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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM MARION COUNTY
G.D. Morgan, Jr., Circuit Court Judge

2019-CP-33-00654

Jayme D. Gamble, #356766,

Appellant,


v.

State of South Carolina,

Respondent.

NOTICE OF APPEAL

Jayme D. Gamble, #356766, appeals the Order of Dismissal with Prejudice, denying his Application for Post-Conviction Relief, which was filed August 12, 2024, issued by The Honorable G.D. Morgan, Jr., Presiding Judge of the Twelfth Judicial Circuit Court of Common Pleas. Appellant received written notice of this Order on January 27, 2025.



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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
COUNTY OF MARION)

Jayne D. Gamble #356766,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

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

) CASE NO. 2019-CP-33-00654
)

**ORDER OF DISMISSAL
WITH PREJUDICE**

Presiding Judge: Hon. G.D. Morgan, Jr.
Applicant's Attorney: Joshua A. Bailey, Esq.
Respondent's Attorney: Talida Balaj, Esq.
Trial Counsel: Laura L. Hiller, Esq.
Date of Hearing: January 23, 2024
Court Reporter: Krystal J. Smith

This matter comes before this Court by way of Jayme D. Gamble's (Applicant) application for Post-Conviction Relief (PCR) timely commenced on September 18, 2019. Respondent, the State of South Carolina, filed its Return on February 17, 2021, requesting an evidentiary hearing to resolve the claims set forth in the application.

On January 23, 2024, an evidentiary hearing was held at the Florence County Courthouse before the Honorable G. D. Morgan, Jr. Applicant was present and represented by Joshua A. Bailey, Esquire. Assistant Attorney General Talida Balaj represented Respondent. Applicant proceeded on the allegations within his original PCR application. In support of these claims, Applicant testified on his own behalf, and Respondent presented testimony from Laura L. Hiller, Esquire (Plea Counsel).

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

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S.C. SUPERIOR COURT

any constitutional violations or deprivations entitling him to any form of relief. Accordingly, this Court denies relief and dismisses this action with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections (SCDC). Applicant was indicted at the February 2018 term of the Marion County Grand Jury on a twenty-four count indictment for: one count of first-degree burglary; seven counts of attempted armed robbery; seven counts of kidnapping; five counts of attempted murder; one count of discharging a firearm into a vehicle; one count of conspiracy; one count of possession of a stolen handgun; and one count of possession of a weapon during the commission of a violent crime (2018-GS-33-0121). Applicant was represented by Laura L. Hiller, Esquire (Plea Counsel). Twelfth Circuit Assistant Solicitor Patti M. Parker prosecuted the case.

On August 1, 2018, Applicant appeared before the Honorable William H. Seals, Jr. and pleaded guilty to one count of first-degree burglary, one count of attempted armed robbery, one count of kidnapping, three counts of attempted murder, and one count of possession of a weapon during the commission of a violent crime, and failure to stop for a blue light.¹ The State recommended that Applicant receive concurrent sentences. Additionally, in exchange for Applicant's guilty plea, the State dropped Applicant's sixteen remaining charges. Judge Seals accepted Applicant's plea and sentenced him to serve concurrent terms of fifty (50) years for first-degree burglary, twenty (20) years for attempted armed robbery, thirty (30) years for kidnapping, thirty (30) years for each attempted murder, five (5) years for the weapons charge, and three (3) years for failure to stop for a blue light.

¹ Applicant's codefendant and brother, Kendall A. Gamble, pleaded guilty at the same time as Applicant before Judge Seals. Kendall A. Gamble was represented by Jonathan M. Hiller, Esquire.

Applicant filed a timely Notice of Appeal and a statement pursuant to Rule 203(d)(1)(B)(iv), SCACR, with the Court of Appeals on August 9, 2018. The Court of Appeals dismissed the appeal on October 12, 2018, by filed order. The Remittitur was returned to the circuit court on November 1, 2018.

FACTS GIVING RISE TO CONVICTION

The facts giving rise to Applicant's conviction were articulated by the State at Applicant's plea hearing, as follows:

This incident occurred on a Friday morning July 21st 2017 at 12 approximately -- it was a little before 7:30 in the morning. Ms. Hattie [REDACTED] who resides on at [REDACTED] in the Mullins area of Marion County. Ms. Hattie [REDACTED] was up that morning getting ready for work about to iron clothes and she heard what sounded like a loud knock on the door. She looked out the window and did not recognize the truck in the driveway, looked out the peephole and did not recognize these individuals that were knocking at her door. She went and woke up a Ms. Lawanda [REDACTED] that was asleep in the residence, that is her grandchild's mother that was there. There were also children in the home. And got Lawanda up and Lawanda also said I don't recognize this truck I don't know who they. Something didn't seem right to Ms. Hattie and she picked up her cell phone and dialed 9-1-1 and about that time the door was busted up. These individuals busted in Ms. Hattie's home. They had guns. They had weapons. They started hollering for them to get down on the floor, pulled the guns on these women and children that were in the home. She had dialed 9-1-1 and press send, but when he hollered put down your phone, of course, these individuals didn't realize that the call to 9-1-1 already gone through. And so she placed the phone down and so a dispatcher here in Marion County thought that something wasn't right, could hear the commotion in the background, could hear hollering and screaming where's the money, get down on the floor, where's the money and women screaming in the background. And so this dispatcher did a very good job that day with this call and thought that she needed to send deputies out to this residence and so deputies did respond to the residence. Before I get to what happened after deputies responded, I'll talk about what they did in the house. They demanded money from these women and children. There were four children total in

the residence a ten year old by the name of [REDACTED], a 16 year old [REDACTED], 24 year old Dennis who was Ms. Lawanda's son and five year old [REDACTED] (sic). Three of the children were Ms. Hattie's grandchildren. They were all woken by this incident and two of the women were slapped. They had guns put to their head. And even when they kept demanding money, Ms. Hattie and the ladies in the house didn't know what they were talking about. These individuals were corresponding with somebody on the cell phone on the other end of the phone. And one of the ladies heard from the other end of the phone just kill them all and so they were terrified for their life. At one point they grabbed [REDACTED], who is five years old, and put a knife to his throat trying to up the intimidation, up the threats because they thought there was some money there that they could get and threaten this child, threaten to cut his fingers off if these women didn't produce the money. So when law enforcement responded to the residence, they did get there rather quickly. Deputy Causey was the first. Deputy Causey along with Deputy Herring were the first two to arrive. And Deputy Causey kind of parked his car kind of by the driveway. Deputy Herring a little further back. And they were waiting on backup to get there, but Deputy Tracy Causey wanted to go ahead and clear the backyard, kind of clear the back portion of the residence. So he had his county issued shotgun that he retrieved from his patrol car and went around the back of the residence. Deputy Causey did not realize that these two individuals just prior to him walking around the backside of the house, they had ran out of the side door of the house and actually were hiding behind what looks like a storage barn, like a storage building. And you'll see shortly hear in the video when they decided to make a run for it, they did fire three shots at Deputy Causey. One of the shots actually got so close to him that it struck his shotgun and actually knocked the shotgun out of his hand. And he then later grabbed it and tried to, you know, to use it to fire some shots, but it was disabled because, you know, that -- one of the shots had actually hit his shotgun. These two individuals run, jump in the Dodge Durango that they were driving. It was a rental car that they had. They had carefully planned this out. The rental car had a North Carolina license plate. They had put a South Carolina license plate on top of the North Carolina plate. They proceeded to back out of the driveway and they're going to run from the police and they're not going to stop. So you have Deputy Herring along with Deputy Cribb and Trooper Jimmy King also hears what's going on on the radio. You have several law enforcement officers responding and this chase ensues throughout the county at some instances well in excess

of 100 miles an hour. And eventually you'll see here shortly on the video ends with a crash right here outside of the City of Marion. There was a civilian vehicle that was struck and then when deputy excuse me -- when Trooper King follows after them when they lose control of the vehicle and go into like a grassy area off like the main highway, he's able to disable their vehicle by hitting it in the side and then he jumps out and runs. Jayme Gamble was the driver of that vehicle. He ran from the vehicle and Trooper King was able to catch him and apprehend him and he was arrested there on site. The passenger, I believe, surrendered and put his hands up and never tried to run from the car. So, Your Honor, I guess, to try to sum this up from the time they run from the house through some of the home surveillance video we have and then through various dash cam videos we have, we have sight on them. We have our eyes on them throughout these videos up until the point they're both apprehended. And so no question at all in the State's case that it was them. While they were driving and during part of the chase and the video's going to touch on this, but I want to point out because it's not -- doesn't jump out at you when you're watching the video. One of the accounts of attempted murder --of course, they're pleading to one count to attempted murder for Deputy Causey for firing those three shots at him. You'll hear that on the video. Constable Glen Turner had heard what was going on on the radio and he was responding. And you'll see when they're on one of our roads here in Marion County they -- during the chase, they take a right at the first stop sign and go down that road and deputy constable excuse me -- Constable Glen Turner was just coming from the opposite direction and they fire a shot into his windshield, two shots. Fired two shots at him. One shot I had a picture. One shot goes in the front of the windshield right there at his rear view mirror, so would have been inches from his head and he pose no threat to them. He was just literally just responding to the call and was coming in the opposite direction. He was not in pursuit of them. And also I have a picture of the shotgun that shows, you know, where it was hit. It was actually very close to Deputy Causey's body when that bullet struck the shotgun. They also right before this chase ends that you see there at the intersection coming into the City of Marion and Trooper King makes reference to this in the video there were shots fired from the passenger side of the vehicle at him right before the chase ended. They were firing shots out the car at him. Certainly they were indicted for, I think, two additional counts of attempted murder, but in consideration of this plea, the State did try to pair it down. It was two rather large indictments paired down. And they're pleading to

about eight or nine counts each. I'm trying to think if I'm leaving anything out other than I want to play the video. And at the appropriate time, I know Deputy Causey wants to speak and Ms. [REDACTED] may want to speak also and also the sheriff. Obviously, you know, we indicted the burglary first degree because they entered the house with the weapons and immediately pulled them on the ladies that were in the home.

THE COURT: All right. Go ahead and play it.

Your Honor, I prepared three pieces of video. This first video is the homeowner's surveillance footage and has no sound. And then immediately after this you'll see a clip from Deputy Herring's dash cam and kind of what happened when he arrived at the house. You can kind of -- by seeing this video and then listening to and seeing the second one, you can kind of see when the shots were fired at Deputy Causey. And then the final video I'm not going to show the whole chase, but we edited to just show the last few moments of the chase. It was a very high speed chase and you can see how there were several civilian cars that were put in danger and one that actually hit.

(WHEREUPON, videos played for the Court.)

Your Honor, that last video was Trooper Jimmy King. And right after he crashed his vehicle into the defendant's vehicle, he did a foot chase and eventually apprehended Jayme Gamble, but you saw on the video when his car hit the curve, you kind of see it kind of knocked his camera loose. He did suffer a concussion to the head where his head hit the top of his patrol car. And not long after this, you know, suffering from headaches eventually he's now on medical retirement and he's not here today. He was willing to come, you know, had this gone to trial and would have been available as a witness for us.

(Plea Tr. pp. 10-17).

CURRENT ACTION BEFORE THIS COURT

In his application for post-conviction relief filed on September 18, 2019, Applicant alleged he is being held in custody unlawfully for the following reasons:

- I. Ineffective Assistance of Counsel:
 - a. "For representing [Applicant] under a conflict of interest."

- b. "For failing to move to dismiss the armed robbery count."
- c. "For failing to move to dismiss the attempted murder counts involving Constable Glen Turner, and Deputies Jonathan Herring and Daniel Cribb."
- d. "For failing to investigate the facts of the case."
- e. "For failing to explain the consequences of a negotiated plea agreement versus an open plea."
- f. "For failing to ensure that the Court explained the nature of each offense and elements that had to be proven for each offense."
- g. "For failing to move to reduce the Burglary 1st degree count to Burglary 2nd degree."

Attached to Applicant's PCR applicant was a "Memorandum of Supporting Facts" for all claims of ineffective assistance of counsel. Applicant requests relief in the form of a new trial and to vacate the convictions/sentences.

Before this Court are the Marion County Clerk of Court records regarding the subject's convictions and sentences, Applicant's records from SCDC, Applicant's guilty plea transcript, Applicant's appellate records, and the records of Applicant's current PCR action.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act² (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based on the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or

² S.C. Code Ann. §§ 17-27-10 to -160.

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

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

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

This inquiry "focuses on a defendant's decision making" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. 357, 367 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances, Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—~~not whether counsel would have~~

still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999) (emphasis added).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), SCRPC (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-recalled~~ **well-recalled** testimony of

relevant background, facts, and discussions leading up to and during the plea hearing. This Court further finds applicable the strong presumption that at all stages of Plea Counsel's representation of Applicant, he rendered adequate assistance and exercised reasonable professional judgment in his representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, supra). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

From the record, this Court makes the following findings: 1. Applicant understood the charges and sentences he faced at his plea hearing (Plea Tr. pp. 4–5); 2. Applicant clearly indicated he was satisfied with his attorneys (Plea Tr. pp. 8–9); 4. Applicant understood his right to a jury trial and that he waived those rights by pleading guilty (Plea Tr. pp. 6–8); 5. Applicant indicated he had enough time with his attorneys (Plea Tr. p. 9); 6. Applicant indicated his attorneys answered all of his questions, and he had no more questions for them (Plea Tr. p. 9); 7. Applicant indicated no promises were made to him, and his decision to plead guilty was voluntary (Plea Tr. pp. 9–10); 8. Applicant was not under the influence of drugs or alcohol, which may affect his ability to understand the plea proceedings (Plea Tr. p. 9); 9. Applicant understood the range of sentencing (Plea Tr. pp. 4–6); 10. Applicant was clearly advised of his right to appeal (Plea Tr. p. 8); 11. Applicant did not disagree with the facts surrounding the State's case against him and apologized (Plea Tr. pp. 10–27); 12. Applicant's plea was qualified as freely, knowingly, and voluntarily entered into (Plea Tr. p. 29).

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INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS ON THE MERITS

Allegation 1a: Plea Counsel represented applicant under a conflict of interest.

Applicant alleged Plea Counsel was constitutionally ineffective and represented him under a conflict of interest because Plea Counsel is married to his co-defendant's defense counsel. This Court finds this allegation to be without merit.

"The mere possibility defense counsel may have a conflict of interest is insufficient to impugn a criminal conviction." Jordan v. State, 406 S.C. 443, 449, 752 S.E.2d 538, 541 (2013) (quoting Lomax v. State, 379 S.C. 93, 101, 665 S.E.2d 164, 168 (2008)). An actual conflict of interest occurs:

when a defense attorney places himself in a situation inherently conducive to divided loyalties. . . . If a defense attorney owes duties to a party whose interests are adverse to those of the defendant, then an actual conflict exists. The interests of the other client and the defendant are sufficiently adverse if it is shown that the attorney owes a duty to the defendant to take some action that could be detrimental to his other client.

Lomax, 379 S.C. at 101, 665 S.E.2d at 168 (quoting Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809, 811 (1984)). "[U]ntil a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for his claim of ineffective assistance." Id. "However, a defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice to obtain relief." Id. (quoting Staggs v. State, 372 S.C. 549, 551-52, 643 S.E.2d 690, 692 (2007)). Conflicts of interest may be waived so long as such waiver is done knowingly, intelligently, and voluntarily. Thomas v. State, 346 S.C. 140, 551 S.E.2d 254 (2001).

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PCR Evidentiary Hearing

On direct examination, Applicant testified he retained Plea Counsel to represent him. (PCR Tr. p. 8). Applicant testified that a conflict of interest existed as Plea Counsel was married to his co-defendant's attorney. Id. Applicant testified he believed this was a conflict of interest as it caused Plea Counsel not to conduct a proper investigation. (PCR Tr. p. 9).

On cross-examination, Applicant testified he feels that Plea Counsel did not conduct a proper investigation due to her relationship with his co-defendant's attorney. (PCR Tr. p. 18).

On direct examination, Plea Counsel testified that Applicant retained her services several months prior to Applicant's plea. (PCR Tr. pp. 24–25). Plea Counsel testified that in their meetings Applicant expressed to her that he did not desire to go to trial, and she was under the impression that Applicant did not want to harm his co-defendant's case. (PCR Tr. p. 26). Plea Counsel testified that when Applicant reached out to her for her services, he asked for suggestions for attorneys for his co-defendant. (PCR Tr. p. 28). Plea Counsel testified that her firm could not take both his case and his co-defendant's, and Applicant wanted to have a unified defense with his brother, so she suggested her husband. Id. Plea Counsel testified she did not advise Applicant that he needed to hire her husband, and the co-defendant later reached out and hired her husband. (PCR Tr. pp. 28–29). Plea Counsel testified she believes they had Applicant and his co-defendant sign waivers. (PCR Tr. p. 29).

On cross-examination, Plea Counsel testified the work was split equally between her and her husband. (PCR Tr. p. 33). Plea Counsel testified that they reviewed discovery separately with their respective clients and met with their clients separately. Id. Plea Counsel testified they did have one joint meeting at the Mario County Detention Center. Id.

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Findings

This Court finds the combination of the record and Plea Counsel's credible testimony that there was no conflict of interest. Applicant has the burden to prove every allegation in his application. See Butler, 286 S.C. at 441, 334 S.E.2d at 814. In support of this allegation, Applicant merely offered that his attorney and his co-defendant's attorney are married, without more. Plea Counsel credibly testified Applicant sought her services and inquired about an attorney for his co-defendant that would work with Plea Counsel, and Plea Counsel suggested her husband. Plea Counsel credibly testified she and her husband represented Applicant and his co-defendant separately, meeting and reviewing discovery separately. This Court finds Applicant has failed to prove that Plea Counsel actively represented conflicting interests. Applicant chose to plead guilty and chose not to withdraw his guilty plea. Therefore, this Court finds Plea Counsel's representation of Applicant was not ineffective, and Applicant cannot demonstrate any prejudice flowing from Plea Counsel's performance in this matter.

Accordingly, this Court finds that the Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED**.

Allegation 1b: Failure to move to dismiss the armed robbery count.

Applicant alleged Plea Counsel was constitutionally ineffective for failing to move to dismiss the armed robbery charge. This Court finds this allegation to be without merit.

PCR Evidentiary Hearing

On cross-examination, Applicant testified that Plea Counsel was supposed to have the burglary dropped to burglary—2nd degree and the armed robberies reduced to attempted robbery.

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(PCR Tr. p. 20). Applicant testified that they were only supposed to plead to three charges and the rest were supposed to be dismissed or reduced. Id.

Findings

As an initial matter, this Court finds Applicant's testimony on this matter **not credible** and **not persuasive**. 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. The record before this Court provides that Applicant was fully aware of the charges he was pleading to and the sentencing ranges the plea court could impose. Also, the record provides Applicant informed the plea court that no one had promised him anything. See Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997) ("Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made.").

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

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland as laid out in Hill—that but for Plea Counsel's deficient performance, Applicant would have gone to trial and not pled guilty.

Accordingly, this Court finds that the Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED**.

Allegation 1c: Failure to move to dismiss the three counts of attempted murder and he should have been charged with ABWIK.

Applicant alleged Plea Counsel was constitutionally ineffective for failing to dismiss the three counts of attempted murder and, instead, he should have been charged with assault and battery with intent to kill. This Court finds this allegation to be without merit.

Attempted murder requires a person, with intent to kill, attempts to kill another person with malice aforethought, either express or implied. S.C. Code Ann. § 16-3-29. Attempted murder was formerly classified as common law assault and battery with intent to kill. It is now a statutory offense, and the common law offense has been repealed. 2010 Act No. 273, § 7.B. "Under [the hand of one, the hand of all] theory, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose." State v. Langley, 334 S.C. 643, 648, 515 S.E.2d 98, 101 (1999)

PCR Evidentiary Hearing

On direct examination, Applicant testified that Plea Counsel failed to secure a dismissal of the attempted murder indictments that he pled guilty to. (PCR Tr. pp. 11–12). Applicant testified that those three charges involved Trooper King, Constable Glenn Turner, and Deputy Causey. (PCR Tr. p. 12). Applicant testified he and his co-defendant were both charged in the shooting, but there was only one shooter. (PCR Tr. pp. 12–13). Applicant testified that his co-defendant was the shooter. (PCR Tr. p. 13).

Applicant testified to the events that gave rise to the attempted murder charges, as follows:

Q: Okay. Trooper King's involvement on that day in Marion 5 County was through a pursuit; correct?
A: Right.
Q: And where was Trooper King's position in his vehicle in relation to the vehicle you and your brother were in?
A: We was coming forward, we was going one way, and he was coming another way.
Q: And that was -- that was Trooper King or was Trooper King behind you?
A: I get them mixed up, King and Constable.
Q: And Constable was the one coming towards y'all?
A: Yes, sir.
Q: Okay. Now, who was driving the vehicle you were in?
A: Me.
Q: Who shot from your vehicle as alleged by the State? Was it you or your brother that did the shooting from the vehicle?
A: They shot at both of us.
Q: No, no. Which one of you, you or your brother --
A: My brother.
Q: -- shot towards law enforcement?
A: My brother.

(PCR Tr. p. 13, ll. 5–25). Applicant testified that he had no knowledge that his co-defendant would shoot at law enforcement. (PCR Tr. p. 14).

On cross-examination, Applicant testified that the charge against him should not have been attempted murder. (PCR Tr. p. 21). Applicant testified that he did not know attempted murder had replaced assault and battery with intent to kill. Id.

On direct examination, Plea Counsel testified that the Solicitor's Office was not open to reducing the charges against Applicant based on the facts and circumstances. (PCR Tr. pp. 29–30). Plea Counsel testified the State had a very strong case and police officers that were harmed. (PCR Tr. p. 30).

On cross-examination, Plea Counsel testified she discussed Applicant's charges as it relates to the intent requirement for attempted murder. (PCR Tr. p. 33).

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Findings

As an initial matter, Applicant's claim fails as a matter of law. Applicant's attempted murder charges could not have been reduced to assault with intent to kill as it was repealed and replaced by attempted murder.

Nevertheless, this Court finds Plea Counsel was not deficient in his performance with regard to this allegation because there was no meritorious motion Plea Counsel could have made. Applicant has the burden to prove every allegation in his application. See Butler, 286 S.C. at 441, 334 S.E.2d at 814. Plea Counsel **credibly** testified the State was not open to reducing the charges based on the facts and circumstances. Additionally, Applicant was appropriately charged with attempted murder under the hand of one, the hand of all theory, and Plea Counsel could not have had Applicant's charges reduced even if he did not have knowledge his co-defendant would shoot at law enforcement.

Furthermore, the record before this Court provides that Applicant was fully aware of the charges he was pleading to and the sentencing ranges the plea court could impose. Also, the record provides Applicant informed the plea court that no one had promised him anything. See Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997) ("Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made.").

Moreover, to whatever extent Applicant was not entirely satisfied with Plea Counsel's representation on the charges he was pleading to, he was presented an opportunity to express his dissatisfaction and/or misunderstanding 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 that the Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED**.

Allegation 1d: Failure to investigate the facts surrounding the case.

Applicant alleged Plea Counsel was constitutionally ineffective for failing to investigate the facts surrounding the case. This Court finds this allegation to be without merit.

"A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). "[W]hile the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." Ard, 372 S.C. at 331–32, 642 S.E.2d at 597 (internal quotation marks omitted) (emphasis omitted). However, counsel need only interview potential witnesses "when it is reasonable to do so." Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011); see id. at 457, 710 S.E.2d at 64–65 ("While our case law does provide that defense counsel must, at a minimum, interview potential witnesses, a strict adherence to that rule loses sight of the controlling standard for counsel's duty to investigate: reasonableness. Indeed, it would be an absurdity to require criminal defense lawyers to interview *every* potential witness when they can articulate reasonable grounds not to. When counsel makes such a reasonable decision, he will have fulfilled the duty he owes to his client.").

"In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Strickland, 466 U.S. at 691; cf. Green v. French, 143 F.3d 865, 892 (4th Cir. 1998) ("Although counsel should conduct a

reasonable investigation into potential defenses, Strickland does not impose a constitutional requirement that counsel uncover every scrap of evidence that could conceivably help their client."), abrogated on other grounds by Williams v. Taylor, 529 U.S. 362 (2000).

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

"The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Id. "Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant." Id. "In particular, what investigation decisions are reasonable depends critically on such information." Id.

PCR Evidentiary Hearing

On direct examination, Applicant testified that Plea Counsel never investigated the facts surrounding the shooting that led to the attempted murder charges. (PCR Tr. p. 14). Applicant

testified he was driving the vehicle and his brother was the one who was shooting at the officers. (PCR Tr. pp. 13–14). Applicant testified Plea Counsel never discussed any investigations concerning the shots fired from his brother's gun and the shots fired by the officers. (PCR Tr. p. 14). Applicant testified that one of the attempted murder charges resulted from Constable Turner's vehicle being struck by a bullet while he was driving towards Applicant. Id. Applicant testified the second attempted murder charge resulted from Deputy Causey's shotgun being shot out of his hand at the house, and Plea Counsel did not investigate who fired at Deputy Causey. (PCR Tr. p. 15). Applicant testified that Plea Counsel never discussed investigating who fired the shots, and he has not seen any evidentiary reports related to the bullets and casings of the shotgun. Id. Applicant testified his brother was the one who shot the shotgun out of Deputy Causey's hand. (PCR Tr. pp. 15–16).

On cross-examination, Applicant testified he wanted Plea Counsel to investigate the shooter to determine who the actual shooter was. (PCR Tr. p. 18). Applicant testified that he did not inform Plea Counsel who the shooter was, even though he knew who the shooter was at the time. (PCR Tr. pp. 18–19). Applicant testified that his co-defendant admitted to Plea Counsel and his attorney that he was the shooter. (PCR Tr. p. 19). When questioned about what Plea Counsel could have investigated concerning the identity of the shooter when she was already aware of it, Applicant answered, "Like, I just feel like she ain't fight for me." (PCR Tr. p. 19, l. 13).

On direct examination, Plea Counsel testified she received discovery prior to Applicant's plea and reviewed it with Applicant. (PCR Tr. p. 25). Plea Counsel testified she did not recall Applicant requesting her to conduct investigations into anything specific. (PCR Tr. pp. 27–28). Plea Counsel testified the incident was heavily recorded and everything was on camera, so investigating the ballistics would not have been helpful. (PCR Tr. p. 28).

On cross-examination, Plea Counsel testified that she does not recall Applicant asking for any specific investigation. (PCR Tr. p. 32). Plea Counsel testified she did not investigate the number of shots fired by Trooper King, Constable Turner, or Deputy Causey outside the discovery provided to her. (PCR Tr. pp. 32–33). Plea Counsel testified that it seemed clear from some of the video that Applicant's co-defendant was the shooter. (PCR Tr. p. 33).

On redirect examination, Plea Counsel testified that the video clearly showed Applicant's co-defendant as the shooter and that she did not know what else she could have investigated outside the discovery provided. (PCR Tr. p. 34).

Findings

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

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

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Plea Counsel failed to render

reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland as laid out in Hill—that but for Plea Counsel's deficient performance, Applicant would have gone to trial and not pled guilty.

Accordingly, this Court finds that the Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED**.

Allegation 1c: Failure to explain the consequences between a negotiated and open plea.

Applicant alleged Plea Counsel was constitutionally ineffective for failing to explain the difference between a negotiated and open plea. Additionally, Applicant alleged Plea Counsel advised him he would receive no more than fifteen years. This Court finds this allegation to be without merit.

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." Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). In evaluating an allegation on 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. Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997); *cf.* Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that where the transcript of the guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant's claim his lawyer misadvised him).

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Guilty Plea Hearing

The following colloquy occurred between the plea court and Applicant:

MRS. LAURA HILLER: Your Honor, I did just want to clarify one thing. The only recommendation or negotiation was that you would recommend concurrent.

MS. PARKER: Concurrent that is correct, Your Honor, that any sentence impose by the Court would run concurrent.

THE COURT: All right. Mr. Jayme Gamble, you are pleading guilty to burglary first degree which carries a minimum of 15 years and a maximum of life; is that correct?

JAYME GAMBLE: Yes, sir.

THE COURT: All right. You need to speak up. And you are pleading guilty to armed robbery which carries a maximum of 20 years; is that correct?

JAYME GAMBLE: Yes, sir.

THE COURT: And you're pleading guilty to kidnapping which carries a maximum of 30 years?

JAYME GAMBLE: Yes, sir.

THE COURT: Pleading guilty to attempted murder which carries a maximum of 30?

JAYME GAMBLE: Yes, sir.

THE COURT: Another count of attempted murder which carries a maximum of 30?

JAYME GAMBLE: Yes, sir.

THE COURT: Another count of attempted murder which carries a maximum of 30?

JAYME GAMBLE: Yes, sir.

THE COURT: And possession of a weapon during the commission of a violent crime which carries up to five years; is that correct?

JAYME GAMBLE: Yes, sir.

THE COURT: And you are pleading guilty to failure to stop for a blue light which carries a minimum of 90 days and a maximum of three years; is that correct?

JAYME GAMBLE: Yes, sir.

(Plea Tr. pp. 4–5).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Plea Counsel advised him to take the open plea and that he would not receive more than fifteen years. (PCR Tr. p. 10). Applicant testified Plea Counsel did not explain the difference between a negotiated and open plea. Id. Applicant testified Plea Counsel did not relay any plea offers to him, only advised him that he would receive no more than fifteen years. Id. Applicant testified that at one point they went before a judge and were offered thirty years, but the judge said that was too much and sent them back to Marion County. Id. Applicant testified that it was his understanding that he would receive fifteen years when he pled before Judge Seals. (PCR Tr. p. 11).

On cross-examination, Applicant testified he understood that he was pleading to lesser charges, and did not know the plea judge could decide what sentence to impose. (PCR Tr. p. 22).

On direct examination, Plea Counsel testified the State made a negotiated plea offer of thirty years, and she informed Applicant of the offer, but the offer was only available that day. (PCR Tr. p. 26). Plea Counsel testified she did her best to explain the difference between the open plea and the negotiated thirty years offer. (PCR Tr. p. 27). Plea Counsel testified that Applicant and his co-defendant had time to discuss the plea offer with their family. Id. Plea Counsel testified that she had carefully explained that a judge cannot give a lesser sentence than fifteen years and that burglary first degree carries a sentence of up to life. Id. Plea Counsel testified she explained that anything could happen. Id.

Plea Counsel testified that she recalled advising Applicant what a negotiated plea was, and that with an open plea the judge could give the mandatory minimum or maximum. (PCR Tr. p. 30). Plea Counsel testified she explained to Applicant that with an open plea the sentence was

entirely up to the judge. Id. Plea Counsel testified she recalled having this conversation with Applicant. Id.

Findings

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. See Boykin supra. Plea Counsel **credibly** testified she carefully explained the difference between an open and negotiated plea. Plea Counsel **credibly** testified she carefully advised Applicant that the plea judge could not impose a sentence of less than fifteen years and that burglary carries up to life. Moreover, the plea colloquy cured any alleged deficiency regarding Plea Counsel's alleged erroneous 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).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or

omissions to prove the second prong of Strickland as laid out in Hill—that but for Plea Counsel's deficient performance, Applicant would have gone to trial and not pled guilty.

Accordingly, this Court finds that the Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED**.

Allegation 1f: Failure to ensure that the plea court explained the nature of each offense and elements that had to be proven for each charged offense.

Applicant alleged Plea Counsel was constitutionally ineffective for failing to ensure the plea court explained the nature of the charges and elements for each offense. 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).

Guilty Plea Hearing

At Applicant's plea hearing, the State advised the plea court, and Applicant was present, of the charges Applicant was pleading to, as follows:

Jayne Gamble is represented by Mrs. Laura Hiller. And he's pleading to Count 1 burglary in the first degree. Count 2 on that indictment attempted armed robbery, Count 15 kidnapping, Count 16 attempted murder, Count 17 attempted murder and Count 20 attempted murder. He's also pleading to possession of a weapon during the commission of a violent crime and failure to stop for a blue light. He is also pleading straight up without any recommendations or negotiations from the State. Your Honor, we have numerous victims that are present here that at the appropriate time that they would like to speak. I also have a presentation on the facts and have a short video at the appropriate time.

(Plea Tr. pp. 3-4).

The plea court then questioned Applicant as to his intention to plea to each charge, informing him of the maximum sentence of each charge. (Plea Tr. pp. 4-6). Applicant affirmed he was pleading to each one of these charges and that he understood the sentence associated with each charge. Id.

PCR Evidentiary Hearing

On direct examination, Applicant testified that, ~~Plea Counsel did not~~ advise him of the

minimum and maximum sentences he could potentially receive. (PCR Tr. p. 11). Applicant testified Plea Counsel reviewed the statutes related to the charges with him. (PCR Tr. pp. 16–17). Applicant testified that Plea Counsel did not explain the elements of the charges to him. (PCR Tr. p. 17).

On cross-examination, Applicant testified he understood all the charges against him. (PCR Tr. p. 20). Applicant testified that he understood that he was only supposed to be pleading three charges and the rest would be thrown out. *Id.* Applicant testified he recalled the plea court stating each offense he was pleading to and the minimum and maximum sentence for each offense. (PCR Tr. pp. 21–22).

On direct examination, Plea Counsel testified she explained the charges and elements of the charges to Applicant. (PCR Tr. p. 27).

Findings

This Court finds Plea Counsel's testimony that she explained to Applicant the elements of the charges and what the State had to prove to convict Applicant **credible**. Additionally, the record establishes 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. See Boykin supra; (Plea Tr. pp. 4–6). Further, this Court finds Applicant has failed to show that, but for Plea Counsel's performance, he would have proceeded to trial. See Roddy supra.

Moreover, to whatever extent Applicant was not entirely satisfied with Plea Counsel's representation, 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 that the Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, Applicant's request for relief by way of

this allegation is **DENIED** and **DISMISSED**.

Allegation 1g: Failure to move for the first-degree burglary charge to be reduced to second-degree burglary.

Applicant alleged Plea Counsel was constitutionally ineffective for failure to move to reduce the first-degree burglary charge to second-degree burglary. This Court finds this allegation to be without merit.

PCR Evidentiary Hearing

On direct examination, Applicant testified that Plea Counsel advised him she would reduce his first-degree burglary charge to second-degree burglary. (PCR Tr. p. 16). Applicant testified he did not recall on what basis Plea Counsel would reduce his charge. *Id.* Applicant testified that Plea Counsel advised him she would reduce the charge at the Dillon County Detention Center. *Id.*

On cross-examination, Applicant testified that he does not know how Plea Counsel would have reduced his charges, only that she told him that she would. (PCR Tr. p. 21).

On direct examination, Plea Counsel testified that she is sure she discussed the possibility of reducing charges with Applicant, but that the State was not open to reducing charges based on facts of Applicant's case. (PCR Tr. pp. 29–30). Plea Counsel testified the State was not backing down because they had a strong case against Applicant and injured police officers. (PCR Tr. p. 30).

Findings

As an initial matter, this Court finds Plea Counsel's testimony **credible** and Applicant's testimony on this matter **not credible** and **not persuasive**. 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*. The record before this Court provides that Applicant was fully aware of the charges he was pleading to and the sentencing

ranges the plea court could impose. Also, the record provides Applicant informed the plea court that no one had promised him anything. See Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997) ("Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made.").

Furthermore, this Court finds the record is without any evidence that Applicant's charge of first-degree burglary was not appropriate and that second-degree burglary would have been a more appropriate charge. The record provides Applicant and his co-defendant entered a home with guns and knives with the intent to commit a crime. Thus, this satisfies the statutory requirements for a charge of first-degree burglary. Additionally, Plea Counsel credibly testified the State was not open to even entertain reducing Applicant's charges because the State had a strong case against Applicant.

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

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland as laid out in Hill—that but for Plea Counsel's deficient performance, Applicant would have gone to trial and not pled guilty.

Accordingly, this Court finds that the Applicant has failed to establish any deficiency by

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Plea Counsel or any prejudice flowing therefrom. Thus, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED**.

ALLEGATIONS RAISED DURING THE EVIDENTIARY HEARING

Allegation: Plea Counsel failed to meet with Applicant a sufficient number of times.

Applicant alleged Plea Counsel was constitutionally ineffective for failing to meet with him a sufficient number of times prior to his plea. 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 ensure 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) ("First, there is no question that counsel met with [Applicant] on several occasions prior to the first trial. Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation."). Mere speculation and

conjecture are insufficient to substantiate allegations that counsel's deficient performance was prejudicial. See Harris v. State, 377 S.C. 66, 659 S.E.2d 140 (2008), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Plea Counsel met with him once before his plea in Dillon County and then on the day of his plea. (PCR Tr. p. 9).

On direct examination, Plea Counsel testified she was retained by Applicant several months before his plea hearing. (PCR Tr. pp. 24–25). Plea Counsel testified she reviewed all the discovery with Applicant prior to his plea, including some videos during a meeting at the Marion County Detention Center. (PCR Tr. p. 25). Plea Counsel testified she met with Applicant at least three times. (PCR Tr. pp. 25–26).

Findings

This Court finds Plea Counsel's well recollected testimony **credible** and Applicant's testimony **not credible**. This Court further 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. Catog, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland). Plea Counsel's **credible** testimony indicates she met with Applicant several times and reviewed Applicant's charges and the evidence against him. Notably, 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 Harris, 377 S.C. at 75, 659 S.E.2d at 145 (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 number of times Plea Counsel met with him, 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.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland as laid out in Hill—that but for Plea Counsel's deficient performance, Applicant would have gone to trial and not pled guilty.

Accordingly, this Court finds that the Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED**.

Allegation: Plea Counsel coerced Applicant to plead guilty.

Applicant alleged his plea was involuntary as he was coerced into pleading by Plea Counsel. 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.

PCR Evidentiary Hearing

On direct examination, Applicant testified that he believed he was going to court for a bond hearing, and Plea Counsel then told him they were taking them to trial. (PCR Tr. p. 11). Applicant testified he did not know what to do in the situation, so he jumped on the first thing that came to him. Id.

On cross-examination, Applicant testified Plea Counsel did not discuss possible defenses with him and did not discuss the possibility of going to trial. (PCR Tr. p. 19). Applicant testified that Plea Counsel told him that the choice was to plea or go straight to trial. (PCR Tr. p. 22). Applicant testified he did not want to plea and wanted to go to trial, but he pled because of Plea Counsel’s advice. (PCR Tr. pp. 22–23).

On direct examination, Plea Counsel testified she reviewed all the discovery with

Applicant, and in their meetings, Applicant expressed to her that he did not want his case to go to trial. (PCR Tr. p. 25–26). Plea Counsel testified the State did not make a plea offer until the day of Applicant's bond hearing, and the State offered a negotiated plea of thirty years. (PCR Tr. p. 26). Plea Counsel testified she advised Applicant of the plea offer that same morning, and the offer was only available on that same day. Id. Plea Counsel testified Applicant had a chance to discuss the plea offer with her and his family. (PCR Tr. pp. 26–27). Plea Counsel testified that she believes Applicant thought thirty years was too much and that Applicant believed there was a chance he could get a better offer. (PCR Tr. p. 27).

Plea Counsel testified that Applicant advised her he wanted a unified defense with his co-defendant. (PCR Tr. p. 29). Plea Counsel testified that Applicant's case was on the trial roster, and it was a plea or go to trial. (PCR Tr. p. 30). Plea Counsel testified she was ready to go to trial, but it was Applicant and his co-defendant that did not want to go to trial but plea. (PCR Tr. p. 31). Plea Counsel testified she explained to Applicant that it was his decision whether to plea, and that she has never pushed a client to plea and never will. (PCR Tr. p. 31). Plea Counsel testified she was not sure if she discussed possible defenses with Applicant and that everything was on video and 911 recordings. Id. Plea Counsel testified she could have tried to fight against "hand of one, hand of all," but it seemed Applicant and his co-defendant were acting in concert, and Applicant seemed to be in agreement with her about that. Id.

Findings

This Court finds Applicant has failed to show his plea was coerced by Plea Counsel's advice. The record before this Court 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. Additionally, Plea Counsel credibly testified she advised Applicant

it was his decision to plea, and Applicant chose to plead guilty. Plea Counsel **credibly** testified she advised Applicant of the plea offer, and Applicant chose not to accept it. Plea Counsel **credibly** testified she reviewed discovery with Applicant, and he agreed with her assessment of the case. 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).

Moreover, to whatever extent Applicant was not entirely satisfied with Plea Counsel's representation, 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.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland as laid out in Hill—that but for Plea Counsel's deficient performance, Applicant would have gone to trial and not pled guilty.

Accordingly, this Court finds that the Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED**.

[CONCLUSION PAGE FOLLOWS]

CONCLUSION

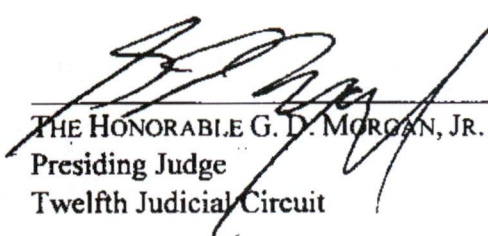
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be **DENIED** and **DISMISSED WITH PREJUDICE**.

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), SCRPC, 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 31st day of July, 2024.



THE HONORABLE G. D. MORGAN, JR.
Presiding Judge
Twelfth Judicial Circuit

Greenville, South Carolina