STATE OF SOUTH CAROLINA COUNTY OF CHEROKEE	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
Donald Martin III, #389230, Applicant, v. State of South Carolina, Respondent.	)	CASE NO. 2023–CP–11-0085

RECEIVED
JAN 27 2025
S.C. SUPREME COURT

ORDER OF DISMISSAL WITH PREJUDICE

FILED IN THE OFFICE
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2025 JAN -1 P 12:01
BRANDY W. MOBEE
CHEROKEE COUNTY, SC

Presiding Judge:	Hon. Perry H. Gravely
Applicant's Attorney:	Rodney W. Richey, Esq.
Respondent's Attorney:	Shayla J. Flores, Esq.
Plea Counsel:	Jacqueline A. Moss, Esq.
Date of Hearing:	November 19, 2024

This matter comes before the Court by way of Donald Martin III 's (Applicant) application for post-conviction relief (PCR) filed on February 9, 2023. Respondent, the State of South Carolina, filed its Return and Partial Motion to Dismiss, and Motion for a More Definite Statement on or around May 5, 2023.

On November 19, 2024, an evidentiary hearing was held at the Spartanburg County Courthouse before the Honorable Perry H. Gravely. Assistant Attorney General Shayla Joan Flores, represented Respondent. Applicant was present and represented by Rodney W. Richey, Esquire (PCR Counsel). At the hearing, Applicant's counsel advised that Applicant requested a continuance to obtain substitute counsel and subpoena witnesses for his hearing to prove his alibi defense. First, the Court finds that the PCR hearing was not an opportunity to present defenses when he pled guilty and the issue before the Court was whether he advised his attorney of this alibi defense. Further, the Applicant did not present any basis for continuing the case or removing Mr.

Richey as counsel. Therefore, Applicant's Motion to Relieve Counsel and for a continuance was denied and the case proceeded on the merits.

Applicant, through counsel, stated for the record which allegations he intended to proceed on. In support of these claims, Applicant testified on his own behalf, and presented testimony from Jacqueline A. Moss, Esq. (Plea Counsel).

Following a thorough review of the record, 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 May 2022 term the Cherokee County Grand Jury indicted Applicant for murder (2022–GS–11–00506). Jaqueline A. Moss, Esq. represented Applicant. Assistant Attorney General Joel A. Kozak prosecuted the case.

On October 13, 2022, Applicant appeared before the Honorable R. Keith Kelly and pleaded guilty pursuant to North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160 (1970), to the lesser included offense of voluntary manslaughter. On October 17, 2022, Applicant appeared before the Honorable R. Keith Kelly for mitigating and sentencing purposes. Judge Kelly sentenced Applicant to twenty-five years' imprisonment for voluntary manslaughter.

Applicant did not appeal his conviction or sentence.

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:

Thank you, Your Honor. On August 20, 2017, at around midnight, the defendant, Donald Martin, III, who is also known as Scrawny and 730, was taken to 802 West Buford Street, Apartment B in Cherokee County by a co-defendant. Once the defendant arrived at the location, he exited his co-defendant's vehicle and fired at least 15 times into the apartment, which bullet holes covering the entire exterior of the apartment. Eight-year-old Kamryn Bradley was staying with her uncle that night and was inside the apartment, sitting on the couch with her two cousins watching her iPad, while her cousins played a video game. When the shots came through the downstairs windows striking Kamryn in the head. Her uncle came downstairs after the gunshots had stopped and immediately dialed 911. The initial responding officer arrived and attempted to deliver medical aid, putting Kamryn in a recovered position on the floor while she continued to shallowly breathe. She was transported to the hospital, and as she was waiting to be airlifted, she succumbed to her injuries. After shooting into the apartment, the defendant got back into the co-defendant's car with the gun pointing at them. Told them to take him back to the house and said I have three bullets left. The co-defendant described the gun as a handgun with an extended magazine. The defendant has many photos on social media holding this exact type of gun, what appears to be a glock with an extended clip. The 15 casings that were recovered in the parking lot of the crime scene were submitted to SLED and were all consistent to have been fired by the same firearm with a firing pin that would have been consistent with a glock. Through the investigation, a witness was interviewed and informed law enforcement that this shooting was over some unpaid drug money by a resident of the apartment. The defendant did not know anyone in the apartment, but was sent by Isaac Bridges, Jr., also known as Ike and Mulla (phonetic). Bridges was on house arrest at the time and was owed money by someone in the house. Testimony would have shown that Bridges and the defendant were both members of the suicide squad, which is a gang out of Spartanburg. The same witness was also a former member of the suicide squad, who through a statement to law enforcement said that the defendant had been kicked out of suicide squad following the shooting and the defendant was bragging about how he now had a body on him. The witness further told law enforcement that the defendant got tattoos on his face following the shooting. One is a tattoo on his right temple that says no regrets, that according to this witness, the defendant would point to when talking about the shooting that killed Kamryn. Another tattoo on his left temple that has a type glock handgun with an extended clip, which was

> consistent with the murder weapon that was used in this incident, Your Honor. The defendant does not have any prior record, other than an assault and battery third from the juvenile, that he was on probation for at the time of this shooting, Your Honor.

(Plea Tr. pp. 9, l. 16 – 12, l. 4).

CURRENT ACTION BEFORE THIS COURT

In his application for post-conviction relief filed February 9, 2023, Applicant claimed he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel:
   a. Misled by these members sworn in by the bar.
2. Prosecutorial Misconduct
   a. Intentionally kept ignorant by these parties.
3. Due Process Violations and Obstruction of Justice.
   a. Not presenting all truths against me.

On November 19, 2024, at the evidentiary hearing Applicant, through PCR Counsel, informed this Court that he would be proceeding on the following additional allegations:

1. Ineffective Assistance of Counsel
   a. Failure to investigate potential alibi witness. (PCR Tr. pp. 4, l. 18- 6, l. 14).
   b. Failure to discuss potential defenses with Applicant. (PCR Tr. pp. 11, l. 19 – 12, l. 11).
   c. Failure to provide and review discovery with Applicant. (PCR Tr. pp. 13, l. 9 – 14, l. 6).

Applicant requests relief in the form of this Court vacating his sentence and conviction and releasing him from the State's custody.

Before this Court is 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[1] (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

[1] 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. 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 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 understood the charges and sentences he faced at his plea hearing (Plea Tr. pp. 5, l. 21-6, l. 13); 2. Applicant understood his right to a jury trial and that he waived those rights by pleading guilty (Plea Tr. pp. 6, l. 14-7, l. 7); 3. Applicant clearly indicated he was satisfied with Plea Counsel's services and

that he had no complaints to make against her (Plea Tr. p. 9, ll. 7-11); 4. Applicant indicated Plea Counsel answered all of his questions (Plea Tr. p. 8, ll. 18-20); 5. Applicant indicated Plea Counsel explained to him the Government's burden of proof and the elements of the offense known as voluntary manslaughter (Plea Tr. pp. 8, l. 21-9, l. 3); 6. Applicant indicated Plea Counsel did everything that she could to help him (Plea Tr. p. 9, ll. 4-6);7. Applicant indicated his guilty plea was made freely, intelligently, and voluntarily (Plea Tr. p. 7, ll. 17-19); 8. Applicant indicated it was his decision alone to plead guilty (Plea Tr. p. 8, ll. 12-14). 9. Applicant indicated he was in no way pressured to enter his guilty plea by Plea Counsel (Plea Tr. p. 8, ll. 15-17); 10. Applicant agreed that there was a substantial likelihood that he would be convicted if the State called all of the witnesses that they were prepared to present (Plea Tr. pp. 7, l. 20-8, l. 6); 11. Applicant indicated his belief that the State could establish the facts as recited at trial and that if they did he would be convicted (Plea Tr. p. 12, ll. 5-22); 12. Applicant was aware that he received a benefit by being allowed to plead under Alford (Plea Tr. p. 8, ll. 7-11).

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INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS

Allegation 1: **Plea Counsel Mislead Applicant.**
Allegation 1: **Plea Counsel Failed to Discuss Potential Defenses with Applicant.**

Applicant alleges Plea Counsel was constitutionally ineffective and that his guilty plea was involuntary. Specifically, Applicant alleges Plea Counsel failed to discuss potential defenses with him in order to persuade him to enter his guilty plea pursuant to Alford. 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.

Guilty Plea Proceedings

The following colloquy occurred between Applicant and the plea court:

The Court:	Mr. Martin, you are entitled to a trial by jury, and I am assigned and I am the resident judge, and I'm assigned to be in Cherokee County Monday morning and we can pick a jury. Do you want a trial by jury?
[Applicant]:	No, sir.
The Court:	You have the right to call any witness you choose to testify on your behalf. Do you waive that right?
[Applicant]:	Yes, sir.

The Court: You have the right to confront through cross-examination by your lawyer any witness who would testify against you. Do you waive that right?

[Applicant]: Yes, sir.

The Court: Okay. How do you offer to plead to voluntary manslaughter, guilty or not guilty?

[Plea Counsel]: Your Honor, if I may interrupt. I didn't bring this to your attention. This is a no contest plea under North Carolina versus Alford.

The Court: Okay, thank you. All right, sir. Do you, in fact, enter a plea under North Carolina versus Alford?

[Applicant]: Yes, sir.

The Court: Do you do so freely, intelligently, and voluntarily?

[Applicant]: Yes, sir.

The Court: I don't know anything about this case, but if the Attorney General calls his witnesses, isn't it true there is a substantial likelihood you would be convicted?

....

[Applicant]: Yes, sir.

The Court: Okay. And isn't it also true that you are receiving a beneficial result? You are receiving a benefit by being allowed to plead under the Alford case?

[Applicant]: Yes, sir.

The Court: Okay. Is it your decision and your decision alone to enter this plea under Alford?

[Applicant]: Yes, sir.

The Court: How about your lawyer, did she pressure you in any way to enter this plea?

[Applicant]: No, sir.

The Court: Okay. Did she answer all of your questions?

[Applicant]: Yes, sir.

The Court: And did she explain to you the burden always remains on the Government to prove your guilt beyond a reasonable doubt?

[Applicant]: Yes, sir.

The Court: Okay. And did she also explain to you the elements of the offense known as voluntary manslaughter?

[Applicant]: Yes, sir.

The Court: Has she done everything she can to help you?

[Applicant]: Yes, sir.

The Court: Are you satisfied with her services?

[Applicant]: Yes, sir.

The Court: Do you have any complaints to make against her?

[Applicant]: No, sir.

(Plea Tr. pp. 6, l. 14– 9, l. 11).

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PCR Evidentiary Hearing

At the evidentiary hearing, Applicant testified that he had numerous lawyers over the five-year period he awaited trial. (PCR Tr. p. 9, ll. 2-5). Applicant testified that he maintained his innocence in pleading guilty pursuant to Alford. (PCR Tr. p. 11, ll. 9-18). Applicant testified that none of his attorneys informed him that he had a viable defense in case, and all advised him to plead guilty. (PCR Tr. p. 12, ll. 1-6). Applicant testified that he was offered to plead guilty to a sentencing range of zero to thirty years with each attorney who represented him. (PCR Tr. p. 12, ll. 7-11).

Applicant testified that he informed Plea Counsel that he wished to proceed to trial. (PCR Tr. p. 20, ll. 18- 21). Applicant testified that Plea Counsel informed him that should he decide to proceed to trial, he would be unable to back out of his decision. (PCR Tr p. 20, ll. 21-23). Applicant testified that Plea Counsel further informed him that she did not "feel like going through all [the] paperwork" involved in a trial. (PCR Tr. p. 20, ll. 23-24). Applicant testified that Plea Counsel then informed him that she had been in communication with the Assistant Attorney General and was able to come to the agreement that, should Applicant plead guilty pursuant to Alford, he would agree to be lenient. (PCR Tr. pp. 20, l. 18- 21, l. 2). Applicant testified that Plea Counsel informed him of her belief that pleading guilty pursuant to Alford was in his best interest. (PCR Tr. p. 21, ll. 1-3).

Applicant testified that he and Plea Counsel partially discussed what it means to enter a plea pursuant to Alford on the day that he accepted the plea. (PCR Tr. p. 21, ll. 6-12). Applicant testified that during this discussion he informed Plea Counsel that he was innocent and Plea Counsel informed him of her continued belief that entering the Alford plea was in his best interest. (PCR Tr p. 21, ll. 6-18). Applicant testified to his understanding of the definition of pleading

pursuant to Alford being "saying like I'm still innocent, but I feel like y'all are going to do what y'all are going to do anyway, so I'm just going to plea." (PCR Tr. p. 21, ll. 15-18).

During the evidentiary hearing, Plea Counsel testified that she was retained to represent Applicant in late 2021 prior to his guilty plea in October of 2022. (PCR Tr. p. 31, ll. 3-9). Plea Counsel testified that Applicant never informed her that he was completely innocent of the charges against him. (PCR Tr. pp. 27, l. 20-28, l. 19). Plea Counsel testified that Applicant described to her events leading up to the crime, and gave her specific factual information about the shooting and about the allegations against him. (PCR Tr. pp. 27, l. 20-28, l. 19). Plea Counsel testified that Applicant did not maintain that he was innocent of the charges against him at all times during her representation of him. (PCR Tr. pp. 27, l. 20-28, l. 19). When asked whether Applicant was stating that he was not guilty of the charges against him but believed that the State had a substantial factual basis to prove the charges against him by pleading pursuant to Alford, Plea Counsel answered in the affirmative. (PCR Tr. pp. 28, l. 22-29, l. 1).

When asked whether Applicant was maintaining his innocence by doing so and whether she had an issue with him doing that, Plea Counsel testified that he was and she did not. (PCR Tr. p. 29, ll. 2-11). When asked whether she felt as though those actions were in Applicant's best interest, Plea Counsel answered in the affirmative. (PCR Tr. p. 29, ll. 12-13).

Plea Counsel testified that she received all discovery pursuant to Rule 5 and Brady and would review that information with Applicant as she received it. (PCR Tr. p. 31, ll. 10-15). Plea Counsel testified that she spoke with and received paper information from one of Applicant's prior attorneys, and did contact the other prior attorneys, but they did not have much to offer. (PCR Tr. p. 31, ll. 16-25). Plea Counsel testified that she and Applicant discussed potential defenses but were unable to craft a viable defense strategy in his case. (PCR Tr. p. 32, ll. 1-12). Plea Counsel

testified that Applicant informed her he wanted to proceed to trial, and she informed her that this was what she was hired for and what they would be pursuing. (PCR Tr. p. 33, ll. 9-11). Plea Counsel testified that Applicant had been given the same plea offer throughout her representation and she had a duty to provide that information to him. (PCR Tr. p. 33, ll. 12-13). Plea Counsel testified that she also had a duty to provide him with the information about the charges he was facing. (PCR Tr. p. 33, ll. 13-14). Plea Counsel testified that Applicant knew the situation he was in regarding the charges against him. (PCR Tr. p. 33, ll. 14-15).

Plea Counsel testified that prior to Applicant pleading guilty, she reviewed with Applicant a guilty plea affidavit that was several pages long and explained exactly what a defendant is facing and what their rights are. (PCR Tr. p. 31, ll. 16-22). Plea Counsel testified that she went through that affidavit with him very specifically so that he could understand what would be occurring and what he was facing in pleading guilty. (PCR Tr. p. 31, ll. 16-22). Plea Counsel testified that following their conversation Applicant indicated to her that he wished to plead guilty. (PCR Tr. p. 31, ll. 16-22). Plea Counsel testified that Applicant knew his trial date when he went to court and made the decision to plead guilty. (PCR Tr. pp. 33, l. 23-34, l. 2). Plea Counsel testified that she had no reason to tell Applicant that he was required to plead guilty and stepped in to represent him to make sure that he knew what he was doing before he pled guilty. (PCR Tr. p. 34, ll. 3-7).

Plea Counsel testified to her belief that she discussed with Applicant all of his options regarding pleading guilty or proceeding to trial at every meeting between the two, as she wanted Applicant to know what he was facing and the choices he had. (PCR Tr. p. 35, ll. 3-12). Plea Counsel testified that, due to Applicant's age, she wanted to ensure that she was clear regarding what his options were, so she very carefully went through each indictment and explained to him what he was facing for each indictment. (PCR Tr. p. 35, ll. 6-12). Plea Counsel testified to her

belief that Applicant had a good understanding of their discussions because he had specific questions about allegations made by the witnesses and codefendant and what the codefendant would testify to. (PCR Tr. p. 35, ll. 13-22). Plea Counsel testified that she stood by her representation and continued to believe that pleading guilty was in his best interest. (PCR Tr. pp. 35, l. 23 – 36, l. 4). Plea Counsel testified to her belief that, when looking at the totality of the circumstances, Applicant could have been sentenced to life. (PCR Tr. p. 36, ll. 5-11). Plea Counsel testified that she explained this to him and believes that his knowledge that he could face life in prison is why he pled guilty pursuant to Alford. (PCR Tr. p. 36, ll. 9-14).

Findings

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)).

Furthermore, 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). 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).

Thus, based on the evidence presented at the plea proceeding and the evidentiary hearing, this Court finds Applicant freely, knowingly, and voluntarily pled guilty. This Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Accordingly, this allegation must be **DENIED** and **DISMISSED**.

Allegation 2: **Plea Counsel Failed to Present All Truths Against Applicant.**

Allegation 2: **Plea Counsel Failed to Investigate and Present Potential Alibi Witnesses.**

Applicant alleges Plea Counsel was constitutionally ineffective for failing to investigate potential alibi witnesses. (PCR Tr. pp. 4, l. 18- 6, l. 14). Specifically, Applicant avers that Plea Counsel was ineffective for failing to investigate the testimony of his brother with whom he

contends he was with at the time the crime was committed. (PCR Tr. pp. 14, l. 7- 17, l. 6). 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).

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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).

Guilty Plea Proceedings

The following colloquy occurred between Applicant and the plea court:

The Court:	Mr. Martin, you are entitled to a trial by jury, and I am assigned and I am the resident judge, and I'm assigned to be in Cherokee County Monday morning and we can pick a jury. Do you want a trial by jury?
[Applicant]:	No, sir.
The Court:	You have the right to call any witness you choose to testify on your behalf. Do you waive that right?
[Applicant]:	Yes, sir.
The Court:	You have the right to confront through cross-examination by your lawyer any witness who would testify against you. Do you waive that right?
[Applicant]:	Yes, sir.

(Plea Tr. pp. 6, l. 14– 7, l. 2).

PCR Evidentiary Hearing

At the evidentiary hearing, PCR Counsel informed this Court that Applicant alleged he has an alibi for the date and time that the murder was committed, and he informed PCR Counsel that he has a witness who would testify to that effect. (PCR Tr. p. 5, ll. 3-5). Applicant testified that he had numerous lawyers over the five- year period he awaited trial. (PCR Tr. p. 9, ll. 2-5). Applicant testified that he maintained his innocence in pleading guilty pursuant to Alford. (PCR Tr. p. 11, ll. 9-18). Applicant testified that his contention that he was innocent of the charges for which he was convicted was based on him not being present at the scene of the murder during its commission. (PCR Tr. p. 10, ll. 10-12). Applicant testified that he informed each of his prior attorneys that he was with his brother and a few friends in Orangeburg at the time that the murder was committed. (PCR Tr. p. 10, ll. 13-18). Applicant testified that he and three to five other individuals were at a college at the time the crime was committed, and that all of those individuals would have been able to testify to his presence there. (PCR Tr. p. 14, ll. 10-16). Applicant testified that he knew all of the individuals and that, if he could get into contact with all of them, they would all be willing to testify on his behalf. (PCR Tr. p. 14, ll. 7-13). Applicant testified to his belief that all of the witnesses were available to Plea Counsel at the time of his case. (PCR Tr. p. 14, ll. 20-22). Applicant testified that, had Plea Counsel wished to contact them, she would have been able to do so. (PCR Tr. p. 14, ll. 23-25). Applicant testified that neither Plea Counsel or any of his previous attorneys ever investigated whether his alleged alibi was true, despite him asking them to do so. (PCR Tr. p. 10, ll. 19-24).

Applicant testified that his half-brother was one of the individuals who would have testified on his behalf as an alibi witness. (PCR Tr. p. 15, ll. 1-9). Applicant testified that he and his half-brother share a mother. (PCR Tr. p. 15, ll. 1-9). Applicant testified that his brother was

approximately seventeen to eighteen years old at the time of the crime. (PCR Tr. p. 15, ll. 12-14). Applicant testified to his belief that one of his brother's friends drove them to Orangeburg where they stayed for about a week. (PCR Tr. p. 15, ll. 15-24). Applicant testified that he and his brother stayed in a room on campus but would attend parties at different campuses. (PCR Tr. pp. 15, l. 25-16, l. 7). Applicant testified that his half-brother's testimony would support his version of events. (PCR Tr. p. 16, ll. 8-10). Applicant testified that the other individuals who would testify as alibi witnesses on his behalf were college students on campus. (PCR Tr p. 16, ll. 11-13). Applicant testified that some of the individuals were from Spartanburg and attended Spartanburg High School. (PCR Tr. pp. 16, l. 14-17, l. 3). Applicant testified hat he had no doubt these individuals could have been located and found. (PCR Tr. p. 17, ll. 4-6).

Applicant testified to his belief that his alleged alibi was a defense in his case. (PCR Tr. pp. 10, l. 25-11, l. 2). Applicant testified that none of his attorneys informed him that he had a viable defense in case, and all advised him to plead guilty. (PCR Tr. p. 12, ll. 1-6). Applicant testified that, at the time of his PCR Hearing, he has never confessed to committing the crimes for which he was convicted. (PCR Tr. p. 11, ll. 14-18). Applicant testified that when he discussed this information with Plea Counsel as well as his prior attorneys, no one ever informed him that he could craft a defense from that information. (PCR Tr. p. 12, ll. 1-4). Applicant testified that his attorneys all told him to plead guilty to the charges against him. (PCR Tr. p. 12, ll. 5-11). Applicant testified that he was offered to plead guilty to a sentencing range of zero to thirty years with each attorney who represented him. (PCR Tr. p. 12, ll. 7-11).

Applicant testified that he did not present Plea Counsel with a list of individuals whom he wished to testify on his behalf as alibi witnesses. (PCR Tr. p. 23, ll. 3-6). Applicant testified that he did not necessarily discuss the witnesses with Plea Counsel but informed her that he had been

in Orangeburg with his brother on a college campus at the time the crime was committed, but did not discuss individuals with her. (PCR Tr. p. 23, ll. 7-12). Applicant testified that Plea Counsel did not try to investigate further into his statements after that conversation. (PCR Tr. p. 23, ll. 12-13). Applicant testified that none of the individuals whom he referenced were present at the evidentiary hearing. (PCR Tr. p. 23, ll. 14-15). Applicant testified that he was one hundred percent positive that he informed Plea Counsel that he had been in Orangeburg at the time of the crime. (PCR Tr. pp. 23, l. 25 – 24, l. 11).

During the evidentiary hearing, Plea Counsel testified that she was retained to represent Applicant in late 2021 prior to his guilty plea in October of 2022. (PCR Tr. p. 31, ll. 3-9). When asked whether, as a criminal defense lawyer, she would agree that it is the lawyer's responsibility to investigate the case for the client to some degree, Plea Counsel answered in the affirmative. (PCR Tr. p. 26, ll. 8-11). Plea Counsel testified that Applicant never told her that he was in Orangeburg at the time of the shooting. (PCR Tr. p. 26, ll. 12-17). Plea Counsel testified that he never informed her that he was not at the crime scene at the time of the shooting. (PCR Tr. p. 26, ll. 18-23). Plea Counsel testified that Applicant had approximately five attorneys represent him prior to her being retained on his case, so he may have informed one of his prior attorneys of this potential defense, but did not inform her about it. (PCR Tr. pp. 26, l. 21-27, l. 6).

Plea Counsel testified that Applicant never informed her that he was completely innocent of the charges against him. (PCR Tr. pp. 27, l. 20-28, l. 19). Plea Counsel testified that Applicant described to her events leading up to the crime and gave her specific factual information about the shooting and about the allegations against him. (PCR Tr. pp. 27, l. 20-28, l. 19). Plea Counsel testified that Applicant did not maintain that he was innocent of the charges against him at all times during her representation of him. (PCR Tr. pp. 27, l. 20-28, l. 19). When asked whether Applicant

was stating that he was not guilty of the charges against him but believed that the State had a substantial factual basis to prove the charges against him by pleading guilty pursuant to Alford, Plea Counsel answered in the affirmative. (PCR Tr. pp. 28, l. 22-29, l. 1).

When asked whether Applicant was maintaining his innocence by doing so and whether she had an issue with him doing that, Plea Counsel testified that he was and she did not. (PCR Tr. p. 29, ll. 2-11). When asked whether she felt as though those actions were in Applicant's best interest, Plea Counsel answered in the affirmative. (PCR Tr. p. 29, ll. 12-13). Plea Counsel testified that if Applicant had an alibi witness that could come to court and testify on his behalf, that would have been important to his case, as she would need to speak with that witness regarding the alibi and give notice to the State that there was an alibi. (PCR Tr. p. 29, ll. 14-20). Plea Counsel testified that she was able to ensure that every witness that Applicant or his family provided her the information for was present and able to present mitigation testimony on his behalf at the plea hearing. (PCR Tr. p. 29, ll. 21-25). Plea Counsel testified that all of the witnesses she presented at the plea hearing were mitigation witnesses. (PCR Tr. p. 30, ll. 1-3). Plea Counsel testified that she investigated, contacted, and spoke with every individual whom she was given the contact information for, and never received any information regarding a witness who was in Orangeburg. (PCR Tr. p. 30, ll. 4-8). Plea Counsel testified that, based on her experience, if her client had a witnesses to state that he was not present at the crime scene that would have been critical evidence as it would have served as an absolute defense to the allegations against him. (PCR Tr. p. 30, ll. 12-18).

Plea Counsel testified that she received all discovery pursuant to Rule 5 and Brady and would review that information with Applicant as she received it. (PCR Tr. p. 31, ll. 10-15). Plea Counsel testified that she spoke with and received paper information from one of Applicant's prior

attorneys, and did contact the other prior attorneys, but they did not have much to offer. (PCR Tr. p. 31, ll. 16-25). Plea Counsel testified that she had a duty to provide him with the information about the charges he was facing. (PCR Tr. p. 33, ll. 13-14). Plea Counsel testified that Applicant knew the situation he was in regarding the charges against him. (PCR Tr. p. 33, ll. 14-15).

Plea Counsel testified that prior to Applicant pleading guilty, she reviewed with Applicant a guilty plea affidavit that was several pages long and explained exactly what a defendant is facing and what their rights are. (PCR Tr. p. 31, ll. 16-22). Plea Counsel testified that she went through that affidavit with him very specifically so that he could understand what would be occurring and what he was facing in pleading guilty. (PCR Tr. p. 31, ll. 16-22). Plea Counsel testified that following their conversation Applicant indicated to her that he wished to plead guilty. (PCR Tr. p. 31, ll. 16-22). Plea Counsel testified that Applicant knew his trial date when he went to court and made the decision to plead guilty. (PCR Tr. pp. 33, l. 23-34, l. 2). Plea Counsel testified that she had no reason to tell Applicant that he was required to plead guilty and stepped in to represent him to make sure that he knew what he was doing before he pled guilty. (PCR Tr. p. 34, ll. 3-7).

Plea Counsel testified that she had regular communication with Applicant's family, during her representation of Applicant. (PCR Tr. p. 34, ll. 8-12). Plea Counsel testified that she spoke with Applicant's mother at least every other week and sometimes every week. (PCR Tr. p. 34, ll. 12-13). Plea Counsel testified she would discuss the case with Applicant's Mother during these calls, including defenses to the case. (PCR Tr. p. 34, ll. 13-15). Plea Counsel testified that she and Applicant never came up with any defenses that would have been viable at trial. (PCR TR. p. 34, ll. 8-20). Plea Counsel testified that Applicant's mother never informed her during any of their conversations that she had another child that had been with Applicant at the time that the crime was committed. (PCR Tr. p. 34, ll. 21-24).

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Plea Counsel testified to her belief that she discussed with Applicant all of his options regarding pleading guilty or proceeding to trial at every meeting between the two, as she wanted Applicant to know what he was facing and the choices he had. (PCR Tr. p. 35, ll. 3-12). Plea Counsel testified that, due to Applicant's age, she wanted to ensure that she was clear regarding what his options were, so she very carefully went through each indictment and explained to him what he was facing for each indictment. (PCR Tr. p. 35, ll. 6-12). Plea Counsel testified to her belief that Applicant had a good understanding of their discussions because he had specific questions about allegations made by the witnesses and codefendant and what the codefendant would testify to. (PCR Tr. p. 35, ll. 13-22). Plea Counsel testified that she stood by her representation and continued to believe that pleading guilty was in his best interest. (PCR Tr. pp. 35, l. 23 – 36, l. 4). Plea Counsel testified to her belief that, when looking at the totality of the circumstances, Applicant could have been sentenced to life. (PCR Tr. p. 36, ll. 5-11). Plea Counsel testified that she explained this to him and believes that his knowledge that he could face life in prison is why he pled guilty pursuant to Alford. (PCR Tr. p. 36, ll. 9-14).

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 3: Plea Counsel Failed to Provide and Review Discovery with Applicant.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to provide and review discovery with Applicant. Specifically, Applicant alleges Plea Counsel was ineffective for failing to provide him with his full discovery until he had already been convicted of the charges for which he is currently incarcerated and for failing to review discovery with him until October 9, 2022. (PCR Tr. pp. 13, l. 9-14, l. 6). This Court disagrees and finds this allegation to be 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)).

PCR Evidentiary Hearing

At the evidentiary hearing, Applicant testified that he never received his discovery materials in full from Plea Counsel during the course of her representation. (PCR Tr. p. 13, ll. 9-14). Applicant testified that Plea Counsel exclusively reviewed "bits and pieces" of the discovery in his case with him. (PCR Tr. p. 13, ll. 9-14). Applicant testified that he did not really have an opportunity to review his discovery prior to his Alford plea. (PCR Tr p. 21, ll. 19-23). Applicant testified he was only allowed to partially review the discovery materials. (PCR Tr. p. 21, ll. 19-23). Applicant testified that Plea Counsel did not come to visit him until October 9, 2022, and that the two did not discuss Applicant's case until that visit. (PCR Tr. pp. 13, l. 23- 14, l. 6). Applicant testified that the case against him was based on a one hundred and twenty-four page statement made by an individual facing other charges. (PCR Tr. pp. 21, l. 25- 22, l. 21). Applicant testified that he received the referenced statement from his attorney while he was incarcerated in SCDC. (PCR Tr. p. 22, ll. 22-24).

During the evidentiary hearing, Plea Counsel testified that she was retained to represent Applicant in late 2021 prior to his guilty plea in October of 2022. (PCR Tr. p. 31, ll. 3-9). Plea Counsel testified that she received all discovery pursuant to Rule 5 and Brady and would review that information with Applicant as she received it. (PCR Tr. p. 31, ll. 10-15). Plea Counsel testified that she spoke with and received paper information from one of Applicant's prior attorneys, and

did contact the other prior attorneys, but they did not have much to offer. (PCR Tr. p. 31, ll. 16-25). Plea Counsel testified that she and Applicant discussed Applicant's version of the events through the discovery. (PCR Tr. p. 27, ll. 4-9). Plea Counsel testified that she and Applicant went through the discovery extensively. (PCR Tr. p. 27, ll. 13-15). Plea Counsel testified that she had to get special permission to bring a laptop in during her visits with Applicant as a good bit of the discovery was digital. (PCR Tr. p. 27, ll. 15-18). Plea Counsel testified that Applicant described to her events leading up to the crime and gave her specific factual information about the shooting and about the allegations against him. (PCR Tr. pp. 27, l. 20-28, l. 19).

Plea Counsel testified that Applicant did not maintain that he was innocent of the charges against him at all times during her representation of him. (PCR Tr. pp. 27, l. 20-28, l. 19). When asked whether Applicant was stating that he was not guilty of the charges against him but believed that the State had a substantial factual basis to prove the charges against him by pleading pursuant to Alford, Plea Counsel answered in the affirmative. (PCR Tr. pp. 28, l. 22-29, l. 1). When asked whether Applicant was maintaining his innocence by doing so and whether she had an issue with him doing that, Plea Counsel testified that he was and she did not. (PCR Tr. p. 29, ll. 2-11). When asked whether she felt as though those actions were in Applicant's best interest, Plea Counsel answered in the affirmative. (PCR Tr. p. 29, ll. 12-13).

Plea Counsel testified that Applicant informed her he wanted to proceed to trial, and she informed him that this was what she was hired for and what they would be pursuing. (PCR Tr. p. 33, ll. 9-11). Plea Counsel testified that Applicant had been given the same plea offer throughout her representation and she had a duty to provide that information to him. (PCR Tr. p. 33, ll. 12-13). Plea Counsel testified that she also had a duty to provide him with the information about the charges he was facing. (PCR Tr. p. 33, ll. 13-14). Plea Counsel testified that Applicant knew the

situation he was in regarding the charges against him. (PCR Tr. p. 33, ll. 14-15). Plea Counsel testified that The State's evidence in Applicant's case included witness statements that corroborated witnesses who stated that they knew Applicant had been present at the crime scene. (PCR Tr. p. 32, ll. 1-7).

Plea Counsel testified that she had regular communication with Applicant's family, during her representation of Applicant. (PCR Tr. p. 34, ll. 8-12). Plea Counsel testified that she spoke with Applicant's mother at least every other week and sometimes every week. (PCR Tr. p. 34, ll. 12-13). Plea Counsel testified she would discuss the case with Applicant's Mother during these calls, including defenses to the case. (PCR Tr. p. 34, ll. 13-15). Plea Counsel testified that she and Applicant never came up with any defenses that would have been viable at trial. (PCR TR. p. 34, ll. 8-20). Plea Counsel testified that, at the time Applicant's mother hired her to represent Applicant, Applicant's mother informed her of her desire for Plea Counsel to obtain a plea deal for Applicant. (PCR Tr. p. 32, ll. 14-16).

Plea Counsel testified to her belief that she discussed with Applicant all of his options regarding pleading guilty or proceeding to trial at every meeting between the two, as she wanted Applicant to know what he was facing and the choices he had. (PCR Tr. p. 35, ll. 3-12). Plea Counsel testified that, due to Applicant's age, she wanted to ensure that she was clear regarding what his options were, so she very carefully went through each indictment and explained to him what he was facing for each indictment. (PCR Tr. p. 35, ll. 6-12). Plea Counsel testified to her belief that Applicant had a good understanding of their discussions because he had specific questions about allegations made by the witnesses and codefendant and what the codefendant would testify to. (PCR Tr. p. 35, ll. 13-22). Plea Counsel testified that she stood by her representation and continued to believe that pleading guilty was in his best interest. (PCR Tr. pp.

35, l. 23 – 36, l. 4). Plea Counsel testified to her belief that, when looking at the totality of the circumstances, Applicant could have been sentenced to life. (PCR Tr. p. 36, ll. 5-11). Plea Counsel testified that she explained this to him and believes that his knowledge that he could face life in prison is why he pled guilty pursuant to Alford. (PCR Tr. p. 36, ll. 9-14).

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. 78, ll. 11-24). 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 4: Prosecutorial Misconduct.

Applicant also asserts that he is entitled to post-conviction relief based on a claim of prosecutorial misconduct. Specifically, Applicant alleges he was "intentionally kept ignorant by these parties." This Court finds this allegation is without merit.

Prosecutors have many powers within the criminal justice system. Included in those powers is the "discretion in choosing how to proceed with a case, including whether to prosecute in the first place and whether he brings it to trial or offers a plea bargain." State v. Langford, 400 S.C. 421, 435 n. 6, 735 S.E.2d 471, 479 n. 6 (2012). In recognition of the severity of the consequences these powers carry "the United States Supreme Court has fashioned certain rules as a protection against vindictive action in response to a criminal defendant's exercise of a statutory or constitutional right." State v. Fletcher, 322 S.C. at 260, 471 S.E.2d at 704. "It is a due process violation to punish a person for exercising a protected statutory or constitutional right." Id. at 259, 471 S.E.2d at 704; see also United States v. Wilson, 262 F.3d 305, 314 (4th Cir.2001) (stating if a prosecutor "responds to a defendant's successful exercise of his right to appeal by bringing a more serious charge against him, he acts unconstitutionally"); United States v. Lanoue, 137 F.3d 656, 664–65 (1st Cir.1998) (stating that such retaliatory conduct amounts to vindictive prosecution and "violates a defendant's Fifth Amendment right to due process").

In a post-conviction relief action, the applicant bears the burden of proving actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). "A claim of prosecutorial vindictiveness turns on the facts of each case." State v. Odom, 412 S.C. 253, 263, 772 S.E.2d 149, 154 (2015) (citing People v. Hall, 311 Ill.App.3d 905, 244 Ill.Dec. 617, 726 N.E.2d 213, 220 (2000).). Only "certain limited circumstances pose a realistic likelihood of

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vindictiveness by a prosecutor" and, therefore, warrant the application of a presumption of vindictiveness. Fletcher, at 260, 471 S.E.2d at 704 (internal quotation marks omitted). "The inquiry ... is not focused solely on the presence or absence of actual vindictive motive, but includes whether the action taken, which exposes the accused to an increased punishment, poses such a reasonable likelihood of vindictiveness as to require a presumption of vindictiveness." Id. at 260–61, 471 S.E.2d at 704 (internal quotation marks omitted).

In order to establish a presumption of prosecutorial vindictiveness, Applicant must show a reasonable likelihood that retaliation was a motive behind the solicitor's actions. See Patrick v. State, 349 S.C. 203, 562 S.E.2d 609 (2002) (holding a presumption of prosecutorial vindictiveness applied because the facts presented a reasonable likelihood that the solicitor brought the additional charges in retaliation for Patrick's exercise of his right to appeal.); Fletcher, 322 S.C. at 262, 471 S.E.2d at 705 (holding Fletcher was "required to prove actual prosecutorial vindictiveness."). Otherwise, a "prosecutor's charging decision is presumptively lawful." Odon, 412 S.C. 253, 263, 772 S.E.2d 149, 154 (2015) (quoting United States v. Goodwin, 457 U.S. 368, 384 n. 19 (2015)).

"To demonstrate actual vindictiveness, a defendant must show that the government harbored 'vindictive animus' and that the superseding indictment was brought 'solely to punish' him." Id., (citing United States v. Bell, 523 Fed.Appx. 956, 959 (4th Cir.2013)). "In other words, to prove a claim of actual vindictiveness, a defendant must show, through objective evidence, that (1) the prosecutor acted with genuine animus toward the defendant and (2) the defendant would not have been prosecuted but for that animus." Id. (internal citations omitted): see also United States v. Sanders, 211 F.3d 711, 716–17 (2d Cir.2000) ("To establish an actual vindictive motive, a defendant must prove objectively that the prosecutor's charging decision or the resultant indictments were a direct and unjustifiable penalty, that resulted solely from the defendant's

exercise of a protected legal right." (internal citations and quotation marks omitted)).

The case in which an applicant can overcome the presumptive validity of the prosecutor's actions is rare. Id., at 264 (quoting Goodwin, 457 U.S. at 384 n. 19). However, a conviction will be reversed if the applicant can show prosecutorial vindictiveness, in that the prosecutor acted with genuine animus toward the defendant and the defendant would not have been prosecuted but for that animus.

Findings

Here, Applicant has not alleged a claim of vindictiveness nor any Brady violation. Further, Applicant has failed to present any evidence of prosecutorial misdoings, and the record refutes that any miscarriage of justice was done on the part of the Attorney General's Office. This Court finds Applicant has failed show that the government harbored 'vindictive animus' and that the superseding indictment was brought 'solely to punish' him." Odon, 412 S.C. 253, 263, 772 S.E.2d 149, 154 (2015). Moreover, to whatever extent Applicant was not entirely satisfied with the actions of the State, 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 Alford plea.

Accordingly, this Court finds Applicant has failed to establish any prosecutorial misconduct by Assistant Attorney General Joel Kozak tor any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED.**

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CHEROKEE COUNTY, SC

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 2nd **day of** June, ~~2024~~ 2025.

THE HONORABLE PERRY H. GRAVLEY
Presiding Judge
Seventh Judicial Circuit

Pickens, South Carolina

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