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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

2019-CP-42-00090

Lamarcus Thompson..... Appellant,
v.
The State, ... Respondent.

NOTICE OF APPEAL

Lamarcus Thompson appeals the Honorable J. Derham Cole's Order of Dismissal filed January 15, 2025.

This twenty-nineth day of January, 2025.

s/Susannah Ross
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STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
Lamarcus D. Thompson, #374348, Applicant, v. State of South Carolina, Respondent.	)	CASE NO. 2019–CP–42–00090 **ORDER OF DISMISSAL WITH PREJUDICE**

Presiding Judge:	Hon. J. Derham Cole
Applicant's Attorney:	Susannah C. Ross, Esq.
Respondent's Attorney:	William H. Ray, Esq.
Plea Counsel:	James A. Cheek, Esq.
Date of Hearing:	April 8, 2021
Court Reporter:	Linda D. Moffitt

This matter comes before the Court by way of Lamarcus D. Thompson's (Applicant) application for post-conviction relief (PCR) filed on January 8, 2019. Respondent, the State of South Carolina, filed its Return and Motion for a More Definite Statement on March 25, 2019. On March 19, 2021, Applicant, through PCR Counsel, filed an amended PCR application.

On April 8, 2021, an evidentiary hearing was held at the Spartanburg County Courthouse before the Honorable J. Derham Cole, circuit court judge. Assistant Attorney General William Harold Ray represented Respondent. Applicant was present and represented by Susannah C. Ross, Esquire (PCR Counsel). At the hearing, Applicant, through counsel, stated for the record which allegations he intended to proceed on.[1] In support of these claims, Applicant testified on his own behalf. Respondent presented the testimony of James A. Cheek, Esq. (Plea Counsel).

[1] PCR Tr. pp. 4, l. 10 – 7, l. 8.

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently incarcerated according to an order of commitment of the Spartanburg County Clerk of Court. During its August 2017 term, the Spartanburg County Grand Jury indicted Applicant for three counts of armed robbery and possession of a weapon during the commission of a violent crime (2017–GS–42–04368; -04369; -04370), and six counts of intent to defraud a lottery (2017–GS–42–04371; -04372; -04373; -04374; -04375; -04376). During its September 2017 term, the Spartanburg County Grand Jury indicted Applicant for armed robbery and possession of a weapon during the commission of a violent crime (2017–GS–42–05285). Assistant Public Defender James A. Cheek of the Seventh Circuit Public Defender's Office represented Applicant. Assistant Solicitor H. Spencer Smith, of the Seventh Circuit Solicitor's Office, prosecuted the case.

On October 19, 2017, Applicant appeared before the Honorable J. Mark Hayes, II, circuit court judge and pleaded guilty as indited to a negotiated sentencing range of ten to twenty years' incarceration, sentences to be served concurrently. Judge Hayes sentenced Applicant to concurrent terms of twenty years' imprisonment for each armed robbery charge, five years' imprisonment for each possession of a weapon during the commission of a violent crime charge, and five years' imprisonment for each charge of intent to defraud the lottery, all sentences to run concurrently.

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:

> The first armed robbery occurred on January 16th of [2017]. Deputies responded to Chesnee Highway for an armed robbery at Li'l Cricket. The clerk described a black male who came in with his face concealed. He pointed a gun at her and she gave him money from inside the register. He was wearing a pair of gray gloves and armed with what she believed to be a rifle.
>
> On January 16th, that same night, deputies also responded to another Li'l Cricket in the Chesnee area for an armed robbery. The clerk stated that a black male wearing a bandana came in with what she believed to be a shotgun yelling, hurry up. She opened the register and grabbed money. Video was obtained and the suspect matched the description from the armed robbery that occurred earlier that night. He had on a pair of distinctive gray gloves. I'm going to hand up some pictures at the end of this, Your Honor, that kind of show what we're talking about.
>
> Next was February 15th, 2017, there was an armed robbery at the Li'l Cricket on Chesnee Highway. The clerk stated that a black male came in with his face concealed with a bandana. He was armed with a small black pistol. He got away with money and cigarettes. He was wearing a distinctive pair of orange and black gloves. That actually ended up being the same clerk that he had robbed a month before.
>
> And then on February 17th, 2017, deputies responded to Scotchman on Chesnee Highway for another armed robbery. The clerk stated a black male entered the store with his face concealed by a bandana, armed with a pistol. She gave the man money and lottery tickets that he demanded. He was wearing a pair of orange and black gloves. Your Honor, I showed these to Mr. Cheek, but I've kind of got them divided. There's four separate surveillance shots from armed robberies. And then the remaining pictures are pictures from a search warrant that was executed I'll go into now. But you can see the distinctive gloves. And in the search warrant we've got the .25 caliber pistol, which matches the description of the pistols that is used in this case. And there was a BB gun found behind the laundry machine that looks very close to the - what the victim described as a rifle or a shotgun.

> The day after the lottery tickets were stolen SLED got a hit that some of the lottery tickets had been cashed at a local business in the Chesnee area, another gas station. SLED contacted the sheriffs office, who immediately went out to that location. They were able to secure the lottery tickets as well as video surveillance, which ultimately ended up showing Mr. Thompson, but at that time they didn't know who he was. They got fingerprints off of the lottery tickets and ran those. It came back to Lamarcus Thompson. They began doing research into him. They had a description of a white Chevy Equinox with a broken windshield wiper that was the car that he arrived in to cash those lottery tickets. They went on Facebook. They found that he dated a lady named Brittany Fowler. They did a DMV car check on Brittany Fowler, and she had a white Chevy Equinox. They then did a tag reader search through TLO and they found that white Equinox had been seen inside the Spartanburg area or they were able to get surveillance video of that confirmed that her white Chevy Equinox had a broken back windshield wiper, which was matched with the car that was used at the cashing of the lottery tickets. They took all of that information to get a search warrant for the house that MR. Thompson and Ms. Fowler were living in together at the time along with another female. They found numerous items, clothing items consistent with the robbery. Most of his clothing was very generic, hard to be specific. But as you can see on the gray gloves, there's like an upside down triangle mark with a brand name on it that looks identical to the ones that were seized in the search warrant and the ones seen in the armed robbery. And they also found a pair of orange and black gloves that seemed to match perfectly with what was seen in this. Mr. Thompson did speak with investigators. He admitted that he was the person that cashed the lottery tickets. He's written me multiple letters saying that he knew that they were stolen, that he was willing to plead guilty to that. His story at that time was that his roommate sometimes picks up cans and stuff off the street and had brought that back into his house, and he had been stupid enough to cash them.

(Plea Tr. pp. 13, l. 5 -16, l. 15). Upon inquiry by the Court, Applicant confirmed the above articulated facts. (Plea Tr. pp. 16, l. 21- 17, l. 1).

CURRENT ACTION BEFORE THIS COURT

In his application for post-conviction relief filed January 8, 2019, Applicant claimed he was being held in custody unlawfully for the following reasons (excerpts verbatim):

1. Ineffective Assistance of Counsel
   a. "Violation of the 4th fifth, sixth, eighth, & 14th Amendments of U.S. Constitution"
2. Due Process Violation:
   a. "Same as above"

On March 19, 2021, Applicant, though PCR Counsel, amended his PCR application to include the following allegations:

1. Ineffective Assistance of Counsel:
   a. Failing to provide the Applicant with discovery prior to his guilty plea;
   b. Failure to review discovery with Applicant;
   c. Failing to explain the elements armed robbery and possible sentences; and
   d. Advising the Applicant to plea when there was not enough evidence to prove guilty beyond a reasonable doubt;
2. Due Process violations because the plea was not knowingly and voluntarily made.

On April 8, 2021, at the evidentiary hearing Applicant, through PCR Counsel, informed this Court that he would be proceeding on the allegations within his amended application for post-conviction relief as follows:

1. Ineffective Assistance of Counsel:
   a. Failing to provide the Applicant with discovery prior to his guilty plea;
   b. Failure to review discovery with Applicant;
   c. Failing to explain the elements armed robbery and possible sentences; and
   d. Advising the Applicant to plea when there was not enough evidence to prove guilty beyond a reasonable doubt;
2. Due Process violations because the plea was not knowingly and voluntarily made.

(PCR Tr. pp. 4, l. 10 – 7, l. 8.).

On April 8, 2021, at the evidentiary hearing Applicant, through his testimony made the following additional allegations (excerpts verbatim):

1. Ineffective Assistance of Counsel:
   e. Failure to investigate:
      i. "Well, [Plea Counsel] failed to investigate my case and – and if he—and if he would have investigated my case properly he would have seen that nobody never identified me as the suspect. Nobody never pointed me out. No fingerprints, no nothing. And – and – and he would have seen that, so." (PCR Tr. p. 8, ll. 14-18).

Applicant requests relief in the following form:

> "Overturn sentence and conviction or any other relief the court feels is relevant."

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

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act[2] (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;

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

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

said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

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

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

This inquiry "focuses on a defendant's decisionmaking" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. 357, 367 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances.

Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—**not** whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999) (emphasis added).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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 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. pp. 17, l. 6 -18, l. 8); 2. Applicant was not under the influence of drugs or alcohol, which may affect his ability to understand the plea proceedings (Plea Tr. p. 6, ll. 17-23); 3. Applicant understood the sentencing range (Plea Tr. pp. 17, l. 25-18, l. 8); 4. Applicant understood his right to a jury trial and that he waived those rights by pleading guilty (Plea Tr. pp. 8, l. 9-9, l. 20); 5. Applicant clearly indicated he was satisfied with Plea Counsel (Plea Tr. p. 9, ll. 15-22); 6. Applicant indicated he was satisfied with the work Plea Counsel did for him (Plea Tr. p. 9, ll. 15-20); 7. Applicant indicated no one was forcing him to plead guilty, and his decision to plead guilty was voluntary (Plea Tr. pp. 7, l. 21-8, l. 10); 8.

Applicant agreed with the facts surrounding the State's case against him (Plea Tr. pp. 16, l. 21- 17, l. 1); 9. Applicant indicated that he was pleading guilty because he was guilty of the offenses for which he was charged (Plea Tr. p. 18, ll. 12-18); 10. Applicant indicated that he understood all of the court's questions and answered them truthfully (Plea Tr. p. 18, ll. 19-21); 11. Applicant indicated that his plea was freely, knowingly, and voluntarily entered into (Plea Tr. p. 8, ll. 4-10). 12. The State shared discovery with Plea Counsel prior to Applicant's plea hearing. (Plea Tr. p. 18, ll. 22-23).

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS

Allegation 1 (a) and (b): Plea Counsel Failed to Properly Provide and Review Discovery with Applicant.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to provide Applicant with discovery prior to his guilty plea and for failing to review discovery with Applicant. This Court finds these allegations 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)).

Guilty Plea Hearing

At Applicant's plea hearing when questioned by the court, the State confirmed that they had shared discovery with Plea Counsel. (Plea Tr. p. 18, ll. 22-23).

PCR Evidentiary Hearing

At the evidentiary hearing on direct examination, Applicant testified that he could not recall when he received the discovery in his case but knew that it was later in his proceedings. (PCR Tr. pp. 8, l. 23- 9, l. 1). Applicant testified that he and Plea Counsel looked at the discovery, but only to "skim through' the materials. (PCR Tr. p. 9, ll. 2-5). When asked whether he would have made the decision to plead guilty had Plea Counsel reviewed the discovery with him Applicant testified that he would not. (PCR Tr. p. 18, ll. 11-18).

During cross examination, Applicant confirmed that he did not get a bond and was housed in the county jail until he pleaded guilty. (PCR Tr. p. 20, ll. 11-13). Applicant testified that Plea Counsel met with him twice at the county jail prior to his guilty plea hearing. (PCR Tr. p. 20, ll. 14-15; 22, ll. 4-8). Applicant testified that during those meeting he and Plea Counsel discussed his case, specifically talking about how he came into possession of the stolen scratch off tickets. (PCR Tr. p. 21, ll. 4-13). Applicant testified to his belief that, while the two discussed his case, they did not discuss it properly but instead just "skimmed through" it. (PCR Tr. p. 21, ll. 14-17). Applicant testified that during their meetings, Plea Counsel had some paperwork with him, but he did not recall what the paperwork was. (PCR Tr. p. 21, ll. 18-23). When asked whether the paperwork contained photographs, statements made by witnesses, police reports, or things of that nature,

Applicant testified that he thought so. (PCR Tr. pp. 21, l. 24 – 22, l. 3). When asked why he did not inform the court that he had not received discovery or had not had time to look at it during his plea hearing when the Solicitor informed the court that the discovery had been shared with the defense,[3] Applicant testified that he did not speak up because at that time he did not know what was going on. (PCR Tr. pp. 25, l. 12- 26, l. 16).

On direct examination, Plea Counsel testified that he reviewed the discovery in Applicant's case with Applicant. (PCR Tr. p. 32, ll. 13-15). Plea Counsel testified that he brought what he had received as discovery to the meetings he had with Applicant. (PCR Tr. p. 32, ll. 23 –25). Plea Counsel testified that the discovery was a number of pages in a folder. (PCR Tr. p. 32, l. 23 –25). Plea Counsel testified that when he and Applicant reviewed the discovery, Applicant had questions and was active in discussing the materials, as he is a very articulate and intelligent young man. (PCR Tr. p. 33, ll. 20-24). Plea Counsel testified that he started off their review of the discovery by showing Applicant a photo of him in a very distinctive cap and informing him that there was no doubt that he cashed the lottery tickets in this case. (PCR Tr. pp. 33, l. 25- 34, l. 4). Plea Counsel testified that during their conversation, after allowing Applicant what he believed to be plenty of time to respond about the lottery tickets, he described to Applicant what the word "integrity" meant. (PCR Tr. p. 34, ll. 5-11).

Plea Counsel testified to his recollection that during that conversation the two also discussed the young lady whom Applicant said found the lottery tickets on the side of the road being a person of need herself. (PCR Tr. p. 34, ll. 11-15). Plea Counsel testified that he then questioned Applicant as to why the young lady would give Applicant the found lottery tickets to go cash rather than cashing them herself. (PCR Tr. p. 34, ll. 14-15). Plea Counsel testified that he

[3] Plea Tr. p. 18, ll. 22-23.

then asked Applicant whether, if Plea Counsel were to ask her, the young lady would inform Plea Counsel that she found the lottery tickets and gave them to Applicant, and Applicant's answer was not in Applicant's best interest to Plea Counsel's estimation. (PCR Tr. p. 34, ll. 16-21). When asked whether he actually made contact with the young lady, Plea Counsel testified that he did not, as Applicant suggested that he should "maybe not waste [his] time doing that." (PCR Tr. p. 34, ll. 22-25).

Plea Counsel testified that he is very careful about leaving discovery with a client. (PCR Tr. p. 33, l. 5). Plea Counsel testified that based on his experience it is his general practice to advise his clients not to leave or receive their discovery at the jail unless they have a way of securing it which he testified that there was no way to do at the jail. (PCR Tr. p. 33, ll. 1-19).

During cross examination, Plea Counsel testified that he did not bring the video from the surveillance cameras to review with Applicant during their review of the discovery, as Applicant could do that with his trial attorney in preparation for actual trial if he wanted to see the video. (PCR Tr. pp. 39, l. 23- 40, l. 5). Plea Counsel testified that he informed Applicant that it was not necessary for Applicant to see everything in the discovery and informed him that the item that he really wanted to see was the photo, before showing Applicant the photo of a young man wearing a New Orleans Saints cap. (PCR Tr. p. 40, ll. 6-13). Plea Counsel testified that he then informed Applicant that, using the referenced photo, the State could connect Applicant to the lottery tickets for certain. (PCR Tr. p. 40, ll. 11-13). Plea Counsel testified that the picture was from one of the scratch-offs on the scratch-off collections and redemptions for the monies. (PCR Tr p. 40, ll. 14-16). Plea Counsel testified that there were photos of Applicant's girlfriend's car at the locations where the lottery tickets were cashed. (PCR Tr. p. 41, ll. 2-5). Plea Counsel testified that Applicant never denied that he was the person who cashed the lottery tickets. (PCR Tr. p. 41, ll. 6-9).

Plea Counsel testified that he and Applicant discussed that it would be a problem that Applicant's body makeup matched the physical descriptions described by the clerks in the robberies. (PCR Tr. p. 40, ll. 17-21).

When asked about his recollection of whether the search warrant in this case referred to looking for black and white colored gloves, Plea Counsel testified that he did not recall, but as Applicant was pleading guilty and the only purpose of the Solicitor's comments at the plea hearing were to have the court determine whether there were substantial grounds to accept the plea, any comments made by the Solicitor regarding the colors of gloves would not have been something he cared to respond to at that point. (PCR Tr. p 42, ll. 11-24). Plea Counsel testified that he and Applicant discussed the gloves referenced in discovery during which discussions he asked Applicant why he needed so many different types of similar looking gloves, what kind of work he was doing, and how he would explain these issues at trial. (PCR Tr. p. 43, ll. 11-14).

When asked whether he pointed out any inconsistencies in the case that may have helped Applicant had he chose to proceed to a jury trial during their review of the evidence, Plea Counsel testified that he did not know what the inconsistencies would have been, because Applicant had not yet had his trial. (PCR Tr. pp. 44, l. 6-45, l. 6) Plea Counsel testified that the discussion of inconsistencies would have been one he would have had with his trial attorney had he decided to go to trial but, after reviewing the State's case with Applicant, Applicant decided that he did not want to face multiple trials for armed robberies. (PCR Tr. p. 45, ll. 8-12).

Plea Counsel testified that during each conversation he had with Applicant, he explained to him that he had the absolute right to go to trial, requiring the State to present evidence, testimony, and witnesses to prove him guilty beyond a reasonable doubt of armed robbery and that he would be subject to more than trial. (PCR Tr. p. 44, ll. 16-24). Plea Counsel testified that

he went through the discovery with Applicant, and Applicant ultimately made the decision that he would make a plea offer to resolve everything at one time. (PCR Tr. pp. 44, l. 25- 45, l. 3).

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. 7, ll. 16-22; 8, ll. 16-20).

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 1C: Plea Counsel Failed to Explain the Elements Armed Robbery and Possible Sentences

Applicant alleges Plea Counsel was constitutionally ineffective for failing to explain the elements armed robbery and possible sentences. This Court finds this allegation to be without merit.

In considering an allegation on post-conviction relief (PCR) that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. Stalk v. State, 375 S.C. 289, 652 S.E.2d 402 (Ct. App. 2007), aff'd as modified, 383 S.C. 559, 681 S.E.2d 592 (2009); Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984) ("[T]he 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."); Roddy v. State, 339 S.C. at 33, 528 S.E.2d at 420 (holding when determining issues relating to guilty pleas, the Court will consider the entire record, including the transcript of the guilty pleas and the evidence presented at the PCR hearing.).

The transcript of the guilty plea directly refutes Applicant's claims that he was unaware of the elements of armed robbery or the potential sentences he faced due to the negligence of Plea Counsel. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977) ("A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed."); Edmonds v. Lewis, 546 F.2d 566 (4th Cir.1976) (holding statements made during a guilty plea

should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements.); Boykin v. Alabama, 395 U.S. 238, 242, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969) (to find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him.); Pittman v. State, 337 S.C. 597, 600, 524 S.E.2d 623, 625 (1999) ("A defendant's knowing and voluntary waiver of the constitutional rights which accompany a guilty plea may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel, or both.").

Guilty Plea Hearing

The following colloquies occurred during the guilty plea proceedings:

[Solicitor]: Your Honor, before you is Lamarcus Devionne Thompson. He's here to plead guilty on ten indictments with 14 counts. First is 2017-GS-42-4368, it's count one, an indictment for armed robbery. He's pleading as charged. Count two is an indictment for possession of a weapon during a violent crime. He's pleading as charged. There ' s a negotiated sentencing range in all of these cases of ten to 20 years. Next is 2017-GS-42-4369, count one, armed robbery. Count two, possession of a weapon during a violent crime, pleading as charged. Next, 2017-42-4370, another indictment for armed robbery, and possession of a weapon during a violent crime. Pleading guilty as charged. Next is 2017-GS-42-4371 is an indictment for defrauding the lottery, pleading as charged. 2017-GS-42-4372, another indictment for defrauding the lottery, pleading as charged. 2017-GS-42-4373, another indictment for defrauding the lottery, pleading as charged. 2017-GS-42-4374, another lottery charge, pleading as charged. 2017-GS-42-4375, another intent to defraud lottery, pleading as charged. 2017-GS-42-4376 is another lottery charge, pleading as charged. And, finally, 2017-GS-42-5285, it's a two count indictment. First count for armed robbery and second count for possession of a weapon during a violent

crime, pleading guilty to that. All of these indictments have been true billed. He's represented by Mr. Cheek with the Public Defender's Office. And there's a sentencing range of ten to 20, negotiated, Your Honor.

The Court: You are Lamarcus Thompson?

[Applicant]: Yes, sir.

The Court: And, sir, it is your intent to enter a plea to the charges that were just announced?

[Applicant]: Yes, sir.

The Court: By my calculation that you're pleading to four armed robberies, four possession of weapon during the commission of a violent crime and six defrauding of lottery?

[Applicant]: Yes, sir.

(Plea Tr. pp. 9, l. 22 – 11, l. 15).

The Court: And, sir, do you understand that on the on all of the defrauding of lottery charges that I could sentence you up to five years on those charges?

[Applicant]: Yes, sir.

The Court: And, sir, do you understand that on the armed robbery charges that — I'm sorry. Yes, sentence you up to five years on those charges. And, sir, do you understand that on the armed robbery charges that these are being presented to me as negotiated sentences, therefore, if I accept the pleas I'll be bound by the negotiations and will have to impose a sentence of between ten to 30 years? I'm sorry, ten to 20 years?

[Applicant]: Yes, sir.

The Court: Sir, do you also understand that all of the armed robbery charges, that they are classified as both violent and most serious?

[Applicant]: Yes, sir.

The Court: And you have been able to talk to your lawyer as to the consequences of those offenses being classified as violent and most serious?

[Applicant]: Yes, sir.

The Court: And you still wish to enter those pleas?

[Applicant]: Yes, sir.

The Court: Do you also understand that on the possession of weapon during the commission of a violent crime that all of those charges carry up to five years?

[Applicant]: Yes, sir.

The Court:	Understanding that this — that this case is being presented to me as a negotiated plea with the range being ten to 20 years, concurrent, do you still wish to enter the plea?
[Applicant]:	Yes, sir.
The Court:	Are you, in fact, guilty of all six of the defrauding of the lottery charges?
[Applicant]:	Yes, sir.
The Court:	And are you also guilty of all four of the armed robbery charges?
[Applicant]:	Yes, sir.
The Court:	And are you also guilty of all four of the possession of weapon during the commission of a violent 1crime charge?
[Applicant]:	Yes, sir.
The Court:	Have all of your answers to my questions today been truthful and honest?
[Applicant]:	Yes, sir.

(Plea Tr. pp. 17, l. 2 – 18, l. 20).

PCR Evidentiary Hearing

At the evidentiary hearing on cross examination, Applicant testified that during his plea hearing he was unaware that he was pleading guilty to the armed robberies. (PCR Tr. p. 24, ll. 12-14). Applicant testified that, though he maintains his innocence of the armed robberies, he pled guilty because he believed he was only pleading guilty to the charges surrounding the stolen lottery tickets. (PCR Tr. pp. 23, l. 17 – 24, l. 6). Applicant testified that he believed he was only pleading guilty to the charges associated with the stolen lottery tickets because the State had evidence of him cashing in the tickets. (PCR Tr. p. 24, ll. 7-11). When asked whether he recalled the court going over his sentences with him and ensuring his understanding that the armed robbery charges were violent and most serious offenses, Applicant answered in the affirmative. (PCR Tr. p. 24, ll. 15-22). Applicant testified that following the court's statements he still did not realize that he was pleading guilty to the armed robbery charges. (PCR Tr. pp. 24, l. 23-25, l. 11).

Applicant testified that Plea Counsel discussed a potential sentence of ten or twelve years.

incarceration with him when he was transported from the county jail to the courthouse. (PCR Tr. pp. 26, l. 17-27, l. 7).

On direct examination Plea Counsel testified that he discussed the offenses of armed robbery, and the lottery charges with Applicant. (PCR Tr. p. 32, l. 5-7). Plea Counsel testified that he informed Applicant that he would make every effort to see if the Solicitor's Office would allow Applicant to plead to common law robberies, but the Solicitor's office was not interested in doing that. (PCR Tr. p. 32, ll. 8-12). Plea Counsel testified that he discussed the elements of each of Applicant's charges with him. (PCR Tr. p. 36, ll. 5-8). Plea Counsel testified that he discussed potential sentences with Applicant. (PCR Tr. p. 36, ll. 9-11). Plea Counsel confirmed Applicant's recollection that he informed Applicant that at best he could hope to get a minimum of ten years, and hopefully twelve years but that Plea Counsel did not expect to get a sentence in that lower range due to the number of charges resolved in Applicant's plea. (PCR Tr. pp. 36, l. 23-37, l. 2). Plea Counsel testified that he had Applicant take a pencil and write down the number of charges and what consecutive sentences would have been in his life if he were to go to trial and win one of them, but not win the second one or the third one. (PCR Tr. pp. 35, l. 23- 36, l. 1).

Plea Counsel testified that he explained Applicant's offenses and the potential sentences he was facing to him during their first visit, had Applicant add up the time during their second visit, and then on the morning of Applicant's plea hearing met with Applicant in the holding area and confirmed with him that he was confident he wanted to plead guilty, and had had enough time to think about it. (PCR Tr. p. 36, ll. 12-21). Plea Counsel testified that he did not then, nor does he now have any reason to believe that Applicant did not understand their conversations. (PCR Tr. p. 36, ll. 2-4).

During cross examination, Plea Counsel testified that he informed Applicant that he was at

the mercy of the sentencing judge and after the first conviction, if he got one, that he could come out with an approximately 23- or 24-year sentence after a conviction at trial. (PCR Tr. p. 45, ll. 13-16). Plea Counsel testified to informing Applicant that in order for that to be the case, Applicant would have to take the chance of going to trial and be in a position to beat each of the armed robbery charges one by one. (PCR Tr. p. 45, ll. 17-24). Plea Counsel testified that during each conversation he had with Applicant, he explained to him that he had the absolute right to go to trial, requiring the State to present evidence, testimony, and witnesses to prove him guilty beyond a reasonable doubt of armed robbery, and that he would be subject to more than trial. (PCR Tr. p. 44, ll. 16-24). Plea Counsel testified that he went through the discovery with Applicant, and Applicant ultimately made the decision that he would make a plea offer to resolve everything at one time. (PCR Tr. pp. 44, l. 25- 45, l. 3).

Findings

Based on the **credible** testimony of Plea Counsel, as well as the information reflected in the record, this Court finds Applicant's testimony **not credible** and **not persuasive**. Rayford v. State, 314 S.C. 46, 48-49, 443 S.E.2d 805, 806 (1994) (where transcript of guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, grant of PCR was inappropriate notwithstanding applicant's claim lawyer misadvised him); Moorehead v. State, 329 S.C. 329, 333, 496 S.E.2d 415, 417 (1998) ("Respondent's explanation that he answered the trial court affirmatively on counsel's alleged advice that the questions were meaningless does not support the grant of PCR.").

The record indicates Applicant was fully informed of his constitutional rights, understood the crimes with which he was charged, and was cognizant of the maximum sentences he might receive. The record further reflects that Applicant understood that he was pleading to a negotiated

sentencing range of ten to twenty years for armed robbery in his case. (Plea Tr. p. 18, ll. 4-8). Any possible misconceptions concerning his constitutional rights, the charges, or potential sentences on Applicant's part were cured by the colloquy during the plea proceeding conducted by the judge. See Pittman, 337 S.C. at 601, 524 S.E.2d at 625; Wolfe, 326 S.C. at 165, 485 S.E.2d at 370.

This Court finds Applicant has 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); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (holding an applicant may attack the voluntary, knowing, and intelligent character of a guilty plea entered on the advice of counsel by demonstrating that counsel's representation was below an objective standard of reasonableness.).

Additionally, this Court finds Applicant has failed to meet his burden proving Plea Counsel's alleged deficiency prejudiced him. Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985) (The "prejudice," requirement focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process.); Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007) (The applicant must prove prejudice by showing that, but for counsel's inadequacy, there is a reasonable probability he would not have pleaded guilty and, instead, would have insisted on going to trial.).

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 1 (d) and (e): Plea Counsel Failed to Investigate; Advising the Applicant to Plea When There Was Not Enough Evidence to Prove Guilty Beyond a Reasonable Doubt.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to investigate the facts and circumstances of his case and for advising Applicant to enter his guilty plea where he contends there was not enough evidence to prove him guilty beyond a reasonable doubt. This Court finds these allegations to be 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)).

Here, Applicant contends that, had Plea Counsel properly investigated his case, he would have found that the State lacked enough evidence to prove their burden at trial. Specifically, Applicant contends that upon a proper investigation Plea Counsel would have found "that nobody never identified me as the suspect. Nobody never pointed me out. No fingerprints, no nothing. And – and – and he would have seen that, so." (PCR Tr. p. 8, ll. 14-18). Importantly, a plea waives any non-jurisdictional defects and defenses, including challenges to the sufficiency of the evidence. See Whetsell v. State, 276 S.C. 295, 277 S.E.2d 891 (1981)."

Guilty Plea Hearing

The following colloquy occurred during the guilty plea proceedings:

The Court:	And, [Applicant], you were able to hear the solicitor when he related the facts to me?
[Applicant]:	Yes, sir.
The Court:	The manner in which he related the facts to me, do you believe that he is substantially correct?
[Applicant]:	Yes, sir.

(Plea Tr. pp. 16, l. 21 – 17, l. 1).

PCR Evidentiary Hearing

At the evidentiary hearing, on direct examination, Applicant testified to his belief that the State did not have enough evidence to prove him guilty beyond a reasonable doubt. (PCR Tr. pp.

8, l. 11-9, l. 11). Applicant testified to being informed by Plea Counsel that the only evidence the State had against him, was the way he was dressed. (PCR Tr. p, 17, ll. 14-20). When asked to state for the Court what his understanding of the State's evidence was, Applicant testified that three or four stores were robbed and during those robberies, money, lottery tickets, and cigarettes were stolen from the stores. (PCR Tr. p. 9, ll. 8-14). Applicant continued to testify that he came into possession of the lottery tickets, and the State was able to identify him after he cashed the lottery tickets in, because the tickets were identified as those that had been stolen during the robberies. (PCR Tr. p. 9, ll. 15-20). Applicant testified that after he was linked to the stolen lottery tickets officers from Spartanburg County came to his girlfriend's house and served him with six warrants. (PCR Tr. p. 9, ll. 21-23). Applicant testified that he was then transported to the Sheriff's Department, where he was charged with eight additional charges. (PCR Tr. pp. 9, l. 24- 10, l. 6).

In response to PCR Counsel's question regarding the reasoning for his belief that the State did not have enough evidence to prove his guilt beyond a reasonable doubt, Applicant testified that his possession of the stolen lottery tickets did not establish his guilt of armed robbery. (PCR Tr. pp. 9, l. 6 – 10, l. 14). Applicant testified that he cashed in the stolen lottery tickets and had always admitted that he did that. (PCR Tr. pp. 12, l. 21- 13, l. 1). Applicant testified that the State had a video of his girlfriend's car and used that video to obtain a search warrant for his girlfriend's home. (PCR Tr. p. 13, ll. 5-11). Applicant testified that the State obtained the license plate number and the description of his girlfriend's car from video evidence depicting Applicant cashing in the lottery tickets. (PCR Tr. p. 13, ll. 9-13).

Applicant testified that he did not commit the actions for which he was charged with armed robbery and possession of a weapon during the commission of a violent crime. (PCR Tr. p. 13, ll. 2-4). Applicant testified that he was not picked out of a line up or otherwise identified by any

witnesses associated with the robberies that occurred at two different Li'l Cricket locations on January 16, 2017. (PCR Tr. p. 10, ll. 19-25; 11, ll. 11-14). Applicant testified that he was not picked out of a line up or otherwise identified by any witnesses associated with the robbery that occurred at a third Li'l Cricket location on February 17, 2017. (PCR Tr. pp. 11, l. 15- 12, l. 1). Applicant testified that the State did not have a description of the car associated with the armed robbery cases. (PCR Tr. p. 13, ll. 14-17).

Applicant testified that the witness of the final robbery, which occurred at the Scotchman on February 17, 2017, gave a statement to police wherein she described the individual who committed the crime as a black male wearing all black with a red bandanna across his face. (PCR Tr. pp. 10, l. 13 – 12, l. 20). Applicant testified to his recollection of the evidence officers obtained from his girlfriend's house as a product of the search warrant being: a black hoody, a dark blue hoody, some orange and black gloves, one pair of white and black gloves, a .25, a BB gun, a toboggan hat, some brown Keveling boots, and a red bandana. (PCR Tr. pp. 14, l. 16-15, l. 11). When asked why officers discovered a red bandanna at his house, Applicant testified that it was his girlfriend's house, and he only spends the night there. (PCR Tr. pp. 15, l. 24-16, l. 11). Applicant testified that because the home was his girlfriend's and not his, the evidence discovered by officers, specifically noting the red bandanna and the black hoody, were not his property. (PCR Tr. p. 16, ll. 5-14).

Applicant testified to his belief that the State's evidence was not strong enough to convict him. (PCR Tr. pp. 16, l. 21 – 17, l. 5). Applicant testified to his belief that, had Plea Counsel investigated the way he should have, Plea Counsel would have discovered that the State's evidence was not strong enough to convict him and Applicant would have never gone to prison. (PCR Tr. p. 17, ll. 1-5). When asked whether he meant that Plea Counsel should have further investigated

the discovery in his case, or whether there was something not in the discovery that Plea Counsel could have found, Applicant testified that Plea Counsel could have "fought harder than he did." (PCR Tr. p. 17, ll. 6-13).

On direct examination, when asked whether he believed the State had enough evidence against Applicant to get a conviction, Plea Counsel testified to his belief that the State had enough evidence against Applicant to get several convictions. (PCR Tr. pp. 38, l. 25-39, l. 2). Plea Counsel testified that he explained to Applicant what circumstantial evidence is, what "circumstances" meant, and what he could offer if he chose to elect to testify at trial and call witnesses. (PCR Tr. p. 35, ll. 13-19). When asked whether Applicant informed him of any defenses he may have to the charges against him, Plea Counsel testified that Applicant informed him that he could not recall where he was staying at that time, either Union or Rainbow Lake Road in the Chesnee community or where he might have been on the particular days and times of the crimes for which he was convicted. (PCR Tr. p. 35, ll.1-12). Plea Counsel testified that during their discussions he and Applicant were unsure who any alibi witnesses would have been or what they would say. (PCR Tr. p. 35, ll. 20-22).

Regarding the red bandanna mentioned by Applicant in his direct testimony, Plea Counsel testified that the return for the search warrant reflects that the red bandanna in question was not located in Applicant's girlfriend's house, but in Applicant's girlfriend's car that Applicant was connected to driving. (PCR Tr. p. 38, ll. 9-17). Plea Counsel testified that the red bandanna was specifically located in secured place inside of Applicant's girlfriend's car that he was connected to driving. (PCR Tr. p. 38, ll. 21-22). Plea Counsel testified that he explained to Applicant that if an individual goes into a location wearing a red bandanna, the first thing they would do when they get back in their vehicle is get rid of the bandanna. (PCR Tr. p. 38, ll. 18-24). Plea Counsel testified

that he explained to Applicant that the discovery of the red bandanna would be problematic for Applicant if he chose to proceed to a jury trial. (PCR Tr. p. 38, ll. 18-24).

During cross examination, Plea Counsel testified that he did not bring the video from the surveillance cameras to review with Applicant in their review of the discovery, as Applicant could do that with his trial attorney in preparation for actual trial if he wanted to see the video. (PCR Tr. pp. 39, l. 23- 40, l. 5). Plea Counsel testified that he informed Applicant that it was not necessary for Applicant to see everything in the discovery and informed him that the item that he really wanted to see was the photo, before showing Applicant the photo of a young man wearing a New Orleans Saints cap. (PCR Tr. p. 40, ll. 6-13). Plea Counsel testified that he then informed Applicant that, using the referenced photo, the State could connect Applicant to the lottery tickets for certain. (PCR Tr. p. 40, ll. 11-13). Plea Counsel testified that the picture was from one of the scratch-offs on the scratch-off collections and redemptions for the monies. (PCR Tr p. 40, ll. 14-16). Plea Counsel testified that there were photos of Applicant's girlfriend's car at the locations where the lottery tickets were cashed. (PCR Tr. p. 41, ll. 2-5). Plea Counsel testified that Applicant never denied that he was the person who cashed in the lottery tickets. (PCR Tr. p. 41, ll. 6-9).

Plea Counsel testified that he and Applicant discussed that it would be a problem that Applicant's body makeup matched the physical descriptions described by the clerks in the robberies. (PCR Tr. p. 40, ll. 17-21). Plea Counsel testified that he and Applicant discussed the gloves referenced in discovery during which discussions he asked Applicant why he needed so many different types of similar looking gloves, what kind of work he was doing, and how he would explain these issues at trial. (PCR Tr. p. 43, ll. 11-14).

Plea Counsel testified that during each conversation he had with Applicant, he explained to him that he had the absolute right to go to trial, requiring the State to present evidence,

testimony, and witnesses to prove him guilty beyond a reasonable doubt of armed robbery, and that he would be subject to more than trial. (PCR Tr. p. 44, ll. 16-24). Plea Counsel testified that he went through the discovery with Applicant, and Applicant ultimately made the decision that he would make a plea offer to resolve everything at one time. (PCR Tr. pp. 44, l. 25- 45, l. 3).

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland). Applicant presented no evidence to this Court as to what Plea Counsel could have discovered or what other defenses could have been pursued had Plea Counsel been more fully prepared. The record before this Court provides Applicant was aware of the sentencing range, that no one promised him anything, and that it was a ten to twenty-year negotiated sentencing range. Without presenting further proof of Plea Counsel's alleged failure to investigate, this Court finds Applicant has failed to overcome the strong presumption that Plea Counsel rendered adequate assistance. See Butler, 286 S.C. at 442, 334 S.E.2d at 814.

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

Allegation 2: Involuntary Guilty Plea.

Applicant alleges Plea Counsel was constitutionally ineffective rendering his guilty plea involuntary. Specifically, Applicant alleges due process violations where his plea was not knowingly and voluntarily made. This Court finds this allegation to be 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)).

Guilty Plea Hearing

During Applicant's plea hearing when questioned by the court, Applicant indicated that no one had threatened him in any way or made any promises to him in order to induce his guilty plea. (Plea Tr. pp. 7, l. 23 – 8, l. 3). During Applicant's plea hearing when questioned by the court, Applicant indicated that his decision to plead guilty was a free and voluntary one. (Plea Tr. p. 8, ll. 4-10). Additionally, the following colloquy occurred during the guilty plea proceedings:

The Court:	And, sir, do you understand that on the on all of the defrauding of lottery charges that I could sentence you up to five years on those charges?
[Applicant]:	Yes, sir.
The Court:	And, sir, do you understand that on the armed robbery charges that — I'm sorry. Yes, sentence you up to five years on those charges. And, sir, do you understand that on the armed robbery charges that these are being presented to me as negotiated sentences, therefore, if I accept the pleas I'll be bound

by the negotiations and will have to impose a sentence of between ten to 30 years? I'm sorry, ten to 20 years?

[Applicant]: Yes, sir.

The Court: Sir, do you also understand that all of the armed robbery charges, that they are classified as both violent and most serious?

[Applicant]: Yes, sir.

The Court: And you have been able to talk to your lawyer as to the consequences of those offenses being classified as violent and most serious?

[Applicant]: Yes, sir.

The Court: And you still wish to enter those pleas?

[Applicant]: Yes, sir.

The Court: Do you also understand that on the possession of weapon during the commission of a violent crime that all of those charges carry up to five years?

[Applicant]: Yes, sir.

The Court: Understanding that this — that this case is being presented to me as a negotiated plea with the range being ten to 20 years, concurrent, do you still wish to enter the plea?

[Applicant]: Yes, sir.

The Court: Are you, in fact, guilty of all six of the defrauding of the lottery charges?

[Applicant]: Yes, sir.

The Court: And are you also guilty of all four of the armed robbery charges?

[Applicant]: Yes, sir.

The Court: And are you also guilty of all four of the possession of weapon during the commission of a violent I crime charge?

[Applicant]: Yes, sir.

The Court: Have all of your answers to my questions today been truthful and honest?

[Applicant]: Yes, sir.

(Plea Tr. pp. 17, l. 2 – 18, l. 20).

PCR Evidentiary Hearing

At the evidentiary hearing on direct examination, when asked whether he would have made the decision to plead guilty had Plea Counsel reviewed the discovery with him Applicant testified that he would not. (PCR Tr. p. 18, ll. 11-18). Applicant testified that he could not recall when he

received the discovery in his case but knew that it was later in his proceedings. (PCR Tr. pp. 8, l. 23- 9, l. 1). Applicant testified that he and Plea Counsel looked at the discovery, but only to "skim through' the materials. (PCR Tr. p. 9, ll. 2-5).

During cross examination, Applicant confirmed that he did not get a bond, and was housed in the county jail until he pleaded guilty. (PCR Tr. p. 20, ll. 11-13). Applicant testified that Plea Counsel met with him twice at the county jail prior to his guilty plea hearing. (PCR Tr. p. 20, ll. 14-15; 22, ll. 4-8). Applicant testified that during those meeting he and Plea Counsel discussed his case, specifically talking about how he came into possession of the stolen scratch off tickets. (PCR Tr. p. 21, ll. 4-13). Applicant testified to his belief that, while the two discussed his case, they did not discuss it properly but instead just "skimmed through" it. (PCR Tr. p. 21, ll. 14-17). Applicant testified that during their meetings, Plea Counsel had some paperwork with him, but he did not recall what the paperwork was. (PCR Tr. p. 21, ll. 18-23). When asked whether the paperwork contained photographs, statements made by witnesses, police reports, or things of that nature, Applicant testified that he thought so. (PCR Tr. pp. 21, l. 24 – 22, l. 3). When asked why he did not inform the court that he had not received discovery or had not had time to look at it during his plea hearing when the Solicitor informed the court that the discovery had been shared with the defense,[4] Applicant testified that he did not speak up because at that time he did not know what was going on. (PCR Tr. pp. 25, l. 12- 26, l. 16).

Applicant testified that during his plea hearing he was unaware that he was pleading guilty to the armed robberies. (PCR Tr. p. 24, ll. 12-14). Applicant testified that, though he maintains his innocence of the armed robberies, he pled guilty because he believed he was only pleading guilty to the charges surrounding the stolen lottery tickets. (PCR Tr. pp. 23, l. 17 – 24, l. 6). Applicant

[4] Plea Tr. p. 18, ll. 22-23.

testified that he believed he was only pleading guilty to the charges associated with the stolen lottery tickets because the State had evidence of him cashing in the tickets. (PCR Tr. p. 24, ll. 7-11). When asked whether he recalled the court going over his sentences with him and ensuring his understanding that the armed robbery charges were violent and most serious offenses, Applicant answered in the affirmative. (PCR Tr. p. 24, ll. 15-22). Applicant testified that following the court's statements he still did not realize that he was pleading guilty to the armed robbery charges. (PCR Tr. pp. 24, l. 23-25, l. 11).

On direct examination, when asked whether he believed the State had enough evidence against Applicant to get a conviction, Plea Counsel testified to his belief that the State had enough evidence against Applicant to get several convictions. (PCR Tr. pp. 38, l. 25-39, l. 2). Plea Counsel testified that he reviewed the discovery in Applicant's case with Applicant. (PCR Tr. p. 32, ll. 13-15). Plea Counsel testified that he brough what he had received as discovery to the meetings he had with Applicant. (PCR Tr. p. 32, ll. 23 –25). Plea Counsel testified that the discovery was a number or pages in a folder. (PCR Tr. p. 32, l. 23 –25). Plea Counsel testified that he is very careful about leaving discovery with a client. (PCR Tr. p. 33, l. 5). Plea Counsel testified that when he and Applicant reviewed the discovery, Applicant had questions and was active in discussing the materials as he is a very articulate and intelligent young man. (PCR Tr. p. 33, ll. 20-24). Plea Counsel testified that he started off their review of the discovery by showing Applicant a photo of him in the very distinctive cap and informing him that there was no doubt that he cashed the lottery tickets in this case. (PCR Tr. pp. 33, l. 25- 34, l. 4). Plea Counsel testified that during their conversation, after allowing Applicant what he believed to be plenty of time to respond about the lottery tickets, he described to Applicant what the word "integrity" meant. (PCR Tr. p. 34, ll. 5-11).

Plea Counsel testified that he discussed the offenses of armed robbery, and the lottery charges with Applicant. (PCR Tr. p. 32, l. 5-7). Plea Counsel testified that he informed Applicant that he would make every effort to see if the Solicitor's Office would allow Applicant to plead to common law robberies, but the Solicitor's office was not interested in doing that. (PCR Tr. p. 32, ll. 8-12). Plea Counsel testified that he discussed the elements of each of Applicant's charges with him. (PCR Tr. p. 36, ll. 5-8). Plea Counsel testified that he discussed potential sentences with Applicant. (PCR Tr. p. 36, ll. 9-11). Plea Counsel confirmed Applicant's recollection that he informed Applicant that at best he could hope to get a minimum of ten years, and hopefully twelve years but that Plea Counsel did not expect to get a sentence in that lower range due to the number of charges resolved in Applicant's plea. (PCR Tr. pp. 36, l. 23-37, l. 2). Plea Counsel testified that he had Applicant take a pencil and write down the number of charges and what consecutive sentences would have been in his life if he were to go to trial and win one of them, but not win the second one or the third one. (PCR Tr. pp. 35, l. 23- 36, l. 1).

Plea Counsel testified that he explained Applicant's offenses and the potential sentences he was facing to him during their first visit, had Applicant add up the time during their second visit, and then on the morning of Applicant's plea hearing met with Applicant in the holding area and confirmed with him that he was confident he wanted to plead guilty, and had had enough time to think about it. (PCR Tr. p. 36, ll. 12-21). Plea Counsel testified that he did not then, nor does he now have any reason to believe that Applicant did not understand their conversations. (PCR Tr. p. 36, ll. 2-4).

During cross examination, Plea Counsel testified that did not bring the video from the surveillance cameras to review with Applicant during their review of the discovery, as Applicant could do that with his trial attorney in preparation for actual trial if he wanted to see the video.

(PCR Tr. pp. 39, l. 23- 40, l. 5). Plea Counsel testified that he informed Applicant that it was not necessary for Applicant to see everything in the discovery and informed him that the item that he really wanted to see was the photo, before showing Applicant the photo of a young man wearing a New Orleans Saints cap. (PCR Tr. p. 40, ll. 6-13). Plea Counsel testified that he then informed Applicant that, using the referenced photo, the State could connect Applicant to the lottery tickets for certain. (PCR Tr. p. 40, ll. 11-13). Plea Counsel testified that the picture was from one of the scratch-offs on the scratch-off collections and redemptions for the monies. (PCR Tr p. 40, ll. 14-16). Plea Counsel testified that there were photos of Applicant's girlfriend's car at the locations where the lottery tickets were cashed. (PCR Tr. p. 41, ll. 2-5). Plea Counsel testified that Applicant never denied that he was the person who cashed the lottery tickets. (PCR Tr. p. 41, ll. 6-9).

Plea Counsel testified that he and Applicant discussed that it would be a problem that Applicant's body makeup matched the physical descriptions described by the clerks in the robberies. (PCR Tr. p. 40, ll. 17-21).

Plea Counsel testified that he informed Applicant that he was at the mercy of the sentencing judge and after the first conviction, if he got one, that he could come out with an approximately 23- or 24-year sentence after a conviction at trial. (PCR Tr. p. 45, ll. 13-16). Plea Counsel testified to informing Applicant that in order for that to be the case, Applicant would have to take the chance of going to trial and be in a position to beat each of the armed robbery charges one by one. (PCR Tr. p. 45, ll. 17-24). Plea Counsel testified that during each conversation he had with Applicant, he explained to him that he had the absolute right to go to trial, requiring the State to present evidence, testimony, and witnesses to prove him guilty beyond a reasonable doubt of armed robbery, and that he would be subject to more than trial. (PCR Tr. p. 44, ll. 16-24). Plea Counsel testified that he went through the discovery with Applicant, and Applicant ultimately made the

decision that he would make a plea offer to resolve everything at one time. (PCR Tr. pp. 44, l. 25-45, l. 3).

Findings

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

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

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**.

|CONCLUSION PAGE FOLLOWS|

CONCLUSION

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

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

IT IS THEREFORE ORDERED:

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

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

AND IT IS SO ORDERED this 15th day of JANUARY, 2025.

J. DERHAM COLE, Presiding Judge
The Seventh Judicial Circuit Court

Spartanburg, South Carolina