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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA COUNTY OF CHEROKEE	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
William T. Tate, Sr., #304559, Applicant, v. State of South Carolina, Respondent.	)	CASE NO. 2023–CP–11–00387 **ORDER OF DISMISSAL WITH PREJUDICE**

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2024 DEC -6 P 1:38
BRANDY W. MOBLEY

Presiding Judge:	Hon. Heath P. Taylor
Applicant's Attorney:	Rodney W. Richey, Esq.
Respondent's Attorney:	Shayla J. Flores, Esq.
Plea Counsel:	Christopher L. Allen, Esq.
Date of Hearing:	May 20, 2024
Court Reporter:	Pamela E. Green

This matter comes before the Court by way of William T. Tate, Sr.'s (Applicant) application for post-conviction relief (PCR) filed on June 7, 2023. Respondent, the State of South Carolina, filed its Return and Motion for a More Definite Statement on October 4, 2023. On May 7, 2024, Applicant, through counsel, amended his PCR application.

On May 20, 2024, an evidentiary hearing was held at the Spartanburg County Courthouse before the Honorable Heath P. Taylor. Assistant Attorney General Shayla Joan 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. In support of these claims, Applicant testified on his own behalf, Applicant also presented testimony from his father, Herman Tate, Sr., and Christopher L. Allen, Esquire (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 Cherokee County Clerk of Court. During its November of 2019 term, the Cherokee County Grand Jury indicted Applicant for domestic violence of a high and aggravated nature (2019-GS-11-01661) and kidnapping[1] (2019-GS-11-01704). Assistant Public Defender Christopher Lee Allen of the Seventh Circuit Public Defender's Office represented Applicant. Assistant Solicitor Toria D. Smith, of the Seventh Circuit Solicitor's Office, prosecuted the case.

On December 7, 2022, Applicant appeared before the Honorable G.D. Morgan, Jr., and pleaded guilty pursuant to Alford[2] to domestic violence of a high and aggravated nature. Judge Morgan sentenced Applicant to eight years' imprisonment, with credit for 213 days' time served.

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:

> This incident occurred April the 12th of 2019. Law enforcement responded to a 9-1-1 call made by the victim, Dora Littlejohn. At the time of this incident she and the defendant were residing together at 410 East Jeffrey Street. That is where law enforcement responded to in reference to an incident that occurred at 307 Peachtree Street, both addresses located in the County of Cherokee. There is a 9-1-1 call and a CAD sheet that has been provided in discovery to Mr. Allen. State's Exhibit No. 1 is the CAD sheet, and I'd like to present

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[1] Applicant's kidnapping charge was dismissed in exchange for his guilty plea. (Plea Tr. p. 10, ll. 1-4).

[2] North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

that to Your Honor at this time. Again, that has been shared with Mr. Allen. And the victim reported that she had been assaulted by her boyfriend, identified him as William Tate. She stated that he choked her and beat her for no reason. That call was reduced to a recording, Your Honor, and we've marked that as State's Exhibit 2. And I'd like to present that call to the Court as well. I'm sorry, Your Honor. It's been marked as State's Exhibit 3. And we'd like to play that call. (Whereupon, State's Exhibit No. 3 was played for the Court.) And, Your Honor, law enforcement responded to 410 East Jeffrey Street. That is where she actually had -- that she stated on the 9-1-1 call she ran from the defendant and actually walked from 307 Peachtree Street to 4010 East Jeffrey Street while it was raining. What's important about the 9-1-1 call is the raspiness of the victim's voice. She also stated that she felt like she was going to pass out and that she had trouble breathing. That would become important later when I go over here medical records and her diagnosis. But what she reports, and she reported to law enforcement and also what she has reported to me in several meetings -- I've spoken with her on several occasions since 2019 up until just very recently this morning just to clarify, confirm the facts -- but what she states is that she and this defendant had been in a relationship for approximately two years. She states that they've known each other since childhood, that they have lived together and they were actually residing at the same residence at the time of this incident. But she said that there had been a separation period. She was involved in his children's lives. They do not share children together, but there were two minor children that were involved in her life while she was involved with the defendant. At this particular residence, she was living there with whom she refers to as a goddaughter. That goddaughter also has some connection to this defendant. It's my understanding that maybe he and the children didn't have anywhere to go at that particular time. That's how he came about moving into this residence at 4010 East Jeffrey Street. And they kind of reconnected and started talking again and started seeing one another. On this particular night, the early morning hours of April the 12th of 2019, she states that the defendant's cousin, his girlfriend, had been at their house. Think she was going through some problems, was upset. She talked to her, fed her, and they were taking the cousin's girlfriend back to his house, which is located at 307 Peachtree Street. This is when an argument ensued between the two of them in his vehicle, and she states that the defendant snatched her purse from her, threw it out the window. She states that he knocked her glasses off, snatched a wig off of her head and locked the door. She states that there was some money in

her purse that she believed that the defendant was after. But she states in how -- what she describes to me, she says when he locked the door I knew what it was, I knew what was going to happen, because there had been a history. She states that the defendant struck her in the face with a closed fist, and for over four hours she states that the defendant proceeded to assault her and beat her by punching her multiple times in her head and face area. She states that the defendant did strangle her, and strangled her to the point where she lost consciousness several times. She stated that the defendant would sit on top of her chest, and when she would pass out and come to that the defendant would bring her back to and he would continue to assault her. She states that this continued for over that 4-hour period. She states that there were several times when she attempted to flee. One particular incident she remembers jumping in the back seat and trying to get away. This defendant gave chase to her each time and would not allow her to leave the truck or leave the area. That was the basis for the kidnapping charge. The state would focus on the confinement part or element of the kidnapping statute. But she states that she was eventually able to get away from this defendant and actually walk barefoot back to the residence at Jeffrey Street. When she arrived that goddaughter that has some connection with both of them was present when law enforcement arrived. They were able to view visible injuries that support her report. They were able to view injuries around her neck. And on the body camera there's a still-shot photo. The body camera goes in and out because they are actually trying to help her stand and get up to get her to E.M.S. They immediately recognized the raspiness. They've been trained on that, to recognize that. So, they were trying to get her to E.M.S. But on the screen shot you can see a dark mark up under her eye, which is very similar to a black eye but supports what was going on with her eye as a result of the strangulation. Her voice is still very raspy. It is very difficult to understand her, which supports her report with regards to strangulation. But they also notice her to be soaking wet. She was covered in mud. They noticed her to be -- blood all over her. And that would support her statements of where this occurred or if it occurred while it was raining and parts of where she had to walk home in the rain. She was subsequently transported to Cherokee Medical Center, and she was transferred to Spartanburg Regional to treat her injuries. She was admitted April the 12th of 2019 and she was discharged April the 13th of 2019. Your Honor, I have spoken just briefly with Dr. Flandry from Spartanburg Regional Medical or Healthcare System with regards to the doctor's report. And I've also spoken with the SANE nurse, Jennifer Cones,

who has been qualified as an expert before on strangulation. Specifically, with regards to the medical injuries and for the purposes of the domestic violence of a high and aggravated nature charge, the state is focusing on the extreme indifference to the value of human life with the victim reporting that she was strangled to the point where she lost consciousness several times. The doctor report indicates that this victim suffered a closed fracture of the right orbital floor. That is the bones in her face. They actually advised her that she needed to consult with a plastic surgeon. They also noted that she had nasal bone fractures. Also, it was advised at that time for plastics to be consulted. They also noted that there are abrasion of multiple sites. They had to treat that local wound care and pain control, but they also noted that she had a closed fracture of the hyoid bone, and that is the bone in her neck. Specifically, with regards to my conversation with Jennifer Cones -- and I had the pleasure of working with Jennifer on numerous occasions. She actually is an instructor for Spartanburg Regional with regards to strangulation. But just for clarification with regards to the hyoid bone, I asked her specifically if there are cases where individuals are strangled to the point where they actually lose their life, if victims can be strangled to death without that bone being broken. And her response to me -- and I'm reading from her email reply that she sent to me Tuesday, December the 6th, 2022, at 1:34 p.m., and she says, "Patients can absolutely die from strangulation with no hyoid bone involvement. Some of the most life-threatening complications of strangulation are stroke and anoxic injury from compression of the arteries. These both involve the blood vessels in the neck, not the bones." So, I focus on that because not only did we have an issue or would there have been issue or she would have testified with regards to her blood vessels, but this bone was broken. So, that tells me the amount of force that was placed on this victim's neck with regards to strangulation. And in my conversations with Jennifer Cones, I believe that her testimony would be that this victim actually could have been -- could have died within less than a minute. We are thankful that the defendant at periods released her, or at least released the hold that he had on her neck. Otherwise, we'd be here for a murder charge. But I fully believe that all of these facts -- the medical reports itself -- supports the element of extreme indifference to the value of human life, especially when this victim reports that she lost consciousness several times only to wake up to this defendant sitting on her chest and continuing to strike her in the head and face area and continuing to strangle her. Your Honor, she is present and would like to address the Court at the appropriate time.

> I won't go into any of much more detail with regards to the confinement since the kidnapping is being dismissed, but we have marked as State's Exhibit 2 a portion of the medical records. The medical records are approximately 140 some-odd pages to 150 pages, and I've included about five to six pages for Your Honor to review. But all of that has been provided to Chris in discovery.

(Plea Tr. pp. 14, l. 2 – 21, l. 18).

CURRENT ACTION BEFORE THIS COURT

In his application for post-conviction relief filed June 7, 2023, Applicant asserts he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel:
    a. "Counsel failed to investigate."
    b. Involuntary Guilty Plea.
        i. "Plea was not knowing voluntary intelligent given."

On May 7, 2024, PCR Counsel amended Applicant's PCR application to include the following allegations:

1. Ineffective Assistance of Plea Counsel
    a. Trial Counsel was ineffective for not allowing the Applicant to proceed with a jury trial which Applicant believes he would have prevailed;
    b. Trial Counsel was ineffective for not pursuing a defense of mutual combat;
    c. Trial Counsel was ineffective for failure to investigate the law and circumstances of his case;
    d. Trial Counsel was ineffective for not preparing witnesses for a jury trial;
    e. Applicant alleges that his guilty plea was not free and voluntarily made because of counsel's ineffectiveness.

Applicant requests relief in the form of this Court vacating his guilty plea.[3]

[3] At the Outset of Applicant's evidentiary hearing, the Honorable Heath P. Taylor confirmed Applicant's understanding of the relief available to him in a PCR action. (PCR Tr. p. 5, ll. 10-24).

Before this Court are the Cherokee 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[4] (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).

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

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

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

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

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

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

This Court makes the following findings from the record: 1. Applicant understood the charges and sentences he faced at his plea hearing (Plea Tr. p. 11, ll. 12 - 19); 2. Applicant was not under the influence of drugs or alcohol, which may affect his ability to understand the plea proceedings (Plea Tr. p. 12, ll. 11 - 14); 3. Applicant did not have any mental or physical disability that would affect his ability to understand the plea proceedings (Plea Tr. p. 12, ll. 15 – 18). 4. Applicant understood the sentencing range (Plea Tr. pp. 10, l. 20 – 11, l. 19); 5. Applicant understood his right to a jury trial and that he waived those rights by pleading guilty (Plea Tr. pp. 3, l. 1 – 13, l. 13); 6. Applicant understood the benefits and consequences he received by entering his guilty plea pursuant to North Carolina v. Alford (Plea Tr. pp. 10, l. 24 – 12, l. 10). 7. Applicant clearly indicated he was satisfied with Plea Counsel (Plea Tr. p. 23, ll. 5 - 7); 8. Applicant indicated he had conversations with Plea Counsel and understood those conversations (Plea Tr. pp. 22, l. 21 – 23, l. 4); 9. Applicant indicated no one was forcing him to plead guilty, and his decision to plead guilty was voluntary (Plea Tr. p. 22, ll. 17 - 20); 10. Applicant did not disagree with the facts surrounding the State's case against him except for a few contradictions Applicant noted to the witness statement (Plea Tr. p. 22, ll. 3 - 16); 11. Applicant's plea was qualified as freely, knowingly, and voluntarily entered into (Plea Tr. pp. 23, l. 17 – 24, l. 4).

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS ON THE MERITS

Allegation:	**Involuntary Guilty Plea**
Allegation:	**Plea Counsel Was Ineffective for Not Allowing Applicant to Proceed with a Jury Trial.**
Allegation:	**Applicant's Guilty Plea was Rendered Involuntarily made due to Plea Counsel's Ineffective Representation.**

Applicant alleges Plea Counsel's representation was constitutionally ineffective rendering his guilty plea involuntarily made. Specifically, Applicant alleges Plea Counsel was ineffective

for failing to allow Applicant to proceed to a jury trial, at which Applicant believes he would have prevailed. 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)).

At the evidentiary hearing on direct examination, Applicant testified that he did not want to plead guilty, but did so on the advice of Plea Counsel. (PCR Tr. p. 7, ll. 19 – 25). Applicant testified that Plea Counsel informed him that if he pled guilty, while he was facing a sentencing range of zero to twenty years' imprisonment, he would more than likely be sentenced to a "lengthy stint of probation and maybe some counseling." (PCR Tr. p. 9, ll. 1 – 6). Applicant testified that Plea Counsel told him how to answer the court's questions during his plea hearing. (PCR Tr. p. 9, ll. 18 - 20). Applicant testified that Plea Counsel induced his Guilty Plea by informing him that he would be immediately released from custody, and but for Plea Counsel's inducement he would have proceeded to a jury trial. (PCR Tr. p. 13, ll. 1 – 21).

On cross examination, Applicant testified that he informed Plea Counsel of his desire to go to trial throughout their relationship. (PCR Tr. p. 20, ll. 18-24). Applicant testified that he was coerced into entering his guilty plea, as he told the court what Plea Counsel told him to say regardless of the fact that he did not understand the consequences of pleading guilty pursuant to

Alford. (PCR Tr. pp. 21, l. 20 – 22, l. 2). Applicant testified that he pled guilty based upon Plea Counsel's verbal assurances that he would probably be sentenced to probation and counseling prior to entering the courtroom. (PCR Tr. pp. 23, l. 13 – 24, l. 1). This Court finds Applicant's testimony on this matter not credible.

At the evidentiary hearing on direct examination, Plea Counsel credibly testified that Applicant initially wanted to proceed to a jury trial. (PCR Tr. p. 31, ll. 4 - 12). When asked whether Plea Counsel had informed Applicant that he would be sentenced to probation and counseling, Plea Counsel credibly testified that nothing could be further from the truth. (PCR Tr. pp. 31, l. 21 – 32, l. 5). Plea Counsel credibly testified that he would never tell a client charged with domestic violence of a high and aggravated nature that they are likely to only get probation. (PCR Tr. p. 32, ll. 5 - 8). Plea Counsel credibly testified that he and Applicant discussed the risks versus the rewards of the plea deal that Applicant ultimately accepted, and he informed Applicant that he would do everything possible to get the lower end of the zero-to-twenty-year sentencing range that Applicant was facing, but that he could not guarantee any results. (PCR Tr. pp. 32, l. 9 – 33, l. 13).

When asked whether he believed the State's case was strong enough to convict Applicant, Plea Counsel credibly testified to his belief that the medical report in and of itself, would have convicted Applicant. (PCR Tr. p. 33, ll. 17 - 20). Plea Counsel credibly testified to his belief that Applicant's guilty plea pursuant to Alford was voluntary. (PCR Tr. p. 35, ll. 7 – 15). Plea Counsel credibly testified that he introduced the idea of pleading guilty pursuant to Alford, because Applicant was having a hard time with his decision to plead guilty as he did not want to necessarily admit to being the cause of the victim's injuries. (PCR Tr. pp. 35, ll. 15 – 25). Plea Counsel credibly testified that he and Applicant had this discussion regarding an Alford plea a couple days before trial, Applicant was going back and forth about whether to plead or go to trial, so these discussions

continued until the first of appearance which was the day prior to Applicant's plea hearing. (PCR Tr. p. 36, ll. 2 – 9).

On cross examination, Plea Counsel credibly testified that, had he felt it rational, he would have recommended Applicant proceed to trial, however he could not, in good conscience, do so under the current circumstances as he does not believe it would have been possible to overcome the burden that Applicant would have to have overcome in proving self-defense. (PCR Tr. p. 40, ll. 19 - 25). Plea Counsel credibly testified that he attempted to present the most thorough mitigation possible on Applicant's behalf. (PCR Tr. p. 21, ll. 13 - 14). Plea Counsel credibly testified that Applicant was sentenced to approximately forty percent of the twenty-year sentence he faced. (PCR Tr. p. 41, ll. 14 - 16).

Plea Counsel credibly testified that ultimately the decision to enter the guilty plea was Applicant's alone. (PCR Tr. p. 42, ll. 1 - 3). Plea Counsel credibly testified that he did not in any way coerce Applicant into entering his guilty plea. (PCR Tr. p. 42, ll. 4 - 7). Plea Counsel credibly testified that he stands by his representation of Applicant. (PCR Tr. p. 42, ll. 12 - 13). Plea Counsel credibly testified that he does not believe that Applicant would have received a lower sentence had he chosen to proceed to a jury trial. (PCR Tr. p. 42, ll. 14 - 18). Plea Counsel credibly testified to explaining to Applicant his case, the charges against him, his constitutional rights, and to his recollection of the court doing the same. (PCR Tr. p. 43, ll. 2 - 10).

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 Plea Counsel told him that he would only be receiving a sentence of probation and counseling, thereby coercing him to enter his guilty plea. 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**.

Allegation: Plea Counsel Failed to Present Defense of Mutual Combat.

Applicant alleges Plea Counsel provided constitutionally ineffective assistance of counsel where he failed to present a defense of mutual combat. This Court finds this allegation without

merit.

At the evidentiary hearing on direct examination, Applicant testified that the victim initiated the fight from which his current charges resulted. (PCR Tr. p. 10, ll. 1 - 8). Applicant agreed with PCR Counsel's description of events that the victim began hitting Applicant and his actions were a result of him trying to defend himself. (PCR Tr. p. 10, ll. 1 - 8). Applicant testified that he informed Plea Counsel of these facts, but Plea Counsel never discussed any sort of mutual combat defense with him. (PCR Tr. p. 10 ll. 9 – 13). Applicant testified to his belief that the victim's injuries were not as bad as the State asserted during his plea hearing and that he was not the cause of any injuries to the victim that did exist. (PCR Tr. p. 11, ll. 11 – 19).

Applicant testified that he sustained injuries during the altercation he had with the victim. (PCR Tr. p. 11, ll. 20 - 23). Applicant testified that his father took and brought to court photos depicting his injuries in the form of: a black eye, a bite mark on the left side of his chest, a stab wound on his right side, and bruising on his right side. (PCR Tr. pp. 11, l. 24 – 12, l. 8). Applicant testified to his belief that Plea Counsel should have crafted a defense on his behalf centered around his contentions that the victim initiated the altercation and that he was not the cause of her extensive injuries. (PCR Tr. p. 12, ll. 15 – 24).

Applicant testified to his belief that, had he proceeded to a jury trial, the State would not be able to prove the elements of kidnapping based upon his version of events that the victim had custody of his cell phone, and therefore he did not hold her against her will. (PCR Tr. pp. 15, l. 17 – 16, l. 11). Applicant testified that the victim gave three different versions of the altercation to police and that Plea Counsel could have used that information to impeach the victim's testimony had he proceeded to a jury trial. (PCR Tr. p. 18, ll. 4 - 11). Applicant testified that the victim had committed several prior violent acts towards him over the course of a couple of years. (PCR Tr. p.

18, l. 12 – 21). Applicant testified that Plea Counsel never discussed any defenses that could be raised at trial with him. (PCR Tr. p. 19, ll. 8 - 15).

On cross examination, Applicant testified to his recollection of Plea Counsel bringing up his version of events and some of the defenses he would have presented at trial during his plea hearing. (PCR Tr. p. 22, ll. 21 - 24).[5]

At the evidentiary hearing on direct examination, Plea Counsel credibly testified to reviewing the victim's medical report with Applicant (PCR Tr. pp. 33, l. 17 – 34, l. 1). Plea Counsel credibly testified to his recollection of the extreme injuries suffered by the victim being that her right eye socket was crushed, her nasal bones were crushed, the hyoid bone in her throat was crushed, and she sustained additional closed head injuries. (PCR Tr. p. 43, ll. 2 – 8). Plea Counsel credibly testified that Applicant sustained injuries during the altercation and that he did not dispute that both parties participated in the altercation. (PCR Tr. p. 34, ll. 14 – 20). When asked whether he and Applicant discussed any type of mutual combat as a defense Plea Counsel credibly testified that he and Applicant briefly discussed self-defense. (PCR Tr. p. 34, ll. 21 – 24).

Plea Counsel credibly testified that he mentioned to Applicant that it would have been very hard for a jury to believe that the injuries sustained by the victim were the result of self-defense. (PCR Tr. p. 35, ll. 1 – 4). Plea Counsel credibly testified to his belief that Applicant understood the conversations they had on the subject. (PCR Tr. p. 35, ll. 5 – 8). Regarding this allegation Plea Counsel credibly testified as follows:

> PCR Counsel: Okay. And then when y'all reconvened is when he pled?
> Plea Counsel: So, so the day before the plea that morning, the day before the plea that morning, he's on record as telling the Court he wanted to go to trial. He let me know that as well. Throughout that day, I had spent a

[5] Plea Tr. pp. 27, l. 2 – 34, l. 14.

significant amount of time with him at the jail up until about eight or nine o'clock that night. I did go to the CV -- the local CVS in Gaffney, print out the pictures that his father, Herman, had provided me with, showed him those pictures that evening, told him that, you know, certainly we can show a jury these pictures. However, when a jury has these pictures to look at versus the State's medical report with these abhorrent injuries, I believe it wouldn't be in this best interest not to take a gamble that the State would view this as some type of a self-defense situation. In essence, it would be difficult to believe someone's defending themselves if the jury believes that they're choking the person that they're saying they're defending themselves against.

PCR Counsel: And---

Plea Counsel: I felt that would of been too much to overcome.

PCR Counsel: So did -- you didn't believe this was some type of fight, mutual combat, between the two?

Plea Counsel: I do believe that there was a fight –

PCR Counsel: Yeah.

Plea Counsel: -- based on -- obviously based on the injuries. I just don't believe that I could of ever convinced a jury that the injuries were caused to Ms. Littlejohn because of self-defense.

(PCR Tr. pp. 37, l. 10 – 38, l. 16).

This Court finds Plea Counsel's representation with regard to this allegation was not deficient. Notably, Plea Counsel raised the arguments that Applicant now sets forth during Applicant's plea hearing. (Plea Tr. pp. 27, l. 2 – 34, l. 14). Accordingly, in addition to finding Applicant's testimony not credible, this Court further finds that Applicant has failed to establish facts sufficient to warrant the issue of mutual combat being considered. This Court finds Plea Counsel's representation of Applicant was not deficient, nor did Applicant demonstrate any prejudice flowing from Plea Counsel's performance in this matter. Therefore, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED**.

Allegation: Plea Counsel Failed to Investigate the Law and Circumstances of His Case

Applicant alleges Plea Counsel was constitutionally ineffective for failing to investigate. Specifically, Applicant avers that Plea Counsel did not effectively investigate his contentions that he was innocent. 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)).

At the evidentiary hearing, Applicant testified that the victim gave investigating officers various different versions of the events resulting in the charges for which he was convicted. (PCR Tr. p. 22, ll. 10 – 18). Applicant testified that the victim informed officers that she was muddy and that there was no mud at the scene of the crime. (PCR Tr. p. 11, ll. 6 - 7). Applicant testified that the victim informed officers that she walked home from the scene of the altercation but that she could not have walked home because she would have had to pass a police station to do so. (PCR Tr. p. 11, ll. 7 – 10). Applicant testified that the victim gave a statement to officers indicating that he had held her for four hours, but he contends that statement was untrue and he informed Plea Counsel of that four months prior to his trial. (PCR Tr. p. 22, ll. 16 – 18).

On cross-examination, Plea Counsel credibly testified that he investigated Applicant's case "as much as any, case that [he's] ever investigated." (PCR Tr. p. 40, ll. 12 – 14). Plea Counsel credibly testified to speaking with Applicant's father several times, and visiting Applicant at the jail numerous times, both for casual conversation in passing and one on one meetings. (PCR Tr. p. 40, ll. 15 – 19). Plea Counsel credibly testified that, had Applicant chosen to proceed to a jury trial, Applicant would have called Applicant's father to dispute the State's allegations regarding the alleged four hour time line that Applicant held the victim. (PCR Tr. p. 14, ll. 17 – 25). Plea Counsel credibly testified to his recollection of the evidence in the State's case including: a 9-1-1 call made by the victim at approximately 10:00 AM, wherein her voice was raspy and she was asking for help; a police report indicating that the officer on scene did note the appearance of blood on the

victim and that her voice was raspy; a medical report showing that the victim suffered a broken nose, nasal fractures, fractures on the right orbital bone, fractures to the hyoid bone which indicates that someone had been choked, and additional closed head injuries; the testimony of the attending nurse and the physician responsible for the medical report; and the testimony of a strangulation expert. (PCR Tr. pp. 39, l. 17 – 40, l. 11). Plea Counsel credibly testified to his belief that, in light of the evidence, it would not have been possible to overcome the burden imposed on Applicant to prove self-defense. (PCR Tr. p. 40, ll. 19 – 25).

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 zero to twenty year open plea. 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.

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

Allegation: **Plea Counsel Failed to Prepare Witnesses for A Jury Trial**

Applicant alleges Plea Counsel was constitutionally ineffective for failing to prepare witnesses for a jury trial. Specifically, Applicant alleges Plea Counsel did not contact any witnesses on his behalf. 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)).

At the evidentiary hearing, Applicant testified to his belief that Plea Counsel did not contact any of his witnesses. (PCR Tr. p. 22, l. 19). Applicant testified that his father appeared at his hearing with photos of his injuries sustained during the altercation with the victim of his own volition. (PCR Tr. p. 22, ll. 19 - 20). Applicant testified that the victim gave a statement to officers indicating that he had held her for four hours, but he contends that statement was untrue, and he informed Plea Counsel of that four months prior to his trial. (PCR Tr. p. 22, ll. 16 – 18).

Mr. Herman Tate, Sr., (Applicant's father) did appear and testify at Applicant's evidentiary hearing. (PCR Tr. pp. 24 – 29). On direct examination, Applicant's father testified that Applicant came to his home on the day of the subject altercation, and that he observed various injuries on Applicant's person at that time. (PCR Tr. p. 25, ll. 7 – 16). Applicant's father testified that Applicant informed him that his injuries were a result of an altercation that had occurred with the victim. (PCR Tr. p. 25, ll. 17 – 22). Applicant's father testified to his observation of several similar incidents between the two parties prior to the subject altercation. (PCR Tr. pp. 25, l. 23 – 26, l. 9). Applicant's father testified to having had discussions with Plea Counsel regarding Applicant's case. (PCR Tr. pp. 26, l. 18 – 27, l. 12). Applicant's father testified that he was present in the courtroom to support his son on the day of his guilty plea. (PCR Tr. p. 27, ll. 13 - 20). Applicant's father testified that he did not know that Applicant had requested a jury trial. (PCR Tr. p. 27, ll. 15 – 18).

On cross examination, Applicant's father testified that he met with Plea Counsel at his office once or twice. (PCR Tr. p. 28, ll. 24 - 25). Applicant's father testified that during those meetings they discussed Applicant's incarceration, potential defenses, and projected release dates. (PCR Tr. p. 29, ll. 1 – 5). Applicant's father testified to his recollection of Plea Counsel presenting the photos he had taken of Applicant's injuries to the court during Applicant's plea hearing. (PCR Tr. p. 29, ll. 15 – 18).

On cross-examination, Plea Counsel credibly testified that he investigated Applicant's case "as much as any, case that [he's] ever investigated." (PCR Tr. p. 40, ll. 12 – 14). When asked whether he interviewed and prepared any witnesses for Applicant's case, Plea Counsel credibly testified that the only witness he felt they would have called had Applicant proceeded to a jury trial, would have been Applicant's father. (PCR Tr. p. 41, ll. 17 - 20). Plea Counsel credibly testified that had they presented a case to the jury he would have called Applicant's father, Herman Tate, Sr., to dispute the State's allegations regarding the alleged four-hour timeline that Applicant held the victim. (PCR Tr. p. 14, ll. 17 – 25). Plea Counsel credibly testified to speaking with Applicant's father several times, and visiting Applicant at the jail numerous times, both for casual conversation in passing and one on one meetings. (PCR Tr. p. 40, ll. 15 – 19).

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 more fully prepared any witnesses for a jury trial. The record before this Court provides Applicant was aware of the sentencing range, that no one promised him anything, and that it was a zero to twenty year

open plea, with the State recommending the high end of the sentencing range. Without presenting further proof of Plea Counsel's alleged failure to prepare any witnesses, 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.

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

|CONCLUSION PAGE FOLLOWS|

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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.

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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 27th **day of** November**, 2024.**

THE HONORABLE HEATH P. TAYLOR
Presiding Judge
Seventh Judicial Circuit

Orangeburg, South Carolina