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**Feb 19 2025**

**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
The Honorable William A. McKinnon, PCR Action Judge  
2024-CP-40-02372

MICHAEL DENNIS #371678,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

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**NOTICE OF APPEAL**

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Michael Dennis appeals the denial of his post-conviction relief application. The post-conviction relief action was heard and denied by the Honorable William A. McKinnon, circuit court judge, on September 25, 2024, and was denied by written order issued filed on February 7, 2025. Applicant received notice of the judgement on February 12, 2025.

/s Chelsey F. Marto  
Chelsey F. Marto, Esquire  
Attorney for the Applicant  
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STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Michael J. Dennis, #371678,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS  
) FOR THE FIFTH JUDICIAL CIRCUIT  
)

) CASE NO. 2024-CP-40-02372  
)

**ORDER OF DISMISSAL  
WITH PREJUDICE**

Presiding Judge:	Hon. William A. McKinnon
PCR Counsel:	Chelsey F. Marto, Esq.
Respondent's Attorney:	D. Russell Barlow, II, Esq.
Plea Counsel:	Megan A. Eigenbrot, Esq.
Date of Hearing:	September 25, 2024
Court Reporter:	Maria DiScioscia, RPR

RICHLAND COUNTY  
 FILED  
 2025 FEB - 7 AM 11:36  
 EANNETTE W. McBRIDE  
 C.P., G.S., & F.C.

This matter comes before this Court by way of Michael J. Dennis's (Applicant) application for post-conviction relief filed on April 17, 2024. Respondent, the State of South Carolina, made its Return on June 26, 2024, requesting an evidentiary hearing be convened.

On September 25, 2024, an evidentiary hearing was held virtually via Webex before the Honorable William A. McKinnon. Chelsey F. Marto, Esquire, represented Applicant. Senior Assistant Deputy Attorney General D. Russell Barlow, II, represented Respondent. Applicant testified on his own behalf at the evidentiary hearing. Fifth Circuit Assistant Public Defender Megan A. Eigenbrot (Plea Counsel) also testified.

After a thorough review of the entire record and the testimony and evidence presented at the evidentiary hearing, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would entitle him to relief. Accordingly, the Court denies and dismisses this action with prejudice.

## PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined with the South Carolina Department of Corrections (SCDC) pursuant to the Richland County Clerk of Court's orders of commitment. During the April 2021 term, the Richland County Grand Jury indicted Applicant for Burglary–1<sup>st</sup> Degree (2021–GS–40–317), Kidnapping (2021–GS–40–318), Armed Robbery (2021–GS–40–319), and Assault and Battery–1<sup>st</sup> Degree (2021–GS–40–320). During the August 2021 term, the Richland County Grand Jury indicted Applicant for Attempted Murder (2021–GS–40–03153), Kidnapping (2021–GS–40–03154), and Assault and Battery–1<sup>st</sup> Degree (2021–GS–40–03155). Applicant was represented by Plea Counsel. Fifth Circuit Assistant Solicitor Kathryn Cavanaugh prosecuted the case.

On April 5, 2023, Applicant appeared before the Honorable Daniel Coble and pled guilty under Alford<sup>1</sup> to Burglary–1<sup>st</sup> Degree (2021–GS–40–317), Kidnapping (2021–GS–40–318), and Armed Robbery (2021–GS–40–319). Applicant also pleaded guilty to Attempted Murder (2021–GS–40–03153), and Kidnapping (2021–GS–40–03154).<sup>2</sup> Judge Coble deferred sentencing. On May 8, 2024, Judge Coble accepted the negotiated plea and sentenced Applicant to twenty-five (25) years for Burglary–1<sup>st</sup> Degree (2021–GS–40–317), twenty-five (25) years for Kidnapping (2021–GS–40–318), twenty-five (25) years for Armed Robbery (2021–GS–40–319), twenty-five (25) years for Attempted Murder (2021–GS–40–03153), and twenty-five (25) years for Kidnapping (2021–GS–40–03154). All sentences to run concurrently.

Applicant did not appeal his convictions or sentences.

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<sup>1</sup> North Carolina v. Alford, 400 U.S. 25 (1970).

<sup>2</sup> The Assault and Battery–1<sup>st</sup> Degree (2021–GS–40–320) and Assault and Battery–1<sup>st</sup> Degree (2021–GS–40–03155) were *nolle pross'd* as part of the negotiations.

## SUMMARY OF RELEVANT FACTS

### *First Set of Charges*

On March 17, 2020, Applicant and his co-defendant, Catino Weathersbee, both armed with handguns, forced their way through the back door of the victim's residence, demanding to know where the fifteen-year-old ("victim") and the three-year-old resident's older brother's handguns were. (Plea Tr. p. 7). Applicant placed the victim in a headlock and, growing impatient, fired a gun into the floor. (Plea Tr. p. 7). The brothers were put into separate rooms while the defendants rummaged through the house. (Plea Tr. pp. 7–8). They took two PlayStations, a controller, and the victim's phone. (Plea Tr. p. 8). The victim ran to a neighbor's house, called 911, and provided a description of the suspects. (Plea Tr. p. 8). The defendants were apprehended by police minutes apart by canine officers, and the victim positively identified both defendants in a lineup. (Plea Tr. p. 8). During a jail call the next day, Applicant stated that he left the gun he used in the transporting deputy's car, which was found the following day. (Plea Tr. p. 8).

### *Second Set of Charges*

On November 4, 2020, Applicant's girlfriend called 911, reporting that Applicant was standing in her yard firing a weapon. (Plea Tr. p. 8). She gave the dispatcher Applicant's name and description. (Plea Tr. p. 8). Investigator McComb arrived at the scene and immediately saw Applicant holding a rifle. (Plea Tr. p. 8). As soon as Investigator McComb arrived, Applicant started firing. (Plea Tr. p. 8). Shots struck the passenger side window, the computer in the middle of the car, and the passenger side tire. (Plea Tr. p. 9). Eight fired cartridge cases were collected and matched the rifle that Applicant was carrying. (Plea Tr. p. 9).

Applicant's rifle jammed, so he fired the pistol he had on him. (Plea Tr. p. 9). He tossed aside the pistol and took Ms. Curry, a neighbor who was in her yard at the time, as a hostage. (Plea

Tr. p. 9). Applicant kept the rifle in his hand. (Plea Tr. p. 9). Applicant held Ms. Curry in a headlock and chokehold for protection. (Plea Tr. p. 9). Ms. Curry's husband managed to take the rifle from him and set it down in the front yard. (Plea Tr. p. 9). Multiple deputies were on the scene, demanding Applicant release Ms. Curry but to no avail. (Plea Tr. pp. 9–10).

DNA testing was conducted on the rifle and pistol. (Plea Tr. p. 10). Both matched Applicant's profile. (Plea Tr. p. 10).

Investigator McComb returned fire and hit Applicant in the right arm. (Plea Tr. p. 10). Applicant was taken to the hospital for treatment. (Plea Tr. p. 10).

### **CURRENT ACTION BEFORE THIS COURT**

In his current PCR application, Applicant alleges he is being held in custody unlawfully because of ineffective assistance of counsel in that:

1. Ineffective Assistance of Counsel:
  - a. Plea Counsel knew he could not go to trial because he was scared and because of his mental illness.
  - b. Plea Counsel took advantage of his mental illness.
  - c. Plea Counsel did not get him the best deal.
  - d. Plea Counsel withheld information.
  - e. Plea Counsel failed to move for a change of venue when Applicant was scared for his life.
  - f. Plea Counsel knew the employees of Alvin S. Glenn Detention Center were attacking him and he was traumatized after being shot by a deputy in the arm.
2. Actual innocence.
3. Involuntary guilty plea.
  - a. Plea Counsel coerced him into accepting the guilty plea.

At the PCR hearing, Applicant proceeded forward on the following allegations:

1. Applicant's plea is invalid because he was coerced into pleading guilty.
2. Ineffective assistance of plea counsel for failure to get a more favorable plea offer.
3. Ineffective assistance of plea counsel for failure to exploiting Mr. Dennis' PTSD to force him into pleading.
4. Ineffective assistance of plea counsel for failure to investigate

- the facts and circumstances concerning the case, including the fact that a victim died.
5. Ineffective assistance of plea counsel for failure to meet with Applicant enough.
  6. Ineffective assistance of plea counsel for failure to properly prepare for trial.
  7. Ineffective assistance of plea counsel for failure to move for change of venue because of Columbia Police Department's involvement in the incident.
  8. Ineffective assistance of plea counsel for failure to show Applicant a complete copy of the discovery.
  9. Ineffective assistance of plea counsel for failure to communicate to Applicant that he was pleading to a violent offense and would have to serve 85% of his sentence.
  10. Ineffective assistance of counsel for failure to reinstate the twenty-year offer.
  11. Applicant felt rushed into pleading because of the state of turmoil Alvin Glenn Detention Center was in at the time.
  12. Conflict of interest between the Solicitor and Plea Counsel.
  13. Prosecutorial Misconduct for failure to advise plea counsel that a victim was deceased.
  14. Newly discovered evidence that a victim was deceased.

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

#### **SUMMARY OF EVIDENTIARY HEARING TESTIMONY**

##### ***Applicant's Testimony***

On direct examination, Applicant testified that he was represented by Plea Counsel and pled to two counts of kidnapping, one count of armed robbery, and one count of attempted murder. (PCR Tr. p. 7). Applicant indicated that he did not understand the implications of his plea because there was "a lot going on with [him] at the time." (PCR Tr. p. 7). Applicant testified that he experienced issues at Alvin S. Glenn Detention Center. (PCR Tr. p. 7). Applicant testified that these issues made him feel pressured into pleading. (PCR Tr. p. 8). Applicant testified that he

was being rushed out of the county to prevent him from posting additional videos online about the conditions there. (PCR Tr. p. 8).

Applicant testified that he did not wish to plead to his first set of charges but wanted to plead to his second set instead. (PCR Tr. p. 8). Applicant testified that he felt coerced into pleading due to facing federal gun charges, which would be dismissed if he pled in state court. (PCR Tr. p. 9). Applicant testified that he suffers from PTSD and that this condition influenced his decision to plead. (PCR Tr. p. 10). Applicant indicated that his arm was injured before the plea while he was in county custody. (PCR Tr. p. 10). Applicant claimed that he was being rushed to court and, as a result, would not receive a fair trial. (PCR Tr. p. 10).

Applicant testified that he did not think Plea Counsel was prepared for trial. (PCR Tr. p. 11). Applicant testified that he did not know how often he talked to Plea Counsel but did not feel they discussed everything in his case. (PCR Tr. p. 11). Applicant testified that he felt that Plea Counsel was working more for the State than for him. (PCR Tr. pp. 11–12). Applicant testified that he wanted Plea Counsel to get him a better plea offer and to keep the twenty-year offer on the table. (PCR Tr. p. 9).

Applicant testified that he thought that Plea Counsel did not properly investigate his case, specifically that one of the victims in his first case passed away. (PCR Tr. p. 12). Applicant testified that he did not know this until he talked to his family. (PCR Tr. p. 12). Applicant testified that he learned this while he was in Alvin S. Glenn Detention Center prior to the plea. (PCR Tr. p. 12).

Applicant testified that he wanted Plea Counsel to move for a change of venue. (PCR Tr. p. 13). Applicant testified that he thought that a change of venue was needed because Alvin S. Glenn Detention Center and Richland County were "in cahoots with each other." (PCR Tr. p. 13).

Applicant testified that he was assaulted, and his arm was messed up for no reason. (PCR Tr. p. 13). Applicant testified that he also wanted a change of venue because a Richland County Deputy was one of the victims in his second case. (PCR Tr. p. 14).

Applicant testified that he knew he was pleading to violent offenses but did not think he would have to serve eighty-five percent of his sentence. (PCR Tr. p. 14). Applicant testified that he thought he would only have to serve about sixty-five percent of his sentence. (PCR Tr. p. 14). Applicant testified that he would not have pled if he thought he would have to serve eighty-five percent. (PCR Tr. p. 14).

Applicant testified that he wanted to take his case to trial from day one but that he did not think he would win against the police. (PCR Tr. pp. 14–15). Applicant testified that he was innocent in the first case. (PCR Tr. p. 15).

Applicant testified that he received copies of his discovery over time but found it overwhelming to process due to being charged in two separate cases. (PCR Tr. p. 15).

Applicant testified that a conflict of interest existed in his case due to the friendship between the Assistant Solicitor and Plea Counsel. (PCR Tr. p. 15). Applicant testified that this conflict arose because Plea Counsel acknowledged dining with the Assistant Solicitor one evening, during which they discussed the case and attempted to negotiate a favorable plea offer. (PCR Tr. p. 15). Applicant testified that this indicated the Assistant Solicitor and Plea Counsel were friends outside of work, which he believed constituted a conflict. (PCR Tr. p. 16).

On cross-examination, Applicant testified that he wanted to proceed forward with his PCR application after conferring with PCR Counsel. (PCR Tr. p. 19). Applicant testified that he did not know anything about the competency evaluation beyond the fact that the evaluator concluded that he was faking his alleged competency issues. (PCR Tr. p. 20). Applicant testified that that

he was coerced into pleading because he was in lock-up and because everyone else involved thought it was best if he pled. (PCR Tr. p. 20). Applicant testified that he was rushed into pleading despite the fact that he had a date certain trial date set for a couple of weeks after he actually pled. (PCR Tr. pp. 20-21). Applicant testified that he thought the State was retaliating against him for taking videos of the conditions at Alvin S. Glenn Detention Center. (PCR Tr. p. 21).

Applicant testified that Plea Counsel was ineffective in telling him there was a twenty-year offer available and then allowing the offer to be taken off the table before he had a chance to accept it. (PCR Tr. p. 22). Applicant testified that Plea Counsel was ineffective for failure to get a more favorable plea offer for him because it is her job to negotiate with the State on his behalf. (PCR Tr. pp. 22–23).

Applicant testified that Plea Counsel was unprepared to represent him. (PCR Tr. p. 24). Specifically, Applicant testified that he believed Plea Counsel could have secured a better offer and investigated the circumstances surrounding the victim's death. (PCR Tr. p. 24). Applicant testified that the victim's passing was significant because it could have weakened the State's case at trial. (PCR Tr. p. 24).

Applicant testified that he thought he would only have to serve about half of his sentence before being released but declined to say that Plea Counsel told him that he would only have to serve half. (PCR Tr. p. 25).

### ***Plea Counsel's Testimony***

On direct, Plea Counsel testified that she represented Applicant in both of his cases. (PCR Tr. p. 26). Plea Counsel testified that the twenty-year offer discussed was a tentative offer the Assistant Solicitor discussed with her. (PCR Tr. p. 26). Plea Counsel testified that the State's initial offer was twenty-five years' imprisonment or higher but that the State asked Plea Counsel

to discuss a twenty-year offer with Applicant to see if he would take it. (PCR Tr. p. 26). Plea Counsel testified that the State was dealing with the sheriff's department heavily in the case and throughout negotiations because one of the victims in the second case was an officer. (PCR Tr. p. 26). Plea Counsel testified that tentative offers like this tend to leave her clients confused, and she dislikes them for that reason. (PCR Tr. p. 27).

Plea Counsel testified that they discussed the twenty-year offer and that Applicant was considering it. (PCR Tr. p. 27). Plea Counsel testified that Sheriff Lott then told the Assistant Solicitor that "anything under twenty-five years was gonna be a slap in the face." (PCR Tr. p. 27). Plea Counsel testified that the State would not put twenty years on the table after this. (PCR Tr. p. 27). Plea Counsel testified that she told Applicant that the twenty-year imprisonment offer was tentative, but that Applicant sometimes misunderstood their conversations and that she often had to repeat herself with him. (PCR Tr. p. 27).

Plea Counsel testified that she had Applicant evaluated a couple of times because of paranoia and mental health concerns, but the results showed he was competent. (PCR Tr. pp. 27–28). Plea Counsel testified that she never received an official PTSD diagnosis. (PCR Tr. p. 28). However, Plea Counsel testified that Applicant was agitated and paranoid at the time he committed the attempted murder. (PCR Tr. p. 28). Plea Counsel testified that his hospital records also showed that he was exhibiting psychosis. (PCR Tr. p. 28). Plea Counsel testified that the reports never mentioned PTSD but that her primary concern was psychosis, and she never told the evaluator to evaluate for PTSD. (PCR Tr. p. 28). Plea Counsel testified that she would not be surprised if Applicant struggled with PTSD. (PCR. Tr. p. 29). Plea Counsel testified that as time went on, Applicant mellowed out due to the medications he was placed on. (PCR Tr. p. 29). Plea Counsel testified that Applicant was found competent, and there were no outstanding mental health issues

that would have kept Applicant from understanding their conversations. (PCR Tr. p. 29). Plea Counsel testified that she believed Applicant understood her at the time, though she acknowledged that he still did not seem to understand them during the PCR proceeding. (PCR Tr. p. 29).

Plea Counsel testified that she did not believe that Applicant was coerced into pleading. (PCR Tr. p. 29). She mentioned that Applicant was in a bad dorm in Alvin S. Glenn Detention Center with plumbing issues and unhealthy living conditions. (PCR Tr. pp. 29–30). She reported that Applicant obtained a cell phone and recorded videos illustrating the conditions at the jail. (PCR Tr. p. 30). Plea Counsel testified that these videos were released to the media, which resulted in Applicant's involvement being recognized by Alvin S. Glenn Detention Center, leading to his placement in lockup. (PCR Tr. p. 30). Plea Counsel testified to her belief that Applicant was assaulted multiple times by correctional officers as retaliation. (PCR Tr. p. 30). Plea Counsel testified that she thought Applicant wanted to leave Alvin S. Glenn Detention Center quickly due to the jail conditions. (PCR Tr. p. 30).

Plea Counsel testified that after the evaluation and the second trial date were scheduled, she was notified that the feds were threatening a federal indictment on gun charges if Applicant refused to plead and went to trial. (PCR Tr. p. 31). Plea Counsel testified that the federal prosecutor told her that they would not charge Applicant federally if he received at least twenty-five years. (PCR Tr. p. 31). Plea Counsel testified that after she discussed this with Applicant, his decision changed, and he told her he wanted to plead the next time she went to Alvin S. Glenn Detention Center to discuss trial preparation with him. (PCR Tr. p. 31).

Plea Counsel testified that she spoke with Applicant twenty-five times through phone calls, in-person meetings, Zoom calls, and booth visits. (PCR Tr. p. 22). Plea Counsel testified that Applicant was at Well Path receiving treatment for an arm infection for about three months, which

limited her ability to meet with him in person as often as she wished. (PCR Tr. p. 32).

Plea Counsel testified that once Applicant received his second set of charges, her focus shifted considerably to those charges. (PCR. Tr. p. 32). Plea Counsel testified that Applicant was aware of those charges, and they talked about them before he bonded out on the first set of charges. (PCR Tr. p. 32). Plea Counsel testified that they talked about everything. (PCR Tr. p. 33).

Plea Counsel testified that Applicant initially did not want to review his discovery, yet they examined the videos anyway. (PCR Tr. p. 33). Plea Counsel testified that she was unsure whether she had reviewed every piece of discovery with Applicant, but Applicant was aware of its major components. (PCR Tr. p. 33). Plea Counsel testified that she was uncertain if she provided the Applicant with a copy of the discovery, explaining that she preferred not to give copies to clients in jail due to the risk of officers taking them and distributing them throughout the facility. (PCR Tr. p. 33).

Plea Counsel testified that she did not believe there was a legal reason to move for a change of venue. (PCR Tr. p. 33). Plea Counsel testified that she believed that the issues Applicant experienced with correctional officers in Alvin S. Glenn Detention Center were because the officers were not good people, not because they were related to the sheriff's department. (PCR Tr. p. 33). Plea Counsel testified that she did not believe that the sheriff's department and Alvin S. Glenn Detention Center did not have a working relationship. (PCR. Tr. p. 34).

Plea Counsel testified that if Applicant elected to go to trial, she would have done everything she could for him. (PCR Tr. p. 34). Plea Counsel testified that she brought two attorneys into the case to work with her in preparation for trial. (PCR Tr. p. 34). Plea Counsel testified that she met with the Solicitor's Office to review the discovery to ensure she was not missing anything. (PCR Tr. p. 34). Plea Counsel testified that she planned on meeting with him

to review everything in preparation for trial and to discuss his testimony if he chose to testify at trial. (PCR Tr. p. 34).

Plea Counsel testified that she learned a victim, who was the sole eyewitness to the first incident, had passed away before the trial. (PCR Tr. p. 34). Plea Counsel testified that she had doubt that the State could have proven the case without this witness. (PCR Tr. p. 34). Plea Counsel testified that she was informed of this after the plea by Applicant's family. (PCR Tr. pp. 34–35). She indicated that she was unaware of this, partly because she had set those charges aside. (PCR Tr. p. 35). Plea Counsel testified that had she known, she would have advised him against pleading to those charges and would have urged the State to exclude them from any plea agreement. (PCR Tr. p. 35).

Plea Counsel testified that she reviewed a comprehensive advice of rights form with Applicant before the plea. (PCR Tr. p. 35). Plea Counsel testified that the form contains a section informing the client that they are not eligible for parole and must serve a minimum of eighty-five percent of their sentence. (PCR Tr. p. 35). Plea Counsel testified that she believed Applicant understood this, mentioning that she thought Applicant had previously served time for a violent offense before this plea. (PCR Tr. p. 35).

Plea Counsel testified that she did not notice any red flags during the plea hearing that suggested Applicant did not understand what he was doing. (PCR. Tr. p. 35). Plea Counsel testified that she believed Applicant had accepted pleading guilty then, and the plea proceeded smoothly. (PCR. Tr. pp. 35–36).

Plea Counsel testified that she did not believe there were any conflicts of interest between herself and the Assistant Solicitor. (PCR Tr. p. 36). Plea Counsel testified that they work well together and have both been at their respective offices for over a decade, although they do not

consider themselves friends outside of work. (PCR Tr. p. 36).

On cross-examination, Plea Counsel testified that the feds would have indicted Applicant on federal gun charges related to the second set of charges if he did not plead. (PCR Tr. p. 36). Plea Counsel testified that she informed Applicant of this. (PCR Tr. p. 37).

Plea Counsel testified that she had no reason to believe the Assistant Solicitor intentionally withheld the victim's passing from the defense. (PCR Tr. p. 37). Plea Counsel testified that she and the Assistant Solicitor discussed the victim's passing before sentencing and whether she would allow Applicant to withdraw his plea. (PCR Tr. p. 37). Plea Counsel testified that the Assistant Solicitor told her she would object to any motion to withdraw the plea. (PCR Tr. p. 37). Plea Counsel testified that she would have advised him not to plead if she knew that the victim passed away prior to the plea. (PCR Tr. p. 37–38). Plea Counsel testified that the victim in the first case was "basically the entire case for the State" and that the defense would have had a fair chance at winning at trial with the victim having passed away. (PCR Tr. p. 38). Beyond the victim's description and proffered testimony, Plea Counsel testified that the evidence consisted of a gun being found in a cop car that belonged to Applicant and was left by Applicant after being arrested. (PCR Tr. pp. 38–39).

Upon the Court's examination, Plea Counsel testified that the victim passed away before the plea, but she did not find out until after the plea. (PCR Tr. p. 39). Plea Counsel testified that she should have investigated this prior to the plea. (PCR Tr. p. 39).

## STANDARD OF REVIEW

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

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

S.C. Code Ann. § 17-27-20(A).

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

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<sup>3</sup> 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. However, the second, or "prejudice" prong

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

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

#### **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), SCRCF (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, she rendered adequate assistance and exercised reasonable professional judgment in her 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. Plea Counsel affirmed that she explained to Applicant the elements of the charges, the potential punishments, and the

constitutional rights he waives by pleading guilty (Plea Tr. p. 4); 2. Plea Counsel affirmed she discussed what it meant to plead guilty under Alford, *supra* (Plea Tr. p. 4); 3. Plea Counsel agreed with Applicant's choice to plead guilty (Plea Tr. p. 5); 4. Applicant was not under the influence of alcohol or drugs (Plea Tr. p. 5); 5. Applicant did not suffer from any mental or physical infirmities that would affect his ability to understand the guilty plea proceedings (Plea Tr. p. 5); 6. Applicant understood the constitutional rights he was giving up by pleading guilty (Plea Tr. pp. 5–6); 7. Applicant was satisfied with Plea Counsel and did not need more time with her (Plea Tr. p. 6); 8. Applicant affirmed that he understood what it meant to plead under Alford, *supra*, and the ramifications of that decision (Plea Tr. pp. 6–7); 9. Applicant agreed with the facts as set forth by the Assistant Solicitor (Plea Tr. p. 11); 10. Applicant was not being coerced or promised anything for his guilty plea (Plea Tr. p. 11); 11. Applicant understood it was a negotiated sentence (Plea Tr. p. 11); 12. Applicant understood he had ten days to appeal (Plea Tr. p. 11); 13. Applicant's plea was qualified as freely, knowingly, and voluntarily entered into (Plea Tr. p. 12).

#### ***INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS***

##### **Allegation: Involuntary Guilty Plea**

Applicant alleges Plea Counsel's representation was constitutionally ineffective for coercing him into pleading guilty. 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 full 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, 243 (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 Harris v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

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.

### **Findings**

Applicant argues his plea is invalid because he was coerced into pleading guilty. Specifically, he claims he felt forced to plead guilty due to the turmoil at the Alvin Glenn Detention Center at the time and because he was told that if he pleaded to state charges, his federal gun charges would be dismissed. However, this Court finds that Plea Counsel **credibly** testified she did not believe Applicant was coerced into pleading guilty, although she recognized that Alvin Glenn had indeed deteriorated during that period. (PCR Tr. pp. 29-30). Furthermore, this Court finds from the record and Plea Counsel's **credible** testimony that Applicant has failed in his burden to prove Plea 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.

Additionally, the plea transcript shows that the plea was freely, voluntarily, knowingly, and intelligently entered. Applicant affirmed that he understood the charges, including their elements, nature, and possible punishments. (Plea Tr. pp. 3–4). Applicant affirmed that he understood the negotiated sentence and his constitutional rights. (Plea Tr. pp. 3–4, 6, 11). It was established on record that there were no competency issues involving Applicant. (Plea Tr. 4). Applicant affirmed that he was not under the influence and had no physical or mental disabilities impacting his understanding of the proceedings. (Plea Tr. p. 5). Applicant affirmed that he understood what an Alford plea was. (Plea Tr. p. 7). Applicant informed the Court that he was not forced or coerced into pleading. (Plea Tr. p. 11).

Accordingly, this Court finds that Applicant was not coerced into pleading and that Applicant freely, voluntarily, knowingly, and intelligently entered the plea. Thus, this allegation must be **DENIED** and **DISMISSED**.

**Allegation: Plea Counsel Failed to Obtain a More Favorable Plea Offer**

Applicant alleges Plea Counsel's representation was constitutionally ineffective for failure to obtain a more favorable plea offer. This Court finds this allegation to be without merit.

"[A] defendant has no constitutional right to plea bargain." Reed v. Becka, 333 S.C. 676, 684, 511 S.E.2d 396, 400-01 (Ct. App. 1999). (citing State v. Easler, 322 S.C. 333, 471 S.E.2d 745 (Ct. App. 1996), aff'd as modified, 327 S.C. 121, 489 S.E.2d 617 (1997)). "Prosecutors have broad powers in the plea bargain process[.]" Id. Prosecutors may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they can simply decide not to prosecute the offense in its entirety." Id., 333 S.C. at 684, 511 S.E.2d at 400-01. "The Judicial Branch is not empowered to infringe on the exercise of this prosecutorial discretion; however, on occasion, it is necessary to review and interpret the results of the prosecutor's actions." Id. Yet, plea offers must be analyzed

within the bounds of judicial restraint. Id.

### **Findings**

This Court finds that 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, supra. This Court further finds Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, supra. This Court finds Plea Counsel **credibly** testified that the twenty-year offer discussed was a tentative offer the Assistant Solicitor discussed with her. (PCR Tr. p. 26). Plea Counsel **credibly** testified that the State's initial offer was twenty-five years' imprisonment or higher but that the State asked Plea Counsel to discuss a twenty-year offer with Applicant to see if he would take it. (PCR Tr. p. 26). Plea Counsel **credibly** testified that they discussed the twenty-year offer and that Applicant was considering it. (PCR Tr. p. 27). Plea Counsel **credibly** testified that Sheriff Lott told the Assistant Solicitor that "anything under twenty-five years was gonna be a slap in the face." (PCR Tr. p. 27). Plea Counsel **credibly** testified that the State would not put twenty years on the table after this. (PCR Tr. p. 27). This Court finds while Applicant may have wanted a better plea offer, Plea Counsel was not deficient in her performance on this issue and Applicant has failed in his burden of proving any resulting prejudice. Furthermore, this Court finds Applicant was not entitled to a better plea offer, and there is no evidence that a better plea offer would have been offered upon request.

Moreover, to whatever extent Applicant was not entirely satisfied with Plea Counsel's representation during plea negotiations, he was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to avail himself of the benefit of his guilty plea.

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: Guilty Plea Invalid Due to Applicant's PTSD Being Exploited**

Applicant alleges Plea Counsel's representation was constitutionally ineffective and his guilty plea invalid because his PTSD was exploited in an attempt to force him into pleading. This Court finds this allegation to be without merit.

As is the case with any other allegation that a defense attorney failed to adequately investigate some matter, an applicant must present some proof of identifiable mental health issues that undermine his or her competency; mere speculation and conjecture by the applicant is insufficient to establish prejudice. Garren v. State, 423 S.C. 1, 13-14, 813 S.E.2d 704, 711 (2018).

**Findings**

This Court finds that 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, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. This Court finds Plea Counsel **credibly** testified that though she had concerns about his mental health after he was shot, there was no evidence presented to her that Applicant struggled with PTSD. (PCR Tr. p. 28). Plea Counsel **credibly** testified that she had Applicant evaluated, and he was deemed competent. (PCR Tr. pp. 28–29). Plea Counsel **credibly** testified that she was unaware of any outstanding mental health issues that would impact his understanding of the plea. (PCR Tr. p. 29).

To the extent Applicant claims his guilty plea was coerced, this Court reiterates its findings *supra*, that the plea transcript shows that the plea was freely, voluntarily, knowingly, and intelligently entered. Applicant stated that he understood the charges, including their elements, nature, and possible punishments. (Plea Tr. pp. 3–4). He stated that he understood the negotiated sentence and his constitutional rights. (Plea Tr. pp. 3–4, 6, 11). It was established on record that there were no competency issues involving Applicant. (Plea Tr. p. 4). He stated that he was not under the influence and had no physical or mental disabilities impacting his understanding of the proceedings. (Plea Tr. p. 5). He also stated that he understood what an Alford plea was. (Plea Tr. p. 7). He informed the Court that he was not forced or coerced into pleading. (Plea Tr. p. 11).

Accordingly, this Court finds that Applicant was not coerced into pleading and that Applicant freely, voluntarily, knowingly, and intelligently entered the plea. Furthermore, Applicant has failed to show any deficiency in Plea Counsel's representation and any prejudice flowing from the alleged deficiency. Thus, this allegation must be **DENIED** and **DISMISSED**.

**Allegation: Plea Counsel Failed to Investigate**

Applicant alleges Plea Counsel's representation was constitutionally ineffective for failure to investigate the facts and circumstances regarding his case, specifically, that the victim and only eyewitness in his first set of charges passed away prior to the plea.

Strickland makes clear that defense counsel "has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." 466 U.S. at 691. "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)). At the PCR hearing, Applicant is required to present evidence or witnesses he alleges counsel did not properly investigate. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Additionally, whether Applicant was prejudiced by counsel's failure to investigate is contingent on whether the evidence presented would have led counsel to change his recommendation regarding the plea. Stalk v. State, 383 S.C. 559, 562, 681 S.E.2d 592, 594 (2009). 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)).

### **Findings**

This Court finds that 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, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. This Court finds that Plea Counsel's failure to investigate the victims' obituaries to determine if they had passed away prior to a guilty plea is *not reasonable*. Nevertheless, Applicant testified that he knew that the victim passed away *before* he pled, but he did not provide that information to Plea Counsel.

Moreover, to whatever extent Applicant was not entirely satisfied with Plea Counsel's representation or investigations, he was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to avail himself of the benefit of his guilty plea.

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

**Allegation: Plea Counsel Failed to Sufficiently Meet with Applicant**

Applicant alleges Plea Counsel's representation was constitutionally ineffective for failing to meet with Applicant enough. This Court finds this allegation to be without merit.

Federal case law holds that there is no constitutional minimum number of meetings between attorneys and their clients to satisfy competency. Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) (no constitutional minimum number of meetings to satisfy competency); United States v. Olson, 846 F.2d 1103, 1108 (7th Cir. 1988) (reciting that there is no constitutional minimum number of meetings between attorney and client and observing that an experienced attorney may get more out of a single meeting than a neophyte). "Brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980) (holding it is not enough to merely show that counsel only met with his client twice before trial as long as counsel devoted sufficient time to insure an adequate defense and to become thoroughly familiar with the facts of the case and the law applicable to the case, and holding the record revealed that counsel was so prepared.).

South Carolina case law has established that even if Counsel only met with his client very briefly, that alone does not establish that he was unprepared or ineffective at trial. See Harris v.

State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing Easter) (finding "Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation."), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

Additionally, "brevity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation." Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Applicant must show evidence indicating "how additional preparation or communication would have resulted in a different outcome." Id.; see Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (where application failed to show ineffective assistance of counsel based on lack of preparation by neglecting to show evidence of what counsel failed to discover or what defenses counsel could have pursued had he more fully prepared for the case); Skeen v. State, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (where applicant failed to show ineffective assistance of counsel when he did not present evidence showing how additional preparation would have impacted the trial).

### **Findings**

This Court finds that 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, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. This Court finds Applicant's testimony on this matter **not credible** or **persuasive**. Applicant testified that he did not think that Plea Counsel met with him enough and did not communicate with him about the case enough. (PCR Tr. 11-12). Whereas Plea Counsel **credibly** testified to multiple discussions about the case with Applicant.

Additionally, Applicant indicated to the plea court that he was satisfied with Plea Counsel's representation and did not need further time with her.

This Court finds Applicant has failed to articulate specifically what Plea Counsel failed to discuss with him prior to his plea or what matter would have been discovered that would have changed his mind to proceed to trial and not plead guilty.

Moreover, to whatever extent Applicant was not entirely satisfied with Plea Counsel's representation or investigations, he was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to avail himself of the benefit of his guilty plea.

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

**Allegation: Plea Counsel Failed to Prepare for Trial**

Applicant alleges Plea Counsel's representation was constitutionally ineffective for failing to properly prepare for trial. This Court 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)). 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)).

### **Findings**

This Court finds that 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, supra*. This Court further finds Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. *See Butler, supra*. This Court finds Applicant's testimony on this matter **not credible** or **persuasive** and Plea Counsel's testimony **credible** and **persuasive**. Applicant testified at the PCR hearing that he felt Plea Counsel was unprepared for trial, which "somewhat" influenced his decision to plead. (PCR Tr. p. 11). However, Plea Counsel **credibly** testified that she would have been ready to take the case to trial. (PCR Tr. p. 34). She also **credibly** stated that she took several steps to prepare for trial, including bringing in two attorneys and meeting with the Assistant Solicitor to ensure all discovery was provided. (PCR Tr. p. 34). Additionally, Plea Counsel mentioned that she intended to meet with Applicant to review everything and prepare his testimony. (PCR Tr. p. 34).

Additionally, Applicant failed to present evidence of what Plea Counsel could have done to be more prepared or what would have been discovered that would have changed his mind to proceed to trial and not plead guilty.

Moreover, to whatever extent Applicant was not entirely satisfied with Plea Counsel's representation or investigations, he was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to avail himself of the benefit of

his guilty plea.

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

**Allegation: Plea Counsel Failed to Move for a Change of Venue**

Applicant alleges Plea Counsel's representation was constitutionally ineffective for failing to move for a change of venue. This Court finds this allegation to be without merit.

**Findings**

This Court finds that 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, supra*. This Court further finds Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. *See Butler, supra*. This Court finds Plea Counsel **credibly** testified that there was no legal basis to move for a change of venue. This Court also finds that Applicant has presented no evidence supporting that he was entitled to a change of venue. Applicant's mere wish to be tried elsewhere has fallen far short of the burden required to show that Plea Counsel should have sought such a change. Furthermore, Applicant has failed to present any credible evidence that had Plea Counsel moved for a change of venue, he would not have pleaded guilty and proceeded to trial.

Moreover, to whatever extent Applicant was not entirely satisfied with Plea Counsel's failure to move for a change of venue, he was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to avail himself of the benefit of his guilty plea.

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

**Allegation: Plea Counsel Failed to Provide a Full Copy of Discovery**

Applicant alleges Plea Counsel's representation was constitutionally ineffective for failing to provide him with a full copy of the discovery in his case. This Court finds this allegation to be without merit.

An applicant who alleges his or her defense attorney was ineffective in failing to provide a copy of the discovery materials must show how the outcome of trial would have been different had the attorney provided such a copy; the applicant must show what evidence could have been discovered or what other defense could have been 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)).

**Findings**

This Court finds that 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, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. This Court finds Applicant failed to present any credible evidence of what defenses or matters could have been discovered had he had a full copy of his discovery prior to pleading guilty that would have changed his mind about pleading guilty and instead he would have chosen to proceed to trial. In short, Applicant has failed to carry his burden of proof on this allegation.

Moreover, to whatever extent Applicant was not entirely satisfied with Plea Counsel's representation and a lack of not receiving a copy of his discovery, he was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to avail himself of the benefit of his guilty plea.

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

**Allegation: Plea Counsel Failed to Apprise Applicant of Parole Eligibility/Violent Offense**

Applicant alleges Plea Counsel's representation was constitutionally ineffective for failing to tell Applicant that he was pleading to a violent offense and would have to serve a minimum of 85% of his sentence. This Court finds this allegation to be without merit.

It is well-settled that a guilty plea is not rendered involuntary because the defendant was not informed of the collateral consequences of his conviction. See, e.g., Smith v. State, 329 S.C. at 285-86, 494 S.E.2d at 629. In that vein, an attorney does not render deficient performance when he fails to inform a defendant regarding collateral consequences of a guilty plea. See, id. at 284, 494 S.E.2d at 628. There are several consequences of convictions that have been declared collateral by South Carolina courts. See Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citation omitted) (parole eligibility is collateral); Smith v. State, 329 S.C. at 284, 494 S.E.2d at 628 (a crime's designation as "violent" is collateral); Randall v. State, 356 S.C. 639, 591 S.E.2d 608 (2004) (85% service requirement is collateral); Jackson v. State, 349 S.C. 62, 562 S.E.2d 475 (2002) (community supervision is collateral); Page v. State, 364 S.C. at 637, 615 S.E.2d at 742 (sexually violent predator civil commitment is collateral).

## Findings

This Court finds that 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, supra*. This Court further finds Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. *See Butler, supra*. This Court finds Plea Counsel **credibly** testified at the PCR evidentiary hearing that she has an extensive Advice of Rights form that she goes over with every client charged with a violent offense. (PCR Tr. p. 35). Plea Counsel **credibly** testified that included in that form were the facts that Applicant was pleading to a no-parole offense and that Applicant would have to serve a minimum of 85% of the sentence. (PCR Tr. p. 35). Notably, Applicant testified that he was aware it was a violent offense; he just did not know he would have to serve 85%. (PCR Tr. p. 25). This Court finds Applicant's testimony **not credible** or **persuasive**.

Nevertheless, even if this Court were not to find Applicant was fully aware that the charges he was pleading to were violent and he had to serve 85%, Applicant still fails to show how Plea Counsel was deficient or any prejudice flowing from the alleged deficiency. It is well-settled law that these are collateral issues, and Plea Counsel does not render deficient performance when they fail to inform a defendant of collateral consequences to a guilty plea.<sup>4</sup>

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

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<sup>4</sup> Notably, the allegation presented to this Court was whether Plea Counsel was constitutionally ineffective for failing to inform Applicant of the collateral consequences of him pleading guilty. Applicant did not allege and no credible evidence was presented to this Court that Plea Counsel misinformed him of the collateral consequences.

**DISMISSED.**

**Allegation: Plea Counsel Failed to Request a Reinstatement of the Plea Offer**

Applicant alleges Plea Counsel's representation was constitutionally ineffective for failing to request the Assistant Solicitor reinstate the twenty-year plea offer. This Court finds this allegation to be without merit.

A defendant has the right to effective assistance of counsel during the plea-bargaining process. Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018)). "The United States Supreme Court has held that 'defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused.'" Collins v. State, 422 S.C. 250, 261, 810 S.E.2d 871, 876 (2018) (quoting Missouri v. Frye, 566 U.S. 134, 145 (2012)). Generally, defense counsel provides deficient performance when he or she does not communicate such an offer to the defendant. Frye, 566 U.S. at 145.

To show prejudice, an applicant for post-conviction relief "must demonstrate a reasonable probability that: (1) he [or she] 'would have accepted the earlier plea offer had [he or she] been afforded effective assistance of counsel;' (2) 'the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it;' and (3) 'the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time.'" Collins, 422 S.C. at 262, 810 S.E.2d at 877 (quoting Frye, 566 U.S. at 147; citing Lafler v. Cooper, 566 U.S. 156, 164 (2012)). An applicant must show actual prejudice, but depending on the facts of the case, an applicant's self-serving statement *may* be sufficient to establish actual prejudice. Davie, 381 S.C. at 613, 675 S.E.2d at 422.

### **Findings**

This Court finds that 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, supra*. This Court further finds Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. *See Butler, supra*. This Court finds Plea Counsel **credibly** testified at the PCR evidentiary hearing that the twenty-year offer was a tentative, non-formal offer that was never officially extended to Applicant. Plea Counsel **credibly** testified that the tentative nature of the offer was communicated to Applicant.

Moreover, to whatever extent Applicant was not entirely satisfied with Plea Counsel's representation during the plea-bargaining process, he was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to avail himself of the benefit of his guilty plea.

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: Applicant Was Rushed into Pleading Due to Turmoil at Alvin S. Glenn Detention Center**

Applicant alleges he was rushed into pleading guilty due to the turmoil at Alvin S. Glenn Detention Center. This Court finds this allegation to be without merit.

### **Findings**

This Court finds Applicant's testimony on this matter **not credible** or **persuasive**. Furthermore, this Court finds that Applicant's allegation does not undermine the validity of the plea, as the plea transcript clearly reflects that Applicant knowingly, intelligently, freely, and

voluntarily entered the plea.

Accordingly, this allegation must be **DENIED** and **DISMISSED**.

**Allegation: Conflict of Interest Between Plea Counsel and Assistant Solicitor**

Applicant alleges there was a conflict of interest between Plea Counsel and the Assistant Solicitor. This Court finds this allegation to be without merit.

An actual conflict of interest occurs where counsel owes a duty to a party whose interests are adverse to the applicant's. Fuller v. State, 347 S.C. 630, 633-34, 557 S.E.2d 664, 665 (2001). Where an applicant demonstrates that counsel actively represented conflicting interests and that an actual conflict of interest adversely affected his lawyer's performance, prejudice is presumed. Gonzales v. State, 419 S.C. 2, 10, 795 S.E.2d 835, 839 (2017) (citing Strickland, 466 U.S. at 692) (emphasis added). However, "[t]he mere possibility of a conflict of interest is insufficient to impugn a criminal conviction." Fuller, 347 S.C. at 634, 557 S.E.2d at 665.

**Findings**

At the PCR evidentiary hearing Applicant testified to his belief that because Plea Counsel and the Assistant Solicitor had dinner one night to discuss plea negotiations, that constituted a conflict of interest. This Court does not agree. Notably, Applicant has failed in his burden of showing Plea Counsel actively represented conflicting interests and that conflicting interest adversely affected Plea Counsel's performance. Further, this Court finds Plea Counsel **credible** in her assertion that a conflict of interest did not exist. (PCR Tr. 36).

Accordingly, this Court finds Applicant has failed to meet his burden of proof in establishing this allegation. Thus, this allegation must be **DENIED** and **DISMISSED**.

**Allegation: Prosecutorial Misconduct**

Applicant alleges the Assistant Solicitor engaged in misconduct for failure to disclose the fact that the victim passed away in Applicant's first case. This Court finds this allegation to be without merit.

"Brady<sup>5</sup> requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment." Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 268 (1993). "A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment." Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). The mandate of Brady extends to evidence "that is not in the actual possession of the prosecution but known by others acting on the government's behalf in the particular case, including the police." State v. Kennerly, 331 S.C. 442, 452-53, 503 S.E.2d 214, 220 (Ct. App. 1998) (citing Kyles v. Whitley, 514 U.S. 419 (1995)). "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing United States v. Bagley, 473 U.S. 667 (1985)).

In the context of a guilty plea, a Brady violation is material "when there is a reasonable probability that, but for the government's failure to disclose Brady evidence, the defendant would have refused to plead guilty and gone to trial." Gibson, 334 S.C. at 525, 514 S.E.2d at 325.

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<sup>5</sup> Brady v. Maryland, 373 U.S. 83 (1963).

## Findings

This Court finds Applicant has failed in his burden in proving a reasonable probability that he would have refused to plead guilty and gone to trial if he had known the victim was dead before he pled guilty. To be clear, by Applicant's own testimony, which this Court finds **credible**, Applicant knew the victim had passed away before he pled guilty. (PCR Tr. p. 12).

Accordingly, this Court finds there was no prosecutorial misconduct and no Brady violation. Thus, this allegation must be **DENIED** and **DISMISSED**.

### **Allegation: Newly Discovered Evidence**

Applicant alleges he has newly discovered evidence that one of the victims in one of his cases was deceased prior to the plea. This Court finds this allegation to be without merit.

The Uniform Post-Conviction Relief Act states that a person may institute a post-conviction relief action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of material fact not previously presented, the post-conviction relief application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C).

In South Carolina, a guilty plea is regarded as a waiver of non-jurisdictional defects and claims of violations of constitutional rights. State v. Rice, 401 S.C. 330, 331–32, 737 S.E.2d 485, 485–86 (2013) (citing Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). Therefore, an applicant requesting a new trial based on after-discovered evidence following a guilty plea must show that:

- (1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have

been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the "interest of justice" requires the applicant's guilty plea to be vacated. In other words, a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of guilt encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions.

Jamison v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014).

### **Findings**

This Court finds Applicant has failed in his burden of proving his allegation of newly discovered evidence where Applicant **credibly** testified that he knew the information before he pled guilty. (PCR Tr. p. 12).

Accordingly, this Court finds that the evidence presented by Applicant is not newly discovered evidence. Thus, this allegation must be **DENIED** and **DISMISSED**.

**[CONCLUSION AND SIGNATURE PAGE FOLLOWS]**

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. This Court finds Plea Counsel provided effective representation. Therefore, this application for post-conviction relief **must be DENIED and DISMISSED WITH PREJUDICE.**

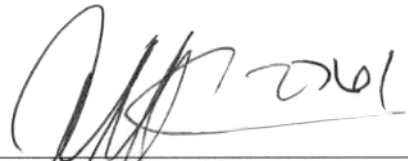
Should Applicant wish to appeal, he must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395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

**IT IS THEREFORE ORDERED:**

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

**AND IT IS SO ORDERED** this 3 day of February, 2025.

Richland, South Carolina.

  
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WILLIAM A. MCKINNON  
Presiding Judge  
Fifth Judicial Circuit