them
19 that and kind of break it to them more easily. It's hard
20 to say how a fellow gets involved in this lifestyle, Your
21 Honor, growing up that way. Like I think the Solicitor
22 said, he was shot both in the throat and in the back that
23 went through his spine and into his lung. A couple
24 inches either way with either of those bullets and it
25 might have been a role reversal here. But hopefully

1 Kevin, he's a smart fellow. I've enjoyed my talks with
2 him at the jail. He's very personable. Hopefully he can
3 learn from this and further his education while he's in
4 jail and come out of this a more productive person.
5 Thank you, Your Honor.
6 THE COURT: Very good. Mr. Pearson, is there
7 anything that you would like to say, sir?
8 KEVIN PEARSON: No, sir.
9 THE COURT: Mr. Pearson, I've followed the
10 negotiations that y'all have entered into. I've
11 sentenced you to 25 years in the Department of
12 Corrections. You will receive, of course, credit for the
13 519 days that you served in pretrial confinement. Does
14 this comply with y'alls negotiations?
15 MS. FULLER: Yes, Your Honor.
16 MR. MAULDIN: Yes, Your Honor.
17 THE COURT: Mr. Pearson, good luck to you. Try to
18 use your time productively.
19 KEVIN PEARSON: Yes, sir.
20 MS. FULLER: Thank you, Your Honor.
21 THE COURT: Thank you.
22 WHEREUPON, THE HEARING WAS CONCLUDED.
23
24
25

1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

3 (COUNTY OF LEXINGTON)

4

5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,

6 and Official Circuit Court Reporter for the Eleventh Judicial

7 Circuit in and for the State of South Carolina, do hereby

8 certify that I reported the proceedings in the before

9 captioned case in the Court of General Sessions in and for the

10 State of South Carolina on the 21st and 22nd day of November,

11 2019.

12 I FURTHER CERTIFY that the forgoing 29 pages

13 constitute a true and accurate record of said proceedings.

14 I FURTHER CERTIFY that I am neither related, counsel

15 to, nor of interest to any party hereto.

16 IN WITNESS WHEREOF, I have hereunto set my hand at

17 Lexington County, this 30th day of January, 2021.

18

19

By:s/Steven E. LeBlanc

20 ________________________________

Steven E. LeBlanc, Sr., R.P.R.
21 Eleventh Circuit Court Reporter
State of South Carolina.

22

23

24

25

FORM 5

STATE OF SOUTH CAROLINA)
COUNTY OF)

Full name and prison number (if any) of Applicant
Kevin Lawrence Pearson 344570
v.
State of South Carolina

FILED
2020 NOV 20 PM 4:06
LISA M. COMER
CLERK OF COURT
LEXINGTON CO. SC

IN THE COURT OF COMMON PLEAS

2020CP3203901

APPLICATION FOR

POST-CONVICTION RELIEF

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 Perry CF SCDC
2. Name and location of Court which imposed sentence Lexington County Court 205 E Main st. Lexington, SC
3. Name(s) of co-defendant(s) (if any) ____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
   (a) Manslaughter 25 years
   (b) ____
   (c) ____
5. The date upon which sentence was imposed and the terms of the sentence:
   (a) NOV. 25 2019 ~~Nego Negtiated~~ Negotiated plea of 25years
   (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

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) Lowyer did not File an appeal

(b) ____

(c) ____

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

(a) Violation of 6th amendment

(b) Violation of 14th amendmet

(c) ~~[illegible]~~ Involuntary gulity Plea

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Strickland VS. Washington

(b) Strickland VS. Washington

(c) ~~[illegible]~~Boykin VS. Alabama

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

(a) any petition in a State Court under South Carolina Law? _____

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____

(d) any other petitions, motions or applications in this or any other Court? _____

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?

_____

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) 1st time P.C.R

(b) _____

(c) _____

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

(a) your arraignment and plea? _____

(b) your trial, if any? _____

(c) your sentencing? Y

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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

(a) the name and address of each attorney who represented you:

i. David Mauldin 407 1/2 west main St. Lexington SC, 29072

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

19. State clearly the relief you seek in filing this application:
Sentence relief or release and remain conviction & sentence or New trail

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

STATE OF SOUTH CAROLINA)
County of Lexington)
)

VERIFICATION

I, KP, 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.

SWORN to and subscribed before me this 30th day of October, 2020.

(L.S.)
Notary Public

My Commission Expires: 1-23-2023

Revised 3/2003

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

I, KP , 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.

[signature]
Applicant

SWORN or affirmed to and subscribed before me this 30th day of October, 2020.

[signature]
Notary Public

My Commission Expires: 1-23-2020

Revised 3/2003

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)	IN THE COURT OF COMMON PLEAS FOR THE ELVENTH JUDICIAL CIRCUIT
Kevin Lawrence Pearson, SCDC #344570,	)	Case No. 2020-CP-32-03091
Applicant,	)	
v.	)	**RETURN AND MOTION FOR A MORE DEFINITE STATEMENT** (COUNSEL APPOINTED)
State of South Carolina,	)	
Respondent.	)	

In response to the post-conviction relief (PCR) action commenced by Kevin Lawrence Pearson (Applicant) on November 20, 2020, the State makes this return:

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 on June 22, 2018, following an investigation into the shooting death of Rodney Isaac, which occurred approximately sixteen months prior. During its August 2019 term, the Lexington County Grand Jury indicted Applicant for murder (2019-GS-32-2886).

On November 21–22, 2019, Applicant appeared before the Honorable Frank R. Addy, Jr., and pleaded guilty to lesser-included offense of voluntary manslaughter. David Mauldin, Esquire (Counsel) represented Applicant. Assistant Solicitor Sutania Fuller, prosecuted the case. Pursuant to negotiations entered into between Applicant and the State, Judge Addy sentenced Applicant to twenty-five years' imprisonment. Applicant did not appeal his plea or sentence.

II. FACTS

On February 8, 2017 at approximately 11:17 AM, law enforcement received a 911 call

regarding a shooting. (Plea Tr. 13). The caller reported that the suspect was driving a Honda Accord and provided the tag number. (Plea Tr. 13–14). The caller also reported that a dog was in the vehicle. The tag came back registered to Applicant's sister. (Plea Tr. 14).

When law enforcement questioned the sister, she indicated her brother had just dropped off the dog and car. (Plea Tr. 14, 24). She stated that Applicant told her he "had done something bad." (Plea Tr. 14). Applicant's mother also told law enforcement that he left that morning with the dog in her daughter's car. (Plea Tr. 14, 24). An eyewitness later identified Applicant as the individual who shot Rodney Isaac at 3020 Princeton Road in West Columbia. (Plea Tr. 14).

Review of Applicant's cell phone and Facebook records indicate that Applicant believed Rodney was involved in a drive-by shooting where Applicant was shot in the throat. (Plea Tr. 24). Because Applicant was unable to talk at the time, he sent messages while he was in the hospital putting hits out on Rodney. (Plea Tr. 24). Some of the text messages had Rodney's name listed and his grandmother's address. (Plea Tr. 24). Rodney stayed at his grandmother's house the night before he died. (Plea Tr. 24). Applicant is a validated gang member. (Plea Tr. 25). Law enforcement recovered multiple incriminating text messages. (Plea Tr. 25–26). Applicant was also on the run for approximately sixteen months after the shooting. (Plea Tr. 26).

III. CURRENT APPLICATION

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

> (10) State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
> (a) "Violation of 6th amendment"
> (b) "Violation of 14th amendment"
> (c) "Involuntary guilty plea"
>
> (11) State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) "Strickland vs. Washington"
(b) "Strickland vs. Washington"
(c) "Boykin v. Alabama"

Applicant requests relief as follows:

> "Sentence relief or reverse and remain conviction and sentence or new trial"

Attached to this return and incorporated by reference are the Lexington County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the records of the current PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

IV. MOTION FOR A MORE DEFINITE STATEMENT

In response to question nine as to why he did not pursue a direct appeal, Applicant states "lawyer did not file an appeal." Based on this response and Applicant's failure to state this as an enumerated ground for relief, it is unclear whether Applicant is alleging plea counsel was ineffective for failing to inform Applicant of his right to appeal or for failing to file a notice of appeal on Applicant's behalf. Moreover, it is impossible for the State to adequately respond to Applicant's allegations of ineffective assistance of counsel because Applicant has failed to set forth facts to "support each ground" or to explain with specificity the facts upon which his claims are based. S.C. Code Ann. § 17-27-50 (requiring an applicant to "specifically set forth the grounds upon which the application is based").

Accordingly, the State moves for Applicant, through counsel, to amend his application to provide a more definite statement of his allegations pursuant to Rule 12(e), SCRCP and the Post-Conviction Procedure Act. *See Welch v. MacDougall*, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (stating it is incumbent upon an applicant to make at least a prima facie showing entitling him to relief before an evidentiary hearing will be scheduled and held); *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"); Rule 8(a)(2), SCRCP (requiring all civil pleadings to include "a short and plain statement of the facts showing that the pleader is entitled to relief"); Rule 71.1(d), SCRCP ("Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.").

V. RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

A. Ineffective Assistance of Plea Counsel, Generally

Applicant's claims of ineffective assistance of counsel are without merit. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant—like all other defendants—the right to "assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." *Strickland v. Washington*, 466 U.S. 668, 685 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *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.

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 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*, 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).

B. Involuntary Guilty Plea

"[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced." *Reed v. Becka*, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). Accordingly, because a criminal defendant waives several

constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Pittman v. State*, 337 S.C. 597, 524 S.E.2d 623 (1999). To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. *Brady v. United States*, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant's choice. *Id.* at 755; *see also United States v. Smith*, 440 F.2d 521, 528–529 (7th Cir. 1971) (Stevens, J., dissenting) (explaining that voluntariness relates to the trustworthiness of the admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. *Boykin*, 395 U.S. at 243. Additionally, the defendant "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman*, 337 S.C. at 599, 524 S.E.2d at 624. The defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993); *see generally Wolfe*, 326 S.C. 158, 485 S.E.2d 367 (guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge). To ensure the defendant understands the consequences of his guilty plea, the plea judge "usually questions the defendant about the facts

surrounding the crime and punishment that could be imposed." *Dover v. State*, 304 S.C. 433, 434–35, 405 S.E.2d 391, 392 (1991). However, the plea judge "does not have to direct the defendant's attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea." *Carter v. State*, 329 S.C. 355, 362, 495 S.E.2d 773, 776 (1998).

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). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, *Brady*, 397 U.S. at 750–53, or by increasing the risks of punishment on those who do not. *Alford*, 400 U.S. at 37.

Nonetheless, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual . . . , a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." *Dalton 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) (observing that "guilty plea[s] must be treated as final in the vast majority of cases" and instructing that caution must be exercised so as not to "undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea"). Indeed, admissions made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements." *Dalton*, 376 S.C. at 137–38, 654 S.E.2d at 874 (internal citations and quotation marks omitted); *cf. Blackledge*, 431 U.S. at 73–74 (pointing out that representations made by a defendant,

his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a "formidable barrier in any subsequent collateral proceedings").

The voluntariness of a guilty plea, however, "is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). An applicant who enters a plea on the advice of counsel may "only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the [applicant] would not have pled guilty, but would have insisted on going to trial." *Roscoe*, 345 S.C. at 20, 546 S.E.2d at 419. In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. *Wolfe*, 326 S.C. at 165, 458 S.E.2d at 370; *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*, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); *cf. Hill*, 474 U.S. at 58 ("[R]equiring a 'prejudice' showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.' "). Reviewing "[c]ourts should not upset a plea solely because of *post hoc* assertions

from a defendant about how he would have pleaded but for his attorney's deficiencies." *Lee*, 137 S. Ct. at 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*, 282 S.C. at 134, 318 S.E.2d at 361.

C. Conclusion and Action Requested

The State submits Applicant cannot satisfy either requirement of the *Hill* test. However, as discussed above, the State is presently without sufficient information to fully respond to Applicant's allegations of ineffective assistance of counsel because he failed to set forth facts and circumstances on which his claims are based. Once a more definite statement is provided, the State requests an evidentiary hearing be held on the claims of ineffective assistance of counsel and involuntary guilty plea to fully resolve the issues. *See Sharper*, 279 S.C. at 265, 305 S.E.2d at 248 (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 PROCESS

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 application. *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 (2019), or, alternatively, the State will request a continuance in the matter. *Id.* at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) ("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.").

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRCP. *See also* Rules 15(a)–(b), SCRCP. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRCP.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, 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. 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.

VII. General Denial

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

[*Conclusion and signature on following page*]

VIII. CONCLUSION

WHEREFORE, the State respectfully requests this Court grant its motion for a more definite statement as set forth in section IV, and thereafter convene an evidentiary hearing on the allegations of ineffective assistance of counsel and involuntary guilty plea.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LILLIAN L. MEADOWS
Assistant Attorney General

By: ______________________
ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

June 16, 2021

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
	)	
	)	2020-CP-32-03091
	)	
KEVIN LAWRENCE PEARSON, #344570	)	
	)	
Applicant,	)	
	)	
vs	)	CERTIFICATE OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

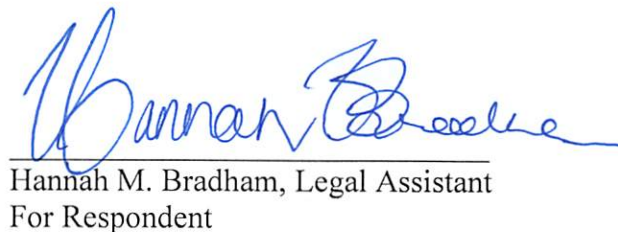
1. I am an employee of the Respondent in the above-captioned action.

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:

Ola A. Johnson
Ola A. Johnson, Attorney at Law
PO Box 549
Lexington, SC 29071

DATED this 16th day of June, 2021



Hannah M. Bradham, Legal Assistant
For Respondent

FILED
2022 MAY 25 AM 11:57
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

ORIGINAL

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT

KEVIN PEARSON,) **CASE NO.: 2020-CP-32-03901**
)
Applicant,)
)
v.) **AMENDMENT TO APPLICATION**
) **FOR POST CONVICTION RELIEF**
STATE OF SOUTH CAROLINA,)
)
Respondent.)
)

Applicant, by and through his undersigned attorney, hereby amends his application for Post-Conviction Relief. This amended complaint adopts and includes all grounds in the original application filed November 20, 2020, by Applicant. Applicant further alleges as additional grounds regarding his claim of ineffective assistance of counsel as to David Mauldin as follows:

1. Applicant's counsel, David Mauldin, failed to meet with the applicant a sufficient number of times to properly review the evidence and discuss this case with applicant and gave Applicant part of the discovery one week before the plea.

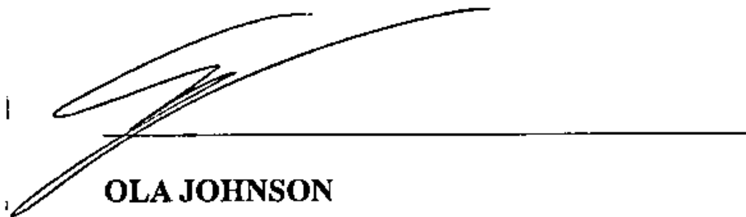
2. Applicant's counsel, David Mauldin, failed to properly investigate the facts of this case and did not have a private investigator work on this case.

3. Applicant's counsel, David Mauldin, failed to file an appeal after the Applicant requested this during a conversation with counsel the day of the plea.

4. Applicant was coerced into entering a guilty plea after the presiding judge informed Applicant he couldn't get a better offer if he retained somebody else to represent him (P. 19, Lines 8-11), after Applicant requested a hearing to have counsel relieved (P. 5).

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

Respectfully submitted,



OLA JOHNSON

Attorney for Applicant

P.O. Box 549

Lexington, SC 29071

803-360-8692 Phone

This 25 day of May, 2022

STATE OF SOUTH CAROLINA) SOUTH CAROLINA CIRCUIT COURT 11
COUNTY OF LEXINGTON) DOCKET NO. 2020-CP-32-03901

KEVIN LAWRENCE PEARSON,)
Plaintiff,)
versus)
)
STATE OF SOUTH CAROLINA,)
Defendant.)

H E A R I N G
BEFORE THE HONORABLE JOCELYN J. NEWMAN

DATE: June 8, 2022
TIME: 1:46 p.m.
LOCATION: South Carolina Circuit Court 11

TRANSCRIBED BY: Mary Ragsdale

LEGAL EAGLE
Post Office Box 5682
Greenville, South Carolina 29606
864-467-1373
depos@legaleagleinc.com

1 APPEARANCES:

2

3 OLA JOHNSON, ESQUIRE

4 Ola A. Johnson, Attorney at Law

5 PO Box 549

6 Lexington, South Carolina 29071

7 Attorney for the Plaintiff,

8

9 LILIAN L. MEADOWS, ESQUIRE

10 11th Judicial Circuit Solicitor's Office

11 205 East Main Street, Suite 309

12 Lexington, South Carolina 29072

13 Attorney for the Defendant.

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5

6 EXHIBITS

7 (None marked)

8

9 EXAMINATIONS

10 WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
11 For the Plaintiff:				
12 Kevin Lawrence				
13 Pearson	10	13		
14				
15 For the Defendant:				
16 David Malden	16	24		

17

18

19

20

21

22

23

24 (THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL

25 IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 THE COURT: Let's hear it.
2 MS. MEADOWS: Your Honor, may it please the Court. This
3 matter is Kevin Pearson versus the State of South Carolina,
4 Docket Number 2020-CP-32-3091. In August of 2019, Mr.
5 Pearson was indicted of a murder, and on November 21 and 22,
6 2019, he appeared before Judge Frank Addie and pled guilty to
7 the lesser included offense of voluntary manslaughter. David
8 Malden represented Mr. Pearson and Assistant Solicitor Sue
9 Tanya Fuller prosecuted the case. And pursuant to the
10 negotiated plea agreement, Judge Addie sentenced Mr. Pearson
11 to 25 years imprisonment and he did not appeal.
12 On November 20, 2020, he filed a timely application for
13 post-conviction relief. He's present today and represented
14 by Mr. Johnson, and it's the State's understanding Mr.
15 Pearson's going forward on the allegations raised in the
16 amended application. And we are moving to dismiss one
17 allegation, so I'd like to be heard on that at the
18 appropriate time.
19 THE COURT: I do not have a copy of the amended
20 application.
21 MS. MEADOWS: (Inaudible).
22 MR. JOHNSON: Judge. Thank you, Judge.
23 THE COURT: (Inaudible) your motion to dismiss?
24 MS. MEADOWS: Yes, ma'am. It's -- I think it's
25 allegation number 4 which is the applicant was coerced into

1 enter a guilty plea after Judge Addie informed him he would
2 not get a better offer if he retained somebody else to
3 represent him after he requested a hearing to have counsel
4 relieved. It's our position that this is a direct appeal
5 issue and although it -- it someone goes to the voluntariness
6 of the plea, it -- it appears this claim is not based on
7 anything Mr. Malden did, but essentially that he was -- Mr.
8 Pearson was coerced into entering the plea by Judge Addie.
9 THE COURT: Mr. Johnson what say you?
10 MR. JOHNSON: Your Honor, just to clarify, this is a
11 case where there's no appeal filed, so I just -- I'm
12 basically on two sides here. Number 1, part of the
13 allegation, I guess is that since we have that in our amended
14 application, that there was no appeal filed by Mr. Malden.
15 So it would relate to, you know, can't appeal any issues
16 because Mr. Malden failed to file the appeal and talk to my
17 client about that and do his job there. The allegation is
18 also that the statement is coercive and that Mr. Malden had
19 the ability to, would try to sidebar and or correct it on --
20 on the record, step back with his client because the actual
21 statement that they're referencing says page -- I'm looking
22 at transcript page 19, lines 18 to 11.
23 During the plea the judge informed the applicant, he
24 couldn't get a better offer if he retained somebody else to
25 represent him. And because this was following back and forth

1 where they discussed the fact that he had asked for new
2 counsel and the judge was going over that with him. So since
3 the judge made that statement and I guess I could just read
4 directly from page 19, "I'll tell you that typically," I'm
5 starting on line 6, "I'll tell you that typically I do not
6 relieve counsel if they've been appointed. If you wanted to
7 retain somebody else, that might be your business, but it
8 would not delay the resolution of this case and obviously
9 wouldn't result in a better offer for what the solicitor is
10 telling us."
11 So I guess the two points, number 1 is no appeal was
12 filed and that is part of the PCR allegation here. And
13 number 2 you know, trying to make an out -- trying to say,
14 well, that should have been addressed on appeal, well, no
15 appeal was filed, and number 2, that Mr. Malden was in a
16 position where he could have sidebar and said, "Well, Miss,
17 step back, talk to my client, could have corrected on the
18 record said, Your Honor, let's just be clear that it's
19 impossible to guess what would happen in the future regarding
20 offers if there was another counsel appointed or could have
21 made a motion to withdraw -- withdraw the plea and/or put
22 that on the record." And there was just different things
23 that would relate to a PCR and make that relevant Judge.
24 THE COURT: All right. I'll withhold the ruling on
25 that, but I mean, you are aware, Mr. Johnson, that even

1 though no appeal is filed, PCR is not placed to raise direct
2 appeal issues, you would be asking for a related appeal
3 rather than a new trial. Is that not right?
4 MR. JOHNSON: Well, Your Honor, our position is as I put
5 it in the -- in the actual application that there was no
6 appeal filed. I believe that's accurate.
7 THE COURT: Oh, right. I'm just saying you don't bring
8 the appellant issues.
9 MR. JOHNSON: Right.
10 THE COURT: You don't have this court decide the
11 appellate issues.
12 MR. JOHNSON: Right. But since you ---
13 THE COURT: Request a related appeal.
14 MR. JOHNSON: Right. And since this, I mean, there --
15 there is the ability to go forward with that as an option as
16 opposed to, you know, I'm just saying that in relation to PCR
17 ineffective assistance of counsel ---
18 THE COURT: Sure.
19 MR. JOHNSON: --- we would also put it in as -- as a
20 option that Mr. Malden had to correct that on the record --
21 failed to correct it. That that's why I think it should
22 remain as well.
23 MS. MEADOWS: Your Honor, if I may briefly respond?
24 THE COURT: Sure.
25 MS. MEADOWS: I'm not entirely sure what Mr. Malden

1 should have corrected. But even if Mr. Pearson is granted
2 ablated appeal raising that issue now, would not preserve
3 that issue for appeal, if that's his purpose of ---
4 THE COURT: That ties into his argument though that he
5 should have objected.
6 MR. JOHNSON: Right.
7 THE COURT: You know ---
8 MS. MEADOWS: Okay.
9 THE COURT: --- it's sort of circular.
10 MS. MEADOWS: Okay.
11 MR. JOHNSON: Yes, ma'am.
12 THE COURT: Right. All righty. Yeah, so I'm going to
13 go ahead and deny the motion to dismiss when that issue ---
14 MS. MEADOWS: And, Your Honor, just briefly given that
15 Mr. Pearson was originally indicted for murder I would just
16 ask that, Your Honor, before we get started, have a colloquy
17 with Mr. Pearson on consequences should he prevail on PCR.
18 THE COURT: Absolutely. Let's go ahead and Mr. Pearson,
19 would you stand up. Raise your right hand.
20 KEVIN LAWRENCE PEARSON,
21 having been duly sworn, testified as follows:
22 THE COURT: Okay. You can -- so you in this case, pled
23 guilty to voluntary manslaughter, and now a 25-year sentence,
24 is that correct?
25 THE WITNESS: Right.

1 THE COURT: But you were originally charged with murder,
2 right? You understand that even if I grant your application
3 for Post-Conviction Relief, I can't reduce your sentence, all
4 I can do is give you a new trial. Do you understand that?
5 THE WITNESS: Yes, ma'am.
6 THE COURT: Do you understand that if you get a new
7 trial, you may be tried for murder? Do you understand that?
8 THE WITNESS: Yes, ma'am.
9 THE COURT: You understand that the minimum possible
10 sentence on murder is 30 years?
11 THE WITNESS: Yes, ma'am.
12 THE COURT: And that is higher than the sentence that
13 you've got now. You understand that, right?
14 THE WITNESS: Right.
15 THE COURT: Also the maximum sentence on murder is life
16 imprisonment. You understand that?
17 THE WITNESS: Yes, ma'am.
18 THE COURT: So there is the potential that if I granted
19 you a new trial, if you were convicted at trial or pled
20 guilty to murder, that you could get a life sentence. You
21 understand that?
22 THE WITNESS: Yes, ma'am.
23 THE COURT: So have you evaluated or discussed with your
24 attorney whether it's in your best interest to go forward
25 with this PCR application?

1 THE WITNESS: Yes, ma'am.
2 THE COURT: So you understand you could get more time?
3 THE WITNESS: Yes, ma'am.
4 THE COURT: And you still want to go forward on the
5 application?
6 THE WITNESS: Yes, ma'am.
7 THE COURT: Okay. Have a seat. Anything else before we
8 get started with testimony?
9 MS. MEADOWS: No, Your Honor.
10 THE COURT: All right.
11 Mr. Johnson, call your first witness.
12 MR. JOHNSON: Thank you, Your Honor. I call Mr.
13 Pearson.
14 MS. MEADOWS: He's already under oath.
15 THE COURT: All right. Thank you.
16 MS. MEADOWS: Yeah.
17 DIRECT EXAMINATION
18 BY MR. JOHNSON:
19 Q. Mr. Pearson, who represented you for this case?
20 A. David Malden.
21 Q. Okay. How many times did Mr. Malden meet with you
22 to prepare and review evidence?
23 A. Around five.
24 Q. Okay. Did he ever give you a physical copy of the
25 evidence?

1 A. Yes, sir. At -- at two different times. He gave
2 me -- within a couple months he gave me one half of my
3 motion. And like a week before I was presented with his
4 plea, he gave me another half of my motion.
5 Q. And did he ever review audio, video recordings and
6 the evidence with you?
7 A. No.
8 Q. Okay. Did he ever have an investigator come meet
9 with you?
10 A. No, sir.
11 Q. Interview witnesses?
12 A. No, sir.
13 Q. Did you ask him to do that?
14 A. Yes, sir.
15 Q. Okay. Who did you ask him to interview?
16 A. The -- the -- the -- one of -- one of the
17 witnesses name was John.
18 Q. Okay. And did you want an appeal to be filed
19 after you were sentenced?
20 A. Yes -- yes, sir.
21 Q. And did Mr. Malden ever talk to you about that?
22 A. Yes, sir.
23 Q. Did you tell him to file an appeal?
24 A. Yes, sir.
25 Q. Okay. But he didn't do that?

1 A. No, sir.
2 Q. Okay. And when you had the conversation about the
3 appeal, was that the day of the plea?
4 A. Yes, sir.
5 Q. Okay. And did you -- did you feel coerced during
6 this proceeding into entering the guilty plea?
7 A. Absolutely.
8 Q. Why was that?
9 A. The Judge told me -- first I -- I wanted -- I
10 wanted a new -- a new -- a new attorney. And I thought -- I
11 -- I believe that was my right to a -- a -- a attorney who
12 was representing me properly, you know what I'm saying? And
13 -- and I asked for that and the Judge -- Judge denied that on
14 top of that. And he told me it's 25 years, the best thing.
15 And he basically was like, yeah, take this 25 years or you
16 going to get this 30 right now today -- you going to have no
17 choice.
18 Q. When the Court stated, and I'm referencing what I
19 read on page 19, Your Honor, when the Court indicated if you
20 got someone else to represent you that you couldn't get a
21 better offer. When you heard that, did you think that that
22 was true?
23 A. Yes, sir.
24 Q. And did Mr. Malden do anything to correct that?
25 A. No.

1 Q. By telling you anything different?
2 A. No.
3 Q. Did he try to withdraw the plea?
4 A. No.
5 Q. And nobody else stated anything else about that?
6 A. No.
7 Q. Okay. After you heard that, do you feel like that
8 was coercive to you? Did ---
9 A. Absolutely.
10 Q. Is there anything else that you felt that made you
11 enter this plea or that Mr. Malden could have done in his
12 representation of you?
13 A. That's about it.
14 MR. JOHNSON: Okay. No more questions, Your Honor.
15 THE COURT: Cross-examination?
16 MS. MEADOWS: Just briefly, Your Honor.
17 CROSS-EXAMINATION
18 BY MS. MEADOWS:
19 Q. Mr. Pearson, I believe you testified that you felt
20 coerced because Judge Addie stated that there would not be a
21 better offer. Do you recall on page 4 where the solicitor
22 tells the court that there is no offer less than murder, she
23 basically informed -- informed the court that they would not
24 be extending a better offer?
25 A. Yes. But I -- I was also you can ask my lawyer

1 right before they offered me -- me 25 years, they offered me
2 22 to 30, which is better. Right. 22 years better than 25.
3 Right.
4 Q. You're saying they offered you 22?
5 A. 22 to 30.
6 Q. Okay. 20, you mean 22 to 30.
7 A. Right.
8 Q. Okay. And when was that offer made?
9 A. 4/25.
10 Q. Okay -- okay. And then do you recall -- believe
11 this is the same page that Mr. Johnson was referring to and
12 he's -- Judge Addie states that, "I realize you and Mr.
13 Malden may have disagreed at times about this case, but are
14 you satisfied with the way he's represented you?" And you
15 answered, "Yes, sir." Do you recall that?
16 A. By that time I was -- I felt defeated, like I felt
17 defeated. Like it was, it was no other choice, like, yes,
18 come on with it. Okay. Like that was it. I am not -- no
19 choice but to take it.
20 Q. Okay. So you were not satisfied with the way he
21 was representing you?
22 A. No.
23 Q. But you told the court that?
24 A. Uh-huh.
25 Q. Okay. And the Judge also asked if Mr. Malden had

1 talked to you enough and you understood all of your
2 conversations with him and you also answered, yes, correct?
3 A. Right.
4 Q. And then you also -- he also asked if you have any
5 other complaints to make against Mr. Malden other than you
6 couldn't get a better deal and you said no. Correct?
7 A. Right.
8 Q. Okay. And then as far as the appeal, do you
9 recall when you asked him to file an appeal for you?
10 A. Same day as -- as the plea?
11 Q. Was it before or after the plea?
12 A. Before.
13 Q. Okay. And did he confirm that he would file that
14 for you?
15 A. Yes, ma'am.
16 MS. MEADOWS: Okay. Nothing further, Judge.
17 THE COURT: Any redirect?
18 MR. JOHNSON: No, Your Honor.
19 THE COURT: All right. You can go sit back next to your
20 (inaudible). Call your next witness.
21 MS. MEADOWS: State calls David Malden. I'm sorry. Oh,
22 sorry.
23 MR. JOHNSON: We have a witness.
24 THE COURT: Okay, now. Mr. Malden, come on up.
25 MS. MEADOWS: Again, we call David Malden.

1 MR. MALDEN: Third times the try?
2 THE COURT: Is this week the third time?
3 MS. MEADOWS: I feel like it's fourth.
4 MR. MALDEN: Today being put under oath.
5 MS. MEADOWS: Okay.
6 THE COURT: (Inaudible) through all this I've done.
7 DAVID MALDEN,
8 having been duly sworn, testified as follows:
9 THE COURT: Have a seat and state your name, please.
10 THE WITNESS: David Michael Malden.
11 DIRECT EXAMINATION
12 BY MS. MEADOWS:
13 Q. All right. Mr. -- Mr. Malden, how long have you
14 been practicing law?
15 A. Since 1997.
16 Q. And how much of that time has been in criminal
17 law?
18 A. Over 20 years. Okay. 20, 22 somewhere.
19 Q. Okay. How did you become involved in Mr.
20 Pearson's case?
21 A. Let's see. Incident date December 8th of '17. He
22 was arrested June 22 of '18. I think he initially had
23 indicated that he was hiring a private attorney. Eventually,
24 I think they had some sort of hearing in front of another
25 judge that said they gave him a certain amount of time to

1 hire somebody or he appoint the office and no one was hired.
2 So they appointed the office and then I ended up with the
3 file.
4 Q. Okay. And would you mind just giving the court a
5 brief explanation of Mr. Pearson's charge and how this charge
6 arose?
7 A. This is a murder of an individual named Rodney
8 Isaac. The witnesses at the scene described a car that had
9 pulled up and then some kind of altercation or something,
10 ended up with Rodney being shot by the individual of the car.
11 The individual drove off in the car. One of them wrote down
12 the license plate number. The license plate number went back
13 to the defendant's sister. They went and talked with the
14 defendant's mother at one point in time and she said that he
15 had been driving that car and he had taken her dog in the
16 car.
17 They talked to the sister. She said that he had been
18 using her car and when he came to her house at some point in
19 time, he had the dog in the car with him. I think the
20 mother's boyfriend also confirmed the fact that he had taken
21 the car. And of course, this is during the day and time of
22 the incident roundabout.
23 Q. Okay.
24 A. There -- eventually they talked about another car
25 being there that belonged to a fellow named Raheem Bonham,

1 where the two cars might have almost hit each other or
2 something. They talked with Raheem. And then somehow it
3 came up with this other fellow named Quan Jenkins who was
4 there, other the initial witnesses at the scene did not say
5 he was there because I think he's related to them in some
6 way. So they get with Quan and he said, "Well, I wasn't
7 there. I went down to the store." This guy, John Hewitt met
8 up with him, gave him a ride, and then they came in as the
9 Honda was leaving. Both Quan and Raheem said that they
10 couldn't identify whoever was in the car, even though there's
11 Facebook pictures of all three of them standing together.
12 Q. Okay.
13 A. But Mr. John Hewitt did pick Mr. Pearson out of
14 the lineup. After arrest there were -- or at some point in
15 time in the investigation, there was a phone -- phone
16 information obtained where apparently Mr. Pearson had been
17 shot the month before and he blamed Mr. Isaac for the
18 shooting. And it indicated that -- that he was not pleased
19 with Mr. Isaac.
20 Q. Okay.
21 A. Thus presenting him with a motive. There was also
22 some phone location information as well as information
23 afterward about saying, I'm not ready to do 20 now, and
24 talking about having to depart.
25 Q. Okay. And did you review all ---

1 A. Okay.
2 Q. Sorry. Did you review all this evidence and
3 discovery with Mr. Pearson?
4 A. I -- most of it was summarized in the police
5 report. There was like 495 pages, 66 that I sent to him in
6 September 27th of '18. Some discovery, you know how it just
7 trickles in here and there over time. The discovery that I
8 think that he mentioned we got before the plea was actually
9 -- the solicitor's PowerPoint presentation that contained the
10 basically evidence of the Facebook posts and the phone
11 records and the texts between people and that kind of thing.
12 Q. Okay. So is that information you already had?
13 A. Yes.
14 Q. Okay. And do you recall about how many times you
15 met with him?
16 A. I can go through it. Initial visit with him was
17 on September 10th of '18 since he had been pointed sometime
18 after he'd been arrested. We were able to get the discovery
19 a little bit more quickly, obviously, because he'd been
20 sitting in jail for a minute. We reviewed the discovery on
21 my second visit on October 24th of '18. On November 21st of
22 '18, I met with him. We discussed the case again, and we
23 also prepped for a bond hearing.
24 We had the bond hearing on November 26th of 2018. Some
25 time passed, as it often does with these cases. He wanted to

1 have another bond I went with to him and discussed that with
2 him On May 17, 2019. We had the bond hearing on June 6th of
3 '19. At some point in that time, the state related plea
4 offer of a range of 25 to 30 on a voluntary manslaughter. I
5 discussed that plea offer with him on October 30, 2019. On
6 November 1st of '19 I talked with him again in jail.
7 Discussed phone information. I think that was the -- the
8 PowerPoint with all the phone information because I'd sent
9 him a copy and ---
10 Q. Okay.
11 A. --- we -- we kind of discussed that and he
12 recognized basically that it was not good for him. But he
13 indicated that he would not take 25 to 30, that he would take
14 15 to 20.
15 Q. Okay.
16 A. Then we had the hearing in front of Judge Addie to
17 reject the plea on November 7th. And I don't know, at some
18 point there is where he might have made a motion to -- to
19 having dismissed or if it was the day of the plea, both.
20 Q. Okay.
21 A. After that, this solicitor did relent and instead
22 of arrange, she went to her floor, I guess, of 25 ---
23 Q. Okay.
24 A. --- as an offer. And that's where we came up to
25 the he wanted to think a day about it. That was on November

1 13th. I relay that new plea offer to him. It was about a
2 week after the court hearing where he rejected 25 to 30.
3 Q. Okay.
4 A. And solicitor only gave him till the next day
5 afternoon. On November 14th I went to see him, or we talked
6 and it was tentative, yes. But he still wanted to talk with
7 his family, so I told her to go ahead and schedule it. On
8 November 21, '19, I have a thing here about the client didn't
9 want to plea, he wants me to be relieved, and then the plea
10 ends up going through and then the sentencing on November
11 22nd of '19.
12 Q. Okay.
13 A. So counting the visits and the court hearings,
14 it's about 13 or 14 times.
15 Q. Okay. And then did Mr. Pearson ever give you any
16 leads or mention any witnesses he wanted you to interview?
17 A. I don't recall that.
18 Q. Okay. Do you know who -- I believe he mentioned
19 someone named John earlier.
20 A. That's the fellow that identified him out of the
21 photo. I don't ---
22 Q. Okay. All right. And then you stated just a
23 minute ago that he said he would accept 15 to 20. Did you
24 convey that to the solicitor's office?
25 A. Yes, ma'am.

1 Q. What was their response?

2 A. No.

3 Q. Okay. And then I believe he testified that there

4 was a 22 to 30 year offer?

5 A. It was 25.

6 Q. It was 25. Okay. And then what was kind of --

7 what was the reason that he requested to relieve you at the

8 beginning of the hearing?

9 A. He was not happy with the plea offer.

10 Q. Okay. And then sort of after the solicitor stated

11 there -- there'd be no better offer. And Judge Addie

12 informed him of this, he essentially changed his mind?

13 A. I believe so.

14 Q. Okay.

15 A. Judge Addie did reiterate what the solicitor had

16 already said.

17 Q. Okay. Did he give you -- did Mr. Pearson give you

18 any indication at that time that he felt that Judge was

19 coercing him into pleading guilty?

20 A. No. It's -- again he thought it was too much time

21 for what he did. And he wasn't happy about it all, but he

22 kind of understood that the state made that offer and his

23 alternative was going to trial where the minimum would be 30

24 and the maximum would be life.

25 Q. Okay.

1 A. So if that's coercion, that's coercion.
2 Q. Okay. And did you feel accepted the 25 year-
3 negotiated plea was -- would be in his best interest?
4 A. Yes.
5 Q. Okay. As far as filing an appeal, is it your
6 practice to discuss the possibility of appealing with your
7 clients following a negotiated guilty plea?
8 A. Well, you -- the Judge always informs them during
9 the plea and the judge tells them they need to tell me
10 usually. And if they don't tell me they want to file an
11 appeal, I don't file an appeal.
12 Q. Okay. Do you recall whether you discussed filing
13 an appeal with Mr. Pearson?
14 A. I did not file one, so he did not ask for one.
15 Q. Okay. Do you think there was any factual or legal
16 basis to appeal?
17 A. No.
18 MS. MEADOWS: Okay. I beg Court's indulgence.
19 THE COURT: Okay.
20 BY MS. MEADOWS:
21 Q. Do you have any notes indicating that Mr. Pearson
22 ever asked you about an appeal or anything like that?
23 A. No. If they asked for appeal, I -- I -- I write
24 their sentence on this side of the file, the front of the
25 file, and if they ask for appeal, I write the filed appeal

1 and I put it on my paralegal's desk and she knows what to do.
2 MS. MEADOWS: Okay. Nothing further, Your Honor.
3 THE COURT: Cross-examination.
4 MR. JOHNSON: Your Honor.
5 CROSS-EXAMINATION
6 BY MR. JOHNSON:
7 Q. Mr. Malden, is it possible that you forgot after
8 all these years that he asked for an appeal?
9 A. No.
10 Q. Okay. And did you have an investigator go meet
11 with him?
12 A. No, I did not.
13 Q. Okay. And how many times? I can't remember how
14 many times did you say you met with him to review evidence
15 around.
16 A. Well, I mean, it is -- it's counting bond hearings
17 and that kind of thing, but I -- I met with him or was with
18 him in person about 13 or 14 ---
19 Q. Did you give him ---
20 A. All including bond hearings in this week.
21 Q. Okay. Did you give him all of his discovery?
22 A. I believe I gave him all the paper discovery. I
23 did not print out any phone records other than the --- the
24 PowerPoint presentation that was done. There were some, you
25 know, summaries of what was in the phone records in the

1 officers narrative.

2 Q. Did -- what date did you give them discovery? Do

3 you remember?

4 A. Well, I was just paralegal I have now, we just

5 started with me. We had sent some in September of '18, I

6 believe. Let me see file. No, wait. I started with one and

7 ended up with another after. The file was through let's see,

8 it's bond motion. And on September 27, 2018, there's 495

9 pages and then another 66 pages, April 3, 2019, 84 pages.

10 And those are the letters I have from my old paralegal, but I

11 don't see any letters from any paralegal in there.

12 Okay. So that's all the documentation I have, but --

13 but typically if I get paper discovery that's, you know, not

14 like graphs and squiggly of the DNA or stuff like that, I

15 typically send it to the client and it's a -- that I just

16 kind of go over the DNA report and not all the other stuff

17 and a waste of paper.

18 Q. Do you recall the Judge making that statement from

19 page 19 to the transcript about the fact that he, if he got

20 another lawyer, he wouldn't get a better offer?

21 A. Yes. And again, as I said on direct, I believe

22 that statement was made because the solicitor said if he does

23 not take the 25-year plea today, that the plea offer will not

24 be better than murder ---

25 Q. Do you ---

1 A. --- which is 30 to life, which is not a better
2 option.
3 Q. Do you feel -- did you have the option to possibly
4 step back with your client, advise him that the judge was not
5 in control of that, that in the future there could be other
6 offers that judge did not determine that? Did you feel that
7 he was confused about that?
8 A. Well, I'm familiar with the solicitor on this case
9 and she's usually one to stick by what she -- what she offers
10 is she's not afraid to put one up, whether it's a good one or
11 a stinker.
12 Q. Well, you had the option to step back then,
13 explain it to him, right? That that was not the Judge's job
14 to limit his offers.
15 A. Well, I think the -- I don't think the judge was
16 limiting the offer. I think the Judge was just repeating
17 what the solicitor said.
18 Q. Do you know what my client was thinking about it
19 though? Did you talk to him?
20 A. No, I don't have a brain reading machine and he
21 did not ---
22 Q. Okay.
23 A. --- express any kind of concerns of that nature to
24 me.
25 Q. Okay. And you didn't make a motion to withdraw or

1 anything like that?

2 A. No, I did not.

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

4 THE COURT: Any re-direct?

5 MS. MEADOWS: I have nothing further. And the State

6 rests.

7 THE COURT: All right. You can sit down.

8 THE WITNESS: Thank you.

9 THE COURT: Anytime. Any argument, Mr. Johnson?

10 MR. JOHNSON: No, Your Honor. We'll rest for the

11 record.

12 THE COURT: All right. I'll give you one moment. So

13 Mr. Pearson contends that Mr. Malden failed to meet with him

14 a sufficient number of times and review the evidence. I find

15 that that allegation lacks merit. In weighing the

16 credibility of the witnesses coupled with Mr. Pearson's vague

17 recollection of the number of times they met, I'm sorry, I

18 might be confusing cases. Give me a moment to look at my

19 notes. Actually, I don't. Yeah, he met with Mr. Malden

20 about five times. That's his vague recollection versus Mr.

21 Malden's specific list of dates and actions that occurred

22 during those dates. So I find that allegation to be without

23 merit.

24 Next, he contends that Mr. Malden failed to properly

25 investigate the facts and did not have a private investigator

1 work on this case. While it is true that no private
2 investigator worked on this case, apparently there has been
3 no showing that a private investigator should have or would
4 have, or that the outcome would've been any different if a
5 private investigator had worked on this case. There's also
6 no evidence of what any additional investigation would have
7 discovered or poured out in this situation. And so I find
8 that allegation to be without merit as well.
9 Mr. Malden failed to file an appeal. I mean, the
10 testimony from Mr. Malden is that no one asked him to file an
11 appeal or that Mr. Pearson did not ask him to file an appeal,
12 but that he saw no factual or legal basis to -- to file an
13 appeal. Having reviewed the transcript, I cannot see what
14 appellate issues there would be anyway. So there's no
15 showing of prejudice, particularly in this situation where
16 there was a negotiated guilty plea and a thorough and
17 appropriate plea call plea by the court.
18 I mean, of course I'm not ruling on an appeal, that's
19 not my job, but -- but he has not demonstrated any prejudice
20 in that he's also failed to demonstrate any coercion. The
21 Judge informed him that he couldn't get a better offer if he
22 retained somebody else. That is simply a restatement of what
23 the solicitor indicated at the outcome of the plea or at the
24 outset of the plea.
25 In addition, I -- you know, that's a statement that

1 people sometimes make you -- you're not going to get a better
2 offer with a different attorney. And frankly, in most cases,
3 giving a better offer to a different attorney would be some
4 kind of unethical prosecutorial misconduct because it -- it
5 would be showing some favoritism. You know, I don't like Mr.
6 Johnson, so if you retain John Doe, then I'll give you a
7 better offer, that -- that's not the way it's supposed to
8 work. But in any event, the Judge was simply reiterating the
9 statement from the solicitor. And that is the last of the
10 allegations, I believe.
11 I will in the written order, go back through the -- the
12 initial PCR application just to make sure that I have touched
13 on each of those issues. I know it mentions involuntary
14 guilty plea and then right 6th and 14th amendment violations.
15 I think I've covered everything. But I'll ask the State to
16 prepare an order for me and send it to me again in Word
17 format.
18 MS. MEADOWS: Yes, ma'am.
19 THE COURT: In the next 20 days or so-- so that I may
20 edit it to use my language to make findings of fact and
21 conclusions of law.
22 MS. MEADOWS: Yes, ma'am.
23 THE COURT: And that's that.
24 MR. JOHNSON: Thank you, Judge.
25 MS. MEADOWS: Thank you, Your Honor.

1 THE COURT: And that's all week, is it not?
2 MS. MEADOWS: Yes, ma'am.
3 THE COURT: Fabulous. Thank you all.
4 MS. MEADOWS: Thank you.
5 MR. JOHNSON: Thank you, Judge.
6 THE COURT: Pleasure meeting here.
7 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED AT
8 2:19 P.M.)
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1 **CERTIFICATE OF TRANSCRIBER**

2

3 I, MARY RAGSDALE, a court-approved transcriber, do
4 hereby certify that the foregoing is a true, accurate and
5 complete Transcript of Record of the proceedings had and
6 evidence introduced in the trial of the captioned case,
7 relative to appeal, in the South Carolina Circuit Court 11 of
8 Lexington County, South Carolina, on the 8th Day of June,
9 2022.

10

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

13

14 July 1, 2024

15

16 Mary Ragsdale
17 Transcriber

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FILED
2023 OCT 27 AM 11:37
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) FOR THE ELVENTH JUDICIAL CIRCUIT

Kevin Lawrence Pearson, SCDC #344570,) Case No. 2020-CP-32-3091

Applicant,

v. **ORDER OF DISMISSAL**

State of South Carolina,

Respondent.

I. Introduction

This matter comes before this Court by way of a post-conviction relief (PCR) action commenced by Kevin Lawrence Pearson (Applicant) on November 20, 2020, alleging he is entitled to post-conviction relief based on constitutionally ineffective assistance of counsel and involuntary guilty plea. A hearing into the matter convened before the undersigned on June 8, 2022, at the Lexington County Judicial Center. Applicant was present at the hearing and represented by Ola A. Johnson. Assistant Attorney General Lillian L. Meadows represented the State. Applicant testified on his own behalf at the hearing, as did his plea counsel, David M. Mauldin.

In addition to the pleadings in this action, this Court had before it a copy of the Lexington County Clerk of Court records regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the plea transcript.

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 post-conviction relief. For the reasons discussed below, this Court denies relief and dismisses this action with prejudice

II. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Lexington County Clerk of Court. Applicant was arrested on June 22, 2018, following an investigation into the shooting death of Rodney Isaac, which occurred approximately sixteen months prior. During its August 2019 term, the Lexington County Grand Jury indicted Applicant for murder (2019-GS-32-2886).

On November 21–22, 2019, Applicant appeared before the Honorable Frank R. Addy, Jr., and pleaded guilty to lesser-included offense of voluntary manslaughter. David Mauldin (Counsel) represented Applicant and Assistant Solicitor Sutania Fuller prosecuted the case. Pursuant to negotiations entered into between Applicant and the State, Judge Addy sentenced Applicant to twenty-five years' imprisonment. Applicant did not appeal his plea or sentence.

III. Summary of Facts

On February 8, 2017, at approximately 11:17 AM, law enforcement received a 911 call regarding a shooting. (Plea Tr. 13). The caller reported that the suspect was driving a Honda Accord and provided the tag number. (Plea Tr. 13–14). The caller also reported that a dog was in the vehicle. The tag came back registered to Applicant's sister. (Plea Tr. 14).

When law enforcement questioned the sister, she indicated her brother had just dropped off the dog and car. (Plea Tr. 14, 24). She stated that Applicant told her he "had done something bad." (Plea Tr. 14). Applicant's mother also told law enforcement that he left that morning with the dog in her daughter's car. (Plea Tr. 14, 24). An eyewitness later identified Applicant as the individual who shot Rodney Isaac at [redacted] Princeton Road in West Columbia. (Plea Tr. 14).

Review of Applicant's cell phone and Facebook records indicate that Applicant believed Rodney was involved in a drive-by shooting where Applicant was shot in the throat. (Plea Tr. 24).

Because Applicant was unable to talk at the time, he sent messages while he was in the hospital putting hits out on Rodney. (Plea Tr. 24). Some of the text messages had Rodney's name listed and his grandmother's address. (Plea Tr. 24). Rodney stayed at his grandmother's house the night before he died. (Plea Tr. 24). Applicant is a validated gang member. (Plea Tr. 25). Law enforcement recovered multiple incriminating text messages. (Plea Tr. 25–26). Applicant was also on the run for approximately sixteen months after the shooting. (Plea Tr. 26).

IV. Issues Before this Court

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

1. "Violation of 6th amendment"
    a. "Strickland vs. Washington"
2. "Violation of 14th amendment"
    a. "Strickland vs. Washington"
3. "Involuntary guilty plea"
    a. "Boykin v. Alabama"

The State requested an evidentiary hearing through its return on June 16, 2021. On March 25, 2022, PCR counsel amended the application pursuant to Rule 71.1, SCRCP, to include the following allegations:

1. "Applicant's counsel, David Mauldin, failed to meet with applicant a sufficient number of times to properly review the evidence, discuss the case with Applicant, and gave Applicant part of discovery one week before the plea."
2. "Applicant's counsel, David Mauldin, failed to properly investigate the case and did not have a private investigator work on the case."
3. "Applicant's counsel, David Mauldin, failed to file an appeal after the Applicant requested this during a conversation with Counsel the day of the plea"
4. "Applicant was coerced into entering a guilty plea after the presiding judge informed Applicant he couldn't get a better off if he retained somebody else to represent him (P. 19, Line 8-11), after Applicant requested a hearing to have counsel relieved (P. 5).

5. Judge Addy informed Applicant he could not get a better offer if he retained somebody else to represent him (Plea Tr. 19) after Applicant requested a hearing to have counsel relieved (Plea Tr. 5).

V. STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act[1] (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based upon the following types of allegations:

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

S.C. Code Ann. § 17-27-20(A).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee all criminal defendants the right to "assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." *Strickland v. Washington*, 466 U.S. 668, 685 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not

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

receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. at 687. To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness; *and* (2) there is a reasonable probability the outcome of the proceeding would have been different but for counsel's deficient performance. *Williams v. State*, 363 S.C. 341, 343, 611 S.E.2d 232, 233 (2005) (citing *Strickland*, 466 U.S. 668). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

The applicant bears the heavy burden of establishing both prongs of the *Strickland* standard by a preponderance of the evidence. *Hughes v. State*, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); Rule 71.1(e), SCRCP. To prove deficient performance, the applicant must establish that, in light of all the circumstances, the acts or omissions complained of "fell below an objective standard of reasonableness" as measured by "prevailing professional norms." *Strickland*, 466 U.S. at 688. Reviewing courts should be deferential in this inquiry, and apply "a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id.* at

689. With respect to prejudice, the applicant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Id.* When evaluating this probability, the reviewing court "should consider the specific impact counsel's error had on the outcome of the trial" coupled with "the strength of the State's case in light of . . . the [totality of the] evidence presented to the jury." *Smalls v. State*, 422 S.C. 174, 188, 810 S.E.2d 836, 843 (2018). Significantly, "the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." *Strickland*, 466 U.S. at 696.

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

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

This inquiry "focuses on a 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. ___, ___, 137 S. Ct. 1958, 1966 (2017). However, the applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. *Padilla*, 559 U.S. at 372. Judges must "look to contemporaneous evidence to substantiate a defendant's expressed preferences." *Lee*, 582 U.S. at ___, 137 S. Ct. at 1967. 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).

Surmounting *Strickland*'s high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." *Lee*, 582 U.S. at ____, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); *cf. Hill*, 474 U.S. at 58 ("[R]equiring a 'prejudice' showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.' "). Reviewing "[c]ourts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies." *Lee*, 582 U.S. at ____, 137 S. Ct. at 1967. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—*not* whether counsel would have still advised him or her to plead guilty. *Turner v. State*, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

VI. FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in this action incorporated by way of the State's return, this Court proceeds to the claims of ineffective assistance of counsel and involuntary guilty plea and finds each to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

A. Failure to Review Discovery

Applicant first contends Counsel was constitutionally ineffective for failing to meet with him a sufficient number of times to review the evidence and discuss his case. Applicant further claims Counsel gave Applicant part of his discovery one week prior to his guilty plea. At the PCR hearing, Applicant testified Counsel met with him approximately five times to review discovery. Applicant further testified Counsel gave him copies of the paper discovery twice—once a few months prior to the plea and once approximately a week before the plea. However, Applicant stated Counsel never reviewed the audio or video recordings with him.

Counsel testified he was appointed to represent Applicant in late August or early September of 2018, and he met with Applicant at least eleven times between then and November 2019.[2] During these meetings, Counsel testified he extensively reviewed all evidence and discovery with Applicant as he received it. He further stated that his general practice is to send his clients copies of all paper discovery. Specifically, Counsel testified his paralegal sent Applicant between five hundred and six hundred pages of discovery on September 27, 2018. He further explained that most of the evidence was summarized in the police report, but that discovery was otherwise slowly "tricking in." Regarding the discovery Applicant stated Counsel gave him only a week before his plea, Counsel testified that Applicant was referring to a PowerPoint presentation he received from the solicitor with the text messages and other evidence recovered from Applicant's phone. He explained that all of the information in the PowerPoint had already been provided in discovery and

[2] Specifically, Counsel's notes indicate he met with Applicant on the following dates: September 10, 2018; October 24, 2018; November 21, 2018; November 26, 2018; May 17, 2019; June 6, 2019; October 30, 2019; November 1, 2019; November 7, 2019; November 14, 2019; and November 21, 2019.

that Counsel gave written summaries of these records to Applicant and went over them during their meetings.

Regarding Applicant's claim that Counsel failed to sufficiently review the discovery with him, this Court finds Applicant failed to establish counsel provided constitutionally ineffective assistance under either prong of *Hill.* This Court finds credible and persuasive Counsel's demonstrated recollection of the evidence produced by the State and the dates he met with Applicant. Applicant's own testimony, although predominantly incredible, establishes Counsel gave him copies of his discovery and reviewed it with him at least five times prior to plea. Although Applicant believes Counsel did not spend enough time discussing the discovery with him, "[t]he brevity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation." *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012).

Counsel credibly testified that the only piece of discovery Applicant received several days before his plea was a PowerPoint that consisted of information Counsel already provided to Applicant and discussed with him. Applicant otherwise failed to identify precisely what Counsel did not explain or disclose to him from materials provided in discovery, or what, if anything, could have been achieved had Counsel spent more time with him in consultation regarding the contents of his discovery. *See id.* at 500–01, 745 S.E.2d at 382 (noting that an applicant must present evidence to show how additional time spent in consultation regarding discovery would have resulted in a different outcome; mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief).

Further, Judge Addy specifically advised Applicant that by pleading guilty, he would waive his ability to challenge the State's evidence against him. (Plea Tr. 17). Applicant indicated he understood and wished to waive that right in order to plead guilty. (Plea Tr. 17–18). *See Dalton v.*

State, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (Ct. App. 2007) ("[S]tatements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements.").

Accordingly, Applicant's allegation pertaining to Counsel's failure to adequately meet with Applicant to review discovery is **DENIED.**

B. Failure to Investigate

Applicant next contends Counsel was constitutionally ineffective for failing to properly investigate the facts and circumstances of his case. Specifically, Applicant claims Counsel should have hired a private investigator. At the PCR hearing, Applicant testified Counsel never had a private investigator interview him nor any witnesses. Applicant stated he asked Counsel to interview a witness named John. Counsel testified that John was the name of the witness who identified Applicant in the photo lineup. However, he could not recall Applicant providing him with the names of any witnesses to interview. Counsel further testified he did not have an investigator meet with Applicant because he did not believe it would be helpful in this case.

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,* 466 U.S. 668). "A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." *McKnight v. State,* 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). "[W]hile the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the

case." *Ard*, 372 S.C. at 331–32, 642 S.E.2d at 597 (internal quotation marks omitted) (emphasis omitted). Essentially, trial "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland*, 466 U.S. at 691; *cf. Green v. French*, 143 F.3d 865, 892 (4th Cir. 1998) ("Although counsel should conduct a reasonable investigation into potential defenses, *Strickland* does not impose a constitutional requirement that counsel uncover every scrap of evidence that could conceivably help their client."), *abrogated on other grounds by Williams v. Taylor*, 529 U.S. 362 (2000).

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel's duty to investigate. *See Ard*, 372 S.C. at 331, 642 S.E.2d at 597 ("Without a doubt, [a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation."). "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." *Strickland*, 466 U.S. at 690–91; *see id.* ("In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary."). Thus, in applying the *Strickland* standard to a claim of failure to investigate, counsel's decision not to undertake a particular investigation must be evaluated with heavy deference to counsel's judgment. *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 63 (Ct. App. 2014).

This Court finds Applicant failed to present any evidence demonstrating how a more thorough investigation would have helped Applicant's case. While Applicant stated he believes Counsel should have interviewed the witness who identified him in the photo lineup, Applicant cannot meet his burden because he did not present any evidence or testimony from that witness or

any other favorable witness at the PCR hearing. *See Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial); *see also Glover v. State*, 318 S.C. 496, 498–99, 458 S.E.2d 538, 540 (1995) (mere speculation as to un-presented witness' testimony does not satisfy PCR applicant's burden); *Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993) (pure conjecture as to what a witness's testimony would have been is not sufficient to show a reasonable probability the result at trial would have been different).

Likewise, this Court will not credit Applicant's present claim he would have gone to trial absent Counsel's allegedly deficient performance when he failed to present evidence of any defense strategy or investigatory matter which would have helped Applicant's case or affected his decision to plead guilty. *See Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (holding trial counsel's failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); *Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009) (noting that to establish prejudice based on failure to investigate or prepare for trial when the applicant enters a guilty plea, he must ordinarily present some evidence "that would have affected counsel's advice to [him] to accept the plea bargain offered or that would have caused [him] to decline to accept it"). Counsel credibly testified that he did not believe an investigator would be helpful in this case in light of his conversations with Applicant and review of the evidence. Applicant failed to demonstrate an investigator was needed or that further investigation would have produced additional evidence that would have had a favorable impact on the outcome of the case.

Accordingly, Applicant's claim pertaining to Counsel's failure to adequately investigate his case is **DENIED.**

C. Failure to File an Appeal

Applicant next contends Counsel was constitutionally ineffective for failing to file a notice of appeal on his behalf. At the PCR hearing, Applicant testified he spoke with Counsel about filing an appeal before his plea hearing. He stated that he asked Counsel to file an appeal, and Counsel agreed. However, Applicant testified Counsel did not follow his instructions to file an appeal.

Counsel testified he only files a notice of appeal when asked to do so by his client, particularly when the client enters a negotiated guilty plea. However, when a client does ask him to file an appeal, he always notes the client's request by conspicuously marking the front of the file and giving it to his paralegal to ensure the appeal is timely filed. During the hearing, Counsel held up his file to show that it was not marked. Counsel was adamant that Applicant did not request an appeal. Counsel further testified he saw no factual or legal basis to appeal the plea.

In light of Counsel's credible testimony and detailed notes regarding his discussions with Applicant, coupled with his established practice for clients who request an appeal, this Court finds no deficiency in Counsel's failure to file a notice of appeal on Applicant's behalf. Applicant further failed to identify any factual or legal issue that could have been successfully raised on appeal. This Court finds Counsel's assessment that nothing occurred during the plea hearing that would give him any reason to think Applicant wished to appeal is consistent with the record. Accordingly, Applicant's claim pertaining to Counsel's alleged failure to file an appeal is **DENIED**.

D. Coerced Plea

Finally, Applicant contends he was coerced into entering a guilty plea after Judge Addy informed Applicant he would not receive a more favorable plea offer if he retained another attorney

to represent him. This Court disagrees, and finds the combined record from the plea hearing and the PCR hearing establishes Applicant freely, knowingly, and voluntarily pleaded guilty.

At the PCR hearing, Applicant testified he asked Counsel Mauldin before the plea hearing about a twenty-two to thirty-year offer that was made several months prior to the plea. Counsel testified Assistant Solicitor Fuller never made such an offer. Rather, she made a twenty-five to thirty-year offer originally. At that time, Applicant recognized the evidence against him was strong; however, he would not accept the offer. He told Counsel he would accept a fifteen to twenty-year offer. Counsel testified he made the counteroffer at Applicant's request but Assistant Solicitor Fuller rejected it. However, she made a twenty-five-year offer at that time. When Counsel informed Applicant of that offer a week prior to the November 21, 2019 hearing, he told Counsel he needed time to think about it. Assistant Solicitor Fuller gave Applicant an additional day to decide. Counsel then dropped off a letter at the jail informing Applicant that he would be brought to the courthouse on the 21st to either accept or reject the offer. (Plea Tr. 5).

Counsel testified that he spoke with Applicant when he arrived at the courthouse on the day of the plea. At that time, Counsel testified Applicant wanted to relieve him because Applicant was not happy with the plea offer. Applicant believed the sentence was too long. However, Counsel stated that Applicant understood that the only alternative was to go to trial on the murder charge. Counsel therefore believed it was in Applicant's best interest to accept the twenty-five-year offer. *See Tollett v. Henderson,* 411 U.S. 258, 268 (1973) (explaining that the prospect of plea bargaining, the expectation or hope of a lesser sentence, or the convincing nature of the evidence against the accused are considerations that might well suggest the advisability of a guilty plea).

At the outset of the November 21, 2019, hearing, Assistant Solicitor Sutania Fuller stated:

> MS. FULLER: Kevin Pearson. Your Honor, we had come before you previously to place an offer and revocation on the record. After

> that moment, you indicated we weren't too far away. Defense counsel and I engaged in further conversations and we agreed on a negotiated plea to 25 years on voluntary manslaughter. That was slated for schedule today at 3:00. The victims were present. At that point I was told that the defendant has changed his mind again and is now rejecting that plea offer and wishes to fire his attorney. So we are here to, at his request to put this on the record and he wishes to be heard. I'm not sure if there's any valid grounds for relief of counsel at this point.

(Plea Tr. 3). She then advised Judge Addy that she had been working with Counsel to come to a resolution. She further stated:

> MS. FULLER: And at this point there's nothing more I can do. I can tell him now whoever he hires, there is no offer less than murder so it was good through today. I don't like wasting victims' time. I don't like wasting court time. And I don't like defendants who play with the system. So that is where we are and I know he wishes to be heard.

(Plea Tr. 4). Judge Addy then questioned Counsel about the situation. (Plea Tr. 4–5). Counsel stated at that time that he had discussed the plea offers with Applicant the week prior. (Plea Tr. 5). Applicant told Counsel he did not wish to accept the offer and wished to have Counsel relieved. (Plea Tr. 5). Judge Addy then asked Applicant about his understanding of the plea offer, whether he wished to reject it, and advised him that his only other option would be a jury trial. (Plea Tr. 5–7). Counsel further confirmed that he had discussed these matters with Applicant, including the risks and benefits of accepting the plea offer and going to trial. (Plea Tr. 7). At that point, Applicant advised Judge Addy that he wished to accept the twenty-five-year negotiated plea offer. (Plea Tr. 7). Judge Addy then conducted a thorough plea colloquy with both Counsel and Applicant.[3]

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[3] Counsel confirmed that he explained to Applicant the charge against him, possible sentences, his constitutional rights, and the terms of the plea offer. (Plea Tr. 9–11). After Applicant confirmed his intention to plead guilty, Judge Addy explained several concepts to Applicant. He first explained that voluntary manslaughter is classified as a "no parole offense," meaning Applicant would be required to serve at least eighty-five percent of the twenty-five-year sentence and that he would not be eligible for parole. (Plea Tr. 11–12). He then noted that Applicant was pleading to a "most serious" offense under South Carolina law and that the State could seek a life without parole sentence should Applicant be convicted of a second most serious offense. (Plea Tr. 12). Finally,

At the PCR hearing, Applicant testified he felt coerced into pleading guilty when Judge Addy made the following statement at the end of the plea colloquy:

> THE COURT: I understand that we started this off with maybe some discord between you and Mr. Mauldin and you were looking to have him fired. I'll tell you that typically I do not relieve counsel if they've been appointed. If you wanted to retain somebody else, that might be your business, but it would not delay the resolution of this case and obviously wouldn't result in a better offer from what the Solicitor is telling us so I realize that maybe you and Mr. Mauldin may have disagreed at times about this case, but are you satisfied with the way he's represented you?
>
> KEVIN PEARSON: Yes, sir.

(Plea Tr. 19).

Applicant testified he was not satisfied with Counsel even though he told Judge Addy he was. He stated he felt coerced when Judge Addy told him he would not get a better plea offer because he wanted a new attorney and believes Judge Addy denied him his right to have an attorney that would represent him properly. He further testified that he did not have a choice because Judge Addy told him he could take the twenty-five-year sentence or he would get thirty years. Applicant then stated Counsel should have attempted to withdraw the plea after Judge Addy said he would not receive a better offer.

Counsel testified he did not move to withdraw the plea at that time because Applicant did not express any concern or indicate he wanted to withdraw the plea after Judge Addy made the

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Judge Addy advised Applicant that voluntary manslaughter is classified as a "violent" offense. (Plea Tr. 13). Applicant confirmed that he understood all of these concepts, that he was not under the influence of any medications or alcohol, that he did not suffer from any mental illness, and that he was guilty of voluntary manslaughter. (Plea Tr. 11–13). After a factual recitation from the solicitor, Applicant admitted he committed the conduct alleged. (Plea Tr. 13–14). Judge Addy next thoroughly explained to Applicant the constitutional rights he would be waiving by pleading guilty. (Plea Tr. 14–18). He advised Applicant that he was entitled to a jury trial, at which time it would be the State's burden to convince a jury of his guilt beyond a reasonable doubt and he could challenge the State's evidence, put up evidence of his own, and testify in his defense if he so desired. (Plea Tr. 15–18). Applicant confirmed that he understood and wished to waive these rights and plead guilty. (Plea Tr. 19).

above statement. Counsel further stated that Judge Addy was merely repeating what the solicitor advised the Court at the beginning of the hearing. This Court agrees with Counsel's assessment based in part on Counsel's credible testimony and experience working with Assistant Solicitor Fuller. He testified that she sticks with her offers and is not afraid to take cases to trial. Counsel therefore had no reason to think she would make a better offer. This Court again agrees with Counsel's assessment, particularly in light of Assistant Solicitor Fuller's statement on the record at the beginning of the hearing that the twenty-five-year voluntary manslaughter offer would expire if Applicant did not accept it that day. (Plea Tr. 3–4). In fact, she stated there would be "no offer less than murder" on the table after that time regardless of who Applicant retained to represent him. (Plea Tr. 4).

This Court further finds Applicant's claim of coercion is wholly without merit, particularly in light of the following exchange between Applicant and Judge Addy that occurred immediately after the allegedly coercive statement:

> THE COURT: [Counsel has] talked to you enough? You understood all your conversations with him?
>
> KEVIN PEARSON: Yes, sir.
>
> THE COURT: Do you have any other complaints to make against Mr. Mauldin other than you couldn't get a better deal?
>
> KEVIN PEARSON: No, sir.
>
> THE COURT: And do you have any complaints to make against the Solicitor's Office, law enforcement, court personnel or anyone involved in this case?
>
> KEVIN PEARSON: No, sir.
>
> THE COURT: Aside from the 25 year sentence has anyone promised you anything else or held out any other hope of reward to get you to plead guilty?
>
> KEVIN PEARSON: No, sir.
>
> THE COURT: Anyone try to threaten you, force you, coerce you in any way to get you to plead guilty?
>
> KEVIN PEARSON: No, sir.

THE COURT: You're pleading guilty of your own free will then?

KEVIN PEARSON: Yes, sir.

THE COURT: Have you understood all of my questions?

KEVIN PEARSON: Yes, sir.

THE COURT: Is there anything that you want to ask me about anything that we have gone over?

KEVIN PEARSON: No, sir.

THE COURT: You have understood everything we have talked about?

KEVIN PEARSON: Yes, sir.

THE COURT: You're sure you want to do this, correct?

KEVIN PEARSON: Yes, sir.

(Plea Tr. 19–20). Although Applicant testified at the PCR hearing that he only answered those questions the way he did because he "felt defeated" and "did not think [he] had any other choice," he made it clear to the plea court that the decision to plead guilty was his own. *See North Carolina v. Alford*, 400 U.S. 25, 31 (1970) (explaining that the test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant"); *but see United States v. Cox*, 464 F.2d 937, 942 (6th Cir. 1972) (noting that 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." (citing *Brady v. United States*, 397 U.S. 742, 748 (1970)).

This Court finds the plea transcript reflects Applicant understood the proceedings, interacted intelligently with the plea court, and entered his guilty plea knowingly and voluntarily. *Cf. Wolfe v. State*, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997) (noting that counsel's statement to defendant that the plea court's "questions are 'routine' is not an invitation to answer them untruthfully, nor does it constitute a reason to believe the questions and statements of the judge during a guilty plea proceeding mean nothing"); *Fields v. Gibson*, 277 F.3d 1203, 1214 (10th Cir.

2002) (In the course of emphasizing the importance of plea colloquies, the Court stated that "[t]his colloquy between a judge and a defendant before accepting a guilty plea is not *pro forma* and without legal significance. Rather, it is an important safeguard that protects defendants from incompetent counsel or misunderstandings").

. Applicant failed to present any valid reason why he should be allowed to depart from the truth of the above statements made during his plea proceeding. *See Dalton v. State*, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (Ct. App. 2007) (holding that "admissions made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements." (internal citations and quotation marks omitted)); *accord. Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975) (finding that the accuracy and truth of an accused's statements at a guilty plea proceeding are "conclusively" established unless he makes some reasonable allegation why this should not be so), *overruled on other grounds by United States v. Whitley*, 759 F.2d 327 (4th Cir. 1985); *cf. Blackledge v. Allison*, 431 U.S. 63, 73–74 (1977) (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"); *McMann v. Richardson*, 397 U.S. 759, 774 (1970) (noting the compelling interests in maintaining the finality of guilty-plea convictions validly obtained).

Based on the evidence presented at the PCR hearing and the record of the plea proceeding, this Court finds Applicant's plea was freely, knowingly, and voluntarily entered. Accordingly, Applicant's request for relief by way of this allegation is **DENIED.**

VII. ALL OTHER ALLEGATIONS

As to any and all allegations raised in the application or at the hearing in this matter and not specifically addressed in this order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds those claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice. S.C. Code Ann. § 17-27-90.

VIII. CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. This Court finds Applicant freely, knowingly, and voluntarily pleaded guilty and further failed to present any justification as to why the statements he made during the guilty plea hearing should not be considered conclusive. Therefore, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 24th day of October, 2022.

JOCELYN NEWMAN
Presiding Circuit Court Judge
Eleventh Judicial Circuit

Columbia, South Carolina

WITNESSES

Lexington County Sheriffs Department

Brian D Burrell

Law Enforcement Case #: 17002582

SF

ARREST WARRANT NUMBER

2017A3210800123

ACTION OF GRAND JURY

Cortney Seely

Foreperson of Grand Jury
Date: 8/5/19

VERDICT

TRUE BILL

Foreperson of Petit Jury
Date:

DOCKET NO. 2019GS3202886

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

AUGUST TERM 2019

THE STATE

vs.

Kevin Lawrence Pearson

CDR #: 0116

Indictment for

Murder

§ 16-03-0010

S.R. Hubbard III, SOLICITOR

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	Murder
COUNTY OF LEXINGTON	)	
	)	§ 16-03-0010

At a Court of General Sessions, convened on August 2019, the Grand Jurors of Lexington County present upon their oath:

That **Kevin Lawrence Pearson** did, in Lexington County, South Carolina, on or about February 8, 2017, commit the offense of murder in that he did unlawfully kill one Rodney Isaac with malice aforethought, either express or implied, to wit: by means of shooting the victim with a firearm, in violation of section 16-3-10 of the Code of Laws of South Carolina (1976, as amended).

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

ASSISTANT SOLICITOR

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STATE OF SOUTH CAROLINA | **IN THE COURT OF GENERAL SESSIONS**

COUNTY OF Lexington

STATE VS. Kevin Lawrence Pearson

AKA:

Race: Black Sex: M Age: 27

DOB: [redacted]1991 SS#: [redacted]

Address: [redacted]

City,State,Zip: West Columbia, SC 29172-2615

DL#: [redacted] SID#: [redacted]

*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

INDICTMENT/CASE#: 2019GS3202886

A/W#: 2017A3210800123

Date of Offense: 2/8/2017

S.C. Code § : 16-03-0010

CDR Code #: 0116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO: Manslaughter / Voluntary manslaughter

in violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or CSC w/minor 3rd) ☐ §17-25-45

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

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

ATTEST:

[signature] Solicitor | 100730 SC Bar# | [signature] Defendant | 2645 [signature] Attorney for Defendant | 14174 SC Bar#

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

for a determinate term of 25 (twenty-five) ~~days/months~~/years or ☐ under the Youthful Offender Act not to exceed ______ years and/or to pay a fine of $ ______; provided that upon the service of ______ days/months/years and/or payment of $ ______; plus costs and assessments as applicable*; the balance is suspended with probation for ______ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: ______

☑ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the SCDOC. Credit 519 days - jail.

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

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

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: $ ______ plus 20% fee: ______ $ ______

Payment Terms: ______

☐ Set by SCDPPPS ______

Recipient: ______

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$100
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso (Public Def/Probation)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$25
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114 (BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$
TOTAL		$125.00

Clerk of Court/ Deputy Clerk [signature]

Court Reporter: [signature]

PTUP ______

______ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. ______

May serve W/E begining ______

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

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

$ ______ paid to Public Defender Fund

Other: ______

☐ Appointed PD or appointed other counsel, §Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge [signature], J.

Judge Code: 2159

Sentence Date: 11-21-19 Plea accepted. 11-22-19 Sentenced

SCCA/217 (04/2018)