STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
Jamal Khalid Rios, #00351915, Applicant, v. State of South Carolina, Respondent.	)	CASE NO. 2023–CP–42–03678 **ORDER OF DISMISSAL WITH PREJUDICE**

Presiding Judge:	Hon. R. Lawton McIntosh
Applicant's Attorney:	Rodney W. Richey, Esq.
Respondent's Attorney:	Shayla J. Flores, Esq.
Plea Counsel:	Beverly D. Jones, Esq.
Date of Hearing:	September 3, 2024
Court Reporter:	Pamela E. Green

This matter comes before the Court by way of Jamal K. Rios' (Applicant) application for post-conviction relief (PCR) filed on September 29, 2023. Respondent, the State of South Carolina, filed its Return on July 25, 2024. On August 23, 2024, Applicant, through counsel, filed his amended PCR application.

On September 3, 2024, an evidentiary hearing was held at the Spartanburg County Courthouse before the Honorable R. Lawton McIntosh. Assistant Attorney General Shayla J. Flores represented Respondent. Applicant was present and represented by Rodney W. Richey, Esquire (PCR Counsel). At the hearing, Applicant proceeded on the claims in his amended application for PCR. In support of these claims, Applicant testified on his own behalf, and presented testimony from Ashley Lindsey and Beverly D. Jones, Esq. (Plea Counsel).

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

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

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently incarcerated according to an order of commitment of the Spartanburg County Clerk of Court. During its July 2021 term, the Spartanburg County Grand Jury indicted Applicant for use of vehicle without permission (2020-GS-42-04897); assault/attempted murder and possession of a firearm during the commission to commit a violent crime (2020-GS-42-04898); and resisting/resisting arrest; oppose or resist law enforcement officer serving process or making arrest (2020-GS-42-04899). During its September 2022 term, the Spartanburg County Grand Jury indicted Applicant for domestic violence – 1st degree (2022-GS-42-04777). During its July 2022 term, the Spartanburg County Grand Jury indicted Applicant for unlawful possession of a firearm by a person convicted of dv 1st degree (2022-GS-42-03943). Applicant was represented by Beverley Dorine Jones, Esquire. Deputy Solicitor James Edward Hunter of the Seventh Circuit Solicitor's Office prosecuted the case.

On October 11, 2022, Applicant appeared before the Honorable J. Mark Hayes, II, circuit court judge, and pled guilty under Alford[1] as indicted to unlawful possession of a firearm by a person convicted of dv 1st degree (2022-GS-42-03943) and the lesser included offense of assault and battery of a high and aggravated nature (2020-GS-42-04898).[2] Judge Hayes sentenced Applicant to five years' imprisonment for unlawful possession of a firearm, and twenty years' imprisonment for assault and battery of a high and aggravated nature, sentences to run concurrently.

[1] North Carolina v. Alford, 400 U.S. 25 (1970).
[2] The remainder of Applicant's charges were *Nolle Prossed* following his entrance into this plea.

Applicant did not appeal his convictions or sentences.

FACTS GIVING RISE TO THE CONVICTION

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

> Your Honor, first, like to note that, at the time of this offense, which was on May 10th of 2020, the Defendant was on probation; an active probation warrant for his arrest. On that day, May 10th, which was Mother's Day in 2020, this happened at Prince Hall Apartments here in the city and County of Spartanburg. On that date we allege the facts would show the Defendant pulled up to Prince Hall Apartments. The victim, Antonio Franks, who is seated back there, was at his mother's apartment, was out talking to a friend. Defendant pulled up and went into the apartment complex, came back out, confronted Mr. Franks about something Mr. Franks had allegedly said. At that time he pulled out a gun, threatened to kill Mr. Franks. Ultimately, Mr. Franks, fearing for his life, tried to fight him off. Mr. Franks tried to fight him off but was unsuccessful. And this Defendant did shoot Mr. Franks in the face, entering his cheek and kind of going out towards his neck. Multiple witnesses on scene identified this -- Mr. Franks identified this Defendant in the hospital immediately after police showed up. Other people on the scene identified the vehicle as a Nissan, light colored Nissan. In fact, one of them said between the years 2008 and 2013. At the time, the Defendant was dating, now engaged, to Leah McGregor. That is the type of car she drives, Your Honor. He shot him in the face. Mr. Franks then gets into a vehicle driven by Roxy Hardison and is taken to the hospital. Ultimately, it's likely if she had not been able to take him to the hospital, he likely would have bled out there at Prince Hall, Your Honor. The shot went through his face, through his tongue. Doctors were afraid he was never going to be able to talk again. You will hear from him shortly. He was in the hospital for almost a month. It's interesting. He went in on Mother's Day, released right around on Father's Day in June, Your Honor. His mouth was wired shut for a long time. Had to be fed through a tube before going to a liquid diet. Again, we're quite lucky that he is here and present with us. Ultimately, the short facts are this: He did shoot the victim in the face here in the city and county of Spartanburg.

(Plea Tr. pp. 6, l. 21 – 8, l. 14).

CURRENT ACTION BEFORE THIS COURT

In his application for post-conviction relief, Applicant alleged he was being held in custody unlawfully for the following reasons (excerpts verbatim):

1. Ineffective Assistance of Counsel
   a. "Hill v. Lockhart, 106 S.CT. 366"
   b. "The Applicant asserts that Counsel that represented him failed to have him (the Applicant) mentally evaluated prior to him entering a guilty plea which violated the Applicants rights under the 6th, 8th, and 14th Amendments of the United States Constitution. The Applicant has a very low I.Q. and dropped out of school at a very young age and did not understand what he was pleading to.
2. Involuntary Guilty Plea
   a. "Boykin v. Alabama, 87 S. CT 1709"
3. "Counsel Failed to File for Direct Appeal."

On August 23, 2024, Applicant, through PCR Counsel, amended his application for post-conviction relief to include the following allegations:

1. Ineffective Assistance of Plea Counsel
   a. Trial Counsel was ineffective for using a life sentence as inducement for Applicant pleading guilty.
   b. Trial Counsel was ineffective for not investigating the facts and circumstances of the Applicant's case.
   c. Trial Counsel was ineffective for not interviewing the Applicant's alibi witness.
   d. Trial Counsel was ineffective for not reviewing the discovery with the Applicant.
   e. Trial Counsel was ineffective for not proceeding with a jury trial.

Before this Court is the Spartanburg County Clerk of Court records regarding the subject convictions and sentences, Applicant's records from the South Carolina Department of Corrections, Applicant's guilty plea transcript, and the records of the current PCR action.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act[3] (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based on the following types of allegations:

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

S.C. Code Ann. § 17-27-20(A).

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

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d

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

813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. Strickland v. Washington, 466 U.S. 668 at 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687-88; Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[without proof of both deficient performance and prejudice to the defense... it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

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

An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the range of competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56. The second, or "prejudice" prong, however,

"focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Id. at 58-59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59.

This inquiry "focuses on a defendant's decisionmaking" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. 357, 367 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—**not** whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999) (emphasis added).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), SCRCP (stating that in a post-conviction

relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

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

INITIAL FINDINGS

This Court further finds applicable the strong presumption that at all stages of Plea Counsel's representation of Applicant, he rendered adequate assistance and exercised reasonable professional judgment in his representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992). See, e.g., State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) ("In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment."); Clemons v. Mississippi, 494 U.S. 738, 766 (1990) (Blackmun, J., concurring in part and dissenting in part) ("The trial judge who hears the witnesses live, observes their demeanor and in general smells the smoke of the battle is by his very position far better equipped to make findings of fact which will have the reliability that we need and desire.").

This Court makes the following findings from the record: 1. Applicant intended to enter a plea to the charges he faced at his plea hearing (Plea Tr. p. 3, ll. 9-11); 2. Applicant was not under

the influence of drugs or alcohol, which may affect his ability to understand the plea proceedings (Plea Tr. p. 4, ll. 12-15); 3. Applicant understood the sentencing range (Plea Tr. pp. 8, l. 23 – 9, l. 21); 4. Understanding the sentencing ranges he faced, Applicant Still wished to enter a plea to the charges he faced at his plea hearing (Plea Tr. pp. 8, l. 23 – 9, l. 21); 5. Applicant understood his right to a jury trial and that he waived those rights by pleading guilty (Plea Tr. pp. 5, l. 14 – 6, l. 16); 6. Applicant clearly indicated he was satisfied with Plea Counsel (Plea Tr. p. 5, ll. 2-4); 7. Applicant indicated he had enough time to discuss the ramifications of pleading guilty to a charge classified as a violent and serious offense with Plea Counsel (Plea Tr. p. 9, ll. 7-10); 8. Applicant indicated no one was forcing him to plead guilty, and his decision to plead guilty was voluntary (Plea Tr. p. 5, ll. 5-13); 9. Applicant testified to his belief that the state could produce sufficient evidence to support the charges against him beyond a reasonable doubt if he proceeded to trial and a jury would most probably find him guilty of those charges (Plea Tr. pp. 9, l. 22 – 10, l. 10); 10. Applicant confirmed that all the answers he gave to the court during his plea hearing were truthful and honest (Plea Tr. p. 10, ll. 11-13). 11. Applicant's plea was qualified as freely, knowingly, and voluntarily entered into (Plea Tr. p. 24, ll. 16-19).

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS

Allegation: Plea Counsel Failed to Investigate

Applicant alleges Plea Counsel was constitutionally ineffective for failing to investigate the facts and circumstances of his case. This Court finds this allegation is without merit.

"[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. "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular

investigations unnecessary." Id. at 691. "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Id. "The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Id. "Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant." Id. "In particular, what investigation decisions are reasonable depends critically on such information." Id.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

PCR Evidentiary Hearing

At the evidentiary hearing, on cross examination, Plea Counsel testified that she did not in any way coerce or threaten Applicant into entering his plea. (PCR Tr. p. 21, ll. 14-19). Plea Counsel testified that Applicant made the decision to plead under Alford the day before the plea occurred. (PCR Tr. p. 19, ll. 18-20). Plea Counsel testified that she and Applicant discussed the plea

agreement because the Solicitor was willing to encompass three additional charges Applicant was facing in addition to the two to which he pled within the plea agreement. (PCR Tr. pp. 19, l. 21 – 20, l. 1).

Plea Counsel testified to her belief that pleading was in Applicant's best interest. (PCR Tr. p. 22, ll. 2-4). Plea Counsel testified to her knowledge of what the evidence was that could convict Applicant and that she did not take the possibility of Applicant being sentenced to life without parole lightly, especially considering his youth. (PCR Tr. p. 20, ll. 10-17). Plea Counsel testified that she had to discuss with Applicant that what he thought was an alibi might not be enough to overcome the fact that the victim had identified him in a photo lineup and was going to identify him in the courtroom. (PCR Tr. p. 20, ll. 18-21). Plea Counsel testified that there were other facts in evidence that could have convicted Applicant at trial, including at least one other eyewitness who saw Applicant at the crime scene. (PCR Tr. pp. 20, l. 22 – 21, l. 1).

Findings

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). Applicant presented no evidence to this Court as to what Plea Counsel could have discovered or what other defenses could have been pursued had Plea Counsel been more fully prepared. The record before this Court provides Applicant was aware of the sentencing range, that no one promised him anything, and that it was a twenty-year negotiated sentence. Without presenting further proof of Plea Counsel's alleged failure to investigate, this Court finds Applicant has failed to overcome the strong presumption that Plea Counsel rendered adequate assistance. See Butler, 286 S.C. at 442, 334 S.E.2d at 814.

This Court finds through the combination of the record, and Plea Counsel's **credible** testimony that Applicant has failed to meet the burden of showing Plea Counsel was constitutionally ineffective. Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation: Plea Counsel Failed to Interview Alibi Witnesses

Applicant alleges Plea Counsel was constitutionally ineffective for failing to interview potential alibi witnesses. This Court finds this allegation is without merit.

"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). However, counsel need only interview potential witnesses "when it is reasonable to do so." Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011); see id. at 457, 710 S.E.2d at 64–65 ("While our case law does provide that defense counsel must, at a minimum, interview potential witnesses, a strict adherence to that rule loses sight of the controlling standard for counsel's duty to investigate: reasonableness. Indeed, it would be an absurdity to require criminal defense lawyers to interview *every* potential witness when they can articulate reasonable grounds not to. When counsel makes such a reasonable decision, he will have fulfilled the duty he owes to his client.").

"In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Strickland, 466 U.S. at 691; cf. Green v. French, 143 F.3d 865, 892 (4th Cir. 1998) ("Although counsel should conduct a reasonable investigation into potential defenses, Strickland does not impose a constitutional requirement that counsel uncover every scrap of evidence that could conceivably help their client."), abrogated on other grounds by Williams v. Taylor, 529 U.S. 362 (2000).

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

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Additionally, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Here, Applicant has alleged that Plea Counsel was ineffective for failing to interview potential alibi witnesses during her representation of Applicant. To establish counsel was ineffective for failing to present an alibi defense, Applicant must first present evidence of an alibi defense in accordance with the rules of evidence at an evidentiary hearing. To qualify as an alibi, a witness's testimony must account for the defendant's whereabouts during the time of the crime such that it would have been physically impossible for the defendant to commit the crime. Walker v. State, 397 S.C. 226, 237, 723 S.E.2d 610, 616 (Ct. App. 2012). "[S]ince an alibi derives its potency as a defense from the fact that it involves the physical impossibility of the accused's guilt, a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all." Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995).

PCR Evidentiary Hearing

At the evidentiary hearing, Applicant presented the testimony of Ashley Lindsey (Lindsey). (PCR Tr. pp. 38, l. 1 – 43, l. 17). Lindsey testified that she and Applicant share their first child in common. (PCR Tr. p. 38, ll. 10-15). Lindsey testified to her recollection of seeing or speaking with Applicant on the night of the shooting. (PCR Tr. p. 38, ll. 16-18). Lindsey testified that Applicant had been staying with her at her home for a couple of days prior to the shooting, as he was having issues with his then girlfriend and the mother of his third child, Leah McGregor. (PCR Tr. p. 39, ll. 2-12). Lindsey testified to her recollection of Applicant being at her house before he attended the block party where the shooting occurred. (PCR Tr. p. 38, ll. 19-25).

Lindsey testified that Applicant informed her that he was going to go to the party for a "little while" before returning to her home. (PCR Tr. p. 39, l. 1-12). Lindsey testified to her belief that Applicant was taken to the party by Leah McGregor but clarified that she did not see Ms. McGregor pick Applicant up. (PCR Tr. p. 39, ll. 13-20). Lindsey testified to being aware that Ms. McGregor gave a police statement about the incident. (PCR Tr. p. 40, ll. 16-21). Lindsey estimated that the party took place approximately five to six minutes away from her apartment. (PCR Tr. p. 39, ll. 15-17).

Lindsley testified to her belief that Ms. McGregor brought Applicant back to her home later that evening. (PCR Tr. p. 40, ll. 14-18). Lindsey testified that she had no recollection of when Applicant returned to her home but believed it to be "way before the incident happened." (PCR Tr. p. 40, ll. 5-7). Lindsey testified that Applicant returned to her home when it was getting dark. (PCR Tr. p. 40, ll. 8-10). Lindsey testified to being in the shower when Applicant returned from the block party. (PCR Tr. p. 39, ll. 22).

Lindsey testified that she did not directly see Applicant when he arrived back at her home as she was in the shower. (PCR Tr. p. 43, ll. 7-13). Lindsey testified that her son opened the door to let Applicant into her home. (PCR Tr. p. 39, ll. 22-23). Lindsey testified that Applicant then came into the bathroom while she was in the shower and asked to use her phone to make a call. (PCR Tr. pp. 39, l. 23 – 40, l. 1). Lindsey testified that she did not hesitate to allow Applicant to use her phone, so he took her phone, left the bathroom, and the two of them spent the remainder of the evening together after she finished her shower. (PCR Tr. p. 40, ll. 1-4). Lindsey testified that, when she had the opportunity to observe him, Applicant was wearing the same clothes that he left her home in and she did not observe any blood on them. (PCR Tr. p. 41, ll. 6-9).

Lindsey testified that she became aware of the shooting while in her living room with Applicant on the evening that it occurred. (PCR Tr. p. 42, ll. 3-10). Lindsey testified that she came across an article about the incident on Facebook and asked Applicant if he was involved because he matched the description listed. (PCR Tr. p. 42, ll. 11-13). Lindsey testified that Applicant denied being involved, so she checked the time listed in the article and realized that Applicant had been with her at that time. (PCR Tr. p. 42, ll. 13-19). Lindsey testified that she spoke with Plea Counsel and informed her of the information that she testified to. (PCR Tr. p. 41, ll. 10-17).

At the evidentiary hearing, Plea Counsel testified that she was aware of the contents of the statement that Leah McGregor made to police regarding the incident. (PCR Tr. p. 47, ll. 2-4). Plea Counsel testified that Ms. McGregor's statement was a part of the discovery given to her and she was aware of it from the very beginning of her representation. (PCR Tr. pp. 15, l. 23 – 16, l. 4). Plea Counsel testified to her knowledge that in this written statement Ms. McGregor explained that she saw Applicant on the night of the shooting, and that he was bloody and talked to her about being sorry that he had to shoot someone. (PCR Tr. p. 16, ll. 2-7). Plea Counsel testified that the

alibi statement and Ms. McGregor's statement were going to collide with one another and therefore the alibi would rise to the level needed to assist him. (PCR Tr. p. 16, ll. 7-11).

Plea Counsel acknowledged in her testimony that, as Lindsey stated during her testimony, Ms. McGregor was a known part of Applicant's transportation to and from the crime scene on the day of the shooting. (PCR Tr. p. 47, ll. 4-6). Plea Counsel testified that during their conversations Lindsey did not inform her that she directly saw Ms. McGregor be involved in the transportation of Applicant, but instead that she had asked her son the question "how did your daddy get here" and her son described Ms. McGregor's car. (PCR Tr. p. 47, ll. 7-12). Plea Counsel testified that after speaking with Lindsey it became clear to her that that the intention of the alibi testimony would not line up with Ms. McGregor's statement to police. (PCR Tr. p. 47, ll. 13-15).

When asked if it was her understanding that Lindsey's son was in the home during the events Lindsey testified to Plea Counsel answered in the affirmative. (PCR Tr. p. 47, ll. 20-25). Plea Counsel testified that, according to her notes, the son was ten years old at the time of the plea in question. (PCR Tr. p. 48, ll. 11-14). Plea Counsel testified that she generally avoids calling children that young as witnesses, especially in emotional cases such as Applicant's. (PCR Tr. p. 48, ll. 15-18). Plea Counsel testified that, regardless of the son's availability to testify, she believed the bigger element causing issue with any potential testimony of this nature was the timing element. (PCR Tr. p. 48, ll. 13-19).

Plea Counsel testified to discussing the viability of the alibi testimony with Applicant while he weighed the pros and cons involved in making the decision whether or not to enter a guilty plea. (PCR Tr. p. 16, ll. 10-15). Plea Counsel testified that she and Applicant had to discuss whether the alibi was really going to be a complete alibi in light of what Ms. McGregor said in her statement to police. (PCR Tr. p. 16, ll. 12-15). Plea Counsel testified that she had to discuss with Applicant

that what he thought was an alibi might not be enough to overcome the fact that the victim had identified him in a photo lineup and was going to identify him in the courtroom. (PCR Tr. p. 20, ll. 18-21). When asked whether she was aware that Ms. McGregor recanted her statement, Plea Counsel answered in the affirmative and testified to her knowledge that Ms. McGregor was also the victim of one of Applicant's domestic violence cases and that Applicant was court ordered to stay away from her. (PCR Tr. p. 16, 11. 16-21). Plea Counsel testified that she was not sure how much of Ms. McGregor's recantation was made in regards to her domestic violence allegations versus the statement in the homicide cause where her statements were video recorded. (PCR Tr. p. 17, ll. 16-21).

Findings

Based on the record before this Court and Plea Counsel's **credible** testimony, this Court finds that Plea Counsel's investigation was reasonable. See Taylor, 404 S.C. at 364, 745 S.E.2d at 104 (citing Wiggins v. Smith, 539 U.S. 510, 522–23 (2003). This Court will not credit Applicant's present claim that he would have gone to trial absent Plea Counsel's alleged failure to investigate, as Applicant has failed to present evidence of any discoverable matters or defenses Plea Counsel would have discovered had she been more prepared. This Court further finds Applicant has offered little more than mere speculation, and speculation does not meet Applicant's burden. Therefore, the Court finds Applicant failed to adequately show that he would have opted to go to trial but for Plea Counsel's lack of investigation.

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

Accordingly, this Court finds Plea Counsel's representation of Applicant was not deficient, and she performed a reasonable investigation. Therefore, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED.**

Allegation: **Ineffective Assistance of Counsel**
Allegation: **Plea Counsel Failed to Review Discovery**

Applicant alleges Plea Counsel was constitutionally ineffective for failing to review discovery materials with him. This Court finds this allegation is without merit.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). Likewise, in order to prevail on a claim that counsel did not review discovery with applicant, the applicant must demonstrate prejudice by showing what evidence could have been discovered or what other defenses could have been pursued. Id.

Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is insufficient to support a relief grant. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Findings

This Court finds the combination of the record, and Plea Counsel's **credible** testimony that Applicant has failed to meet the burden of showing Plea Counsel was constitutionally ineffective.

See Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) Applicant failed to present "any evidence of how additional preparation or communication would have resulted in a different outcome." Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012); see Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998) (explaining that, where an applicant failed to present any evidence of what counsel could have discovered or what other defenses he would have requested counsel pursue had counsel more fully prepared for the trial, applicant failed to show his counsel's lack of preparation prejudiced him); Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (finding that, when there is evidence counsel met with a defendant in preparation for trial and there is no evidence additional preparation on the part of counsel would have affected the outcome at trial, counsel cannot be said to have been ineffective), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

Moreover, to whatever extent Applicant was not entirely satisfied with the amount of time to review discovery and investigate the charges, he was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to proceed with his guilty plea. (Plea Tr. p. 5, ll. 2-4).

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

Allegation:	**Involuntary Guilty Plea**
Allegation:	**Plea Counsel Used Life Sentence as Inducement for Guilty Plea.**
Allegation:	**Plea Counsel Ineffective for Not Proceeding with Jury Trial**

Applicant alleges Plea Counsel was constitutionally ineffective and that his guilty plea was involuntary. Specifically, Applicant alleges Plea Counsel was ineffective for not proceeding with

a jury trial and using a life sentence as inducement to coerce him into taking a guilty plea. This Court finds these allegations are without merit.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a complete understanding of the consequences of the plea and the charges against him or her. Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991); see also Boykin v. Alabama, 395 U.S. 238, 244 (1969) (Courts must make sure defendants have "a full understanding of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought and forestalls the spin-off of collateral proceedings that seek to probe murky memories."). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984) (finding the voluntariness of a guilty plea "is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.").

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

As an initial matter, this Court finds the record refutes Applicant's allegations and reflects that Applicant's guilty plea was knowingly and voluntarily entered with a complete understanding of the charges and consequences of the plea. This Court further finds Applicant was fully aware of the minimum and maximum sentencing ranges on all charges that he pleaded guilty to. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985)).

PCR Evidentiary Hearing

At the evidentiary hearing, on direct examination, Plea Counsel testified that at the time of the case Applicant was subjected to a life sentence. (PCR Tr. p. 8, ll. 2-4). Plea Counsel testified, and the record reflects, that Applicant had been served notice of the State's intent to seek life without parole. (PCR Tr. p. 8, ll. 2-7). Plea Counsel testified to her knowledge from the beginning of her representation that Applicant was in danger of being served with an LWOP notice because of his prior record. (PCR Tr. p. 8, ll. 6-11). Plea Counsel testified to her surprise that Applicant was not served with the LWOP notice until the last moment but noted that there was a change of Solicitor within the last few months of the case being resolved. (PCR Tr. p. 8, ll. 12-16). Plea Counsel testified that the notice of LWOP was filed when Solicitor Hunter took over the case for the Seventh Circuit Solicitor's Office. (PCR Tr. p. 8, ll. 17-21).

When asked about the deficiencies of the LWOP notice referenced in the plea transcript,[4] Plea Counsel recalled that in the transcript she noted that the notice had not been perfected yet.[5] (PCR Tr. pp. 8, l. 22 – 9, l. 3). Plea Counsel testified that the notice was filed five or six days before Applicant entered the plea and the statute required that ten days' notice be given of the State's intent to seek life without parole. (PCR Tr. p. 9, ll. 5-9). Plea Counsel testified that Applicant was on the trial docket for the week he entered his plea, however it did not appear that Applicant was under imminent threat of being called to trial. (PCR Tr. p. 9, ll. 10-15). Plea Counsel testified that in her discussions with the Solicitor leading up to Applicant's plea he promised her that if the case was not resolved during that week, it would be on another trial docket coming quickly, which would allow the State's LWOP notice to become perfected. (PCR Tr. p. 9, ll. 14-19). Plea Counsel testified that the LWOP notice was not a direct threat at the time that Applicant pled, but it was going to become one if Applicant's case was not resolved before the notice became perfected. (PCR Tr. p. 9, ll. 20-23).

At the evidentiary hearing, on cross examination, Plea Counsel testified that she did not in any way coerce or threaten Applicant into entering his plea. (PCR Tr. p. 21, ll. 14-19). Plea Counsel testified that Applicant made the decision to plead under Alford the day before the plea occurred. (PCR Tr. p. 19, ll. 18-20). Plea Counsel testified that she and Applicant discussed the plea agreement because the Solicitor was willing to encompass three additional charges Applicant was facing in addition to the two to which he pled within the plea agreement. (PCR Tr. pp. 19, l. 21 – 20, l. 1).

[4] Plea Tr. pp. 12, l. 21-13, l. 8.
[5] Plea Tr. pp. 15, l. 19-17, l. 4.

Plea Counsel testified to her belief that pleading was in Applicant's best interest. (PCR Tr. p. 22, ll. 2-4). Plea Counsel testified to her knowledge of what the evidence was that could convict Applicant and that she did not take the possibility of Applicant being sentenced to life without parole lightly, especially considering his youth. (PCR Tr. p. 20, ll. 10-17). Plea Counsel testified that she had to discuss with Applicant that what he thought was an alibi might not be enough to overcome the fact that the victim had identified him in a photo lineup and was going to identify him in the courtroom. (PCR Tr. p. 20, ll. 18-21). Plea Counsel testified that there were other facts in evidence that could have convicted Applicant at trial, including at least one other eyewitness who saw Applicant at the crime scene. (PCR Tr. pp. 20, l. 22 – 21, l. 1).

During the evidentiary hearing on direct examination, Applicant testified that he did not believe that he had the correct definition of the Alford plea. (PCR Tr. p. 24, ll. 6-11). When asked to explain his definition of an Alford plea to the Court, Applicant testified to his belief that an Alford plea meant that he was pleading guilty only because he felt the State had enough evidence to convict him. (PCR Tr. p. 24, ll. 12-16). Applicant clarified that this was the understanding he had of the Alford plea at the time that he pled guilty. (PCR Tr. p. 24, ll. 17-18).

Findings

This Court finds Applicant has failed to show that Plea Counsel's representation fell below an objective standard of reasonableness, and that but for Plea Counsel's alleged errors, Applicant would not have pled guilty and proceeded to trial. See Roscoe v. State, 345 S.C.16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362 426 S.E.2d 795, 797 (1993).

Furthermore, this Court finds the combination of the record and Plea Counsel's **credible** testimony at the evidentiary hearing provides Applicant knew the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty pursuant to the

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

Notably, Applicant did not allege any facts tending to prove he was prevented from informing the plea court that he allegedly wanted to proceed to a jury trial. In fact, the record refutes Applicant's allegations. Thus, based on the evidence presented at the plea proceeding and the evidentiary hearing, this Court finds Applicant freely, knowingly, and voluntarily pled guilty.

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

|CONCLUSION PAGE FOLLOWS|

CONCLUSION

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

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

IT IS THEREFORE ORDERED:

1. That the Application for Post–Conviction Relief must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 13 **day of** December, **2024.**

THE HONORABLE R. LAWTON McINTOSH
Presiding Judge
Seventh Judicial Circuit

Anderson, South Carolina

FILED
2024 DEC 19 PM 2:44
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX