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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

2023-CP-42-0600

Joshua R. Winchester..... Appellant,
v.
The State, ... Respondent.

NOTICE OF APPEAL

Joshua R. Winchester appeals the Honorable R. Lawton McIntosh's Order of Dismissal filed December 19, 2024, and received February 7, 2025.

This twenty-fourth day of February, 2025.

s/Susannah Ross
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STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
Joshua R. Winchester, #373196, Applicant, v. State of South Carolina, Respondent.	)	CASE NO. 2023–CP–42-0600 **ORDER OF DISMISSAL WITH PREJUDICE**

FILED
2024 DEC 19 PM 2:43
CLERK OF COURT
SPARTANBURG COUNTY

Presiding Judge:	Hon. R. Lawton McIntosh
Applicant's Attorney:	Susannah C. Ross, Esq.
Respondent's Attorney:	Shayla J. Flores, Esq.
Plea Counsel:	James Z. Farr, Esq.
Date of Hearing:	September 3, 2024

This matter comes before the Court by way of Joshua Winchester's (Applicant) application for post-conviction relief (PCR) filed on February 15, 2023. Respondent, the State of South Carolina, filed its Return and Partial Motion to Dismiss, and Motion for a More Definite Statement on or around July 1, 2024.

On September 3, 2024, an evidentiary hearing was held at the Spartanburg County Courthouse before the Honorable R. Lawton McIntosh. Assistant Attorney General Shayla Joan Flores represented Respondent. Applicant was present and represented by Susannah C. Ross, Esquire (PCR Counsel). At the hearing, Applicant, through counsel, stated for the record which allegations he intended to proceed on. In support of these claims, Applicant testified on his own behalf, and presented testimony from James Zachary Farr, Esq. (Plea Counsel).

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

constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently incarcerated according to an order of commitment of the Spartanburg County Clerk of Court. The Spartanburg County Grand Jury issued four separate indictments charging Applicant for four separate and distinct offenses. Applicant was indited for trafficking methamphetamine 200-400 grams (2021-GS-42-4394); trafficking methamphetamine over 400 grams (2021-GS-42-6224); possession of a weapon during the commission of a violent crime (2021-GS-42-4394); and possession of a controlled substance second or subsequent (2021-GS-42-4393).[1] James Zachary Farr, Esquire, represented Applicant. Seventh Circuit Deputy Solicitor Lindsey Heger Overby prosecuted the case.

On January 25, 2023, Applicant appeared before the Honorable J. Derham Cole, circuit court judge and pled guilty as indicted to possession of a weapon during the commission of a violent crime (2021-GS-42-4394) and possession of a controlled substance second or subsequent (2021-GS-42-4393). Applicant also pled guilty to two counts of the lesser included offense of trafficking methamphetamine 28 to 100 grams; second offense (2021-GS-42-4394; -6224).[2] Judge

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[1] At the time of his arrest applicant was serving a ten-year sentence for possession with intent to distribute, second offense (2019-GS-42-5826). Applicant's ten-year sentence had been suspended to two years' incarceration and five years of probation. Applicant had completed his two years' of incarceration and had only been released on probation for about a month before he was apprehended on the indictments at issue. (Plea Tr. p. 24, ll. 8-16). Therefore, Applicant had eight years of his sentence remaining. (Plea Tr. pp. 15, l. 15-16, l. 9). Judge Cole found Applicant willfully failed to comply with the conditions of his probation, revoking thirty months and thereby terminating the balance. Applicant's probation-revocation sentence is to run consecutive to his additional sentences. (Plea Tr. pp. 35, l. 14-36, l. 18).

[2] The State presented Applicant's plea to the court as a negotiated sentence of fifteen years and a mandatory $50,000.00 fine on two counts of trafficking, a concurrent five-year sentence for the weapons charge, and a one-year concurrent sentence for the possession of a controlled substance charge. (Plea Tr. p. 3, ll. 20-24).

Cole sentenced applicant to concurrent terms of fifteen years' imprisonment for trafficking (2021-GS-42-04394) and (2021-GS-42-06224), 5 years' imprisonment for possession of a weapon during the commission of a violent crime (2021-GS-42-4394), and one year for possession of schedule III drug (2021-GS-42-04393). [3]

Applicant did not appeal his convictions or sentences.

FACTS GIVING RISE TO THE CONVICTION

The facts giving rise to the convictions were articulated by the Solicitor at Applicant's plea hearing as follows:

> As to Indictments 21-4394 and 4394-A, on June the 14th of 2021 Spartanburg County Home Detention Officers conducted a house check at the defendant's listed address in Third Street in Greer, which is within Spartanburg County. The defendant was on home detention as part of a PWID meth second sentence from February of 2020. The defendant was on scene. He was living in a detached garage from the main residence. There was a bedroom area in that garage. From his bedroom officers recovered a scale with white -- with a white substance which tested as meth, as well as drug paraphernalia. Just outside of the bedroom area there was rubber bands, plastic baggies, those kinds of things. The back door of the garage had two doors that lifted up. One of the window panes back there was broken. The home detention officer saw a duffle bag with a large chunk of meth on the ground out there, as well as a duffle bag with a handgun that was sticking out of it. From that duffle bag officers recovered three handguns, five bags of meth with a combined weight of over 375 grams, two packages of the Schedule III substance and scales, as well as two bundles of money and ammunition with various other calibers all in the duffle bag. There was money that was located in the residence over $20,000. That was some stuffed behind a clock, and then there was a fake book that had a compartment with which money was being hidden. That location occurred within a half mile of the Greer City Park.
>
> As to Indictment 21-6224, trafficking meth over 400, on September the 16th of 2021 county narcs were conducting surveillance at the Rodeway Inn on New Cut Road in Spartanburg County. There was a search warrant that had been issued for a room there at the motel.

[3] Judge Cole declined to agree to the negotiations presented by the State, as Applicant's case had already been rostered for trial. (Plea Tr. p. 4, ll. 2-25).

It was based on information that narcotics officers had. The defendant was the target of the investigation. Officers observed the defendant arrive at the motel, park the car that they had information that he would be in, and he was walking towards the stairwell. One officer walked up to him, identified herself as police, and this defendant dropped a backpack and fled on foot. He was apprehended some distance from the motel. Within that backpack there were two bags of meth which over four -- 571 grams of meth, his license, cigarettes, numerous empty plastic baggies and a scale.

THE COURT: And is the previous history only the matter for which he is now on probation?

MS. OVERY: No, sir. He has -- he has a history. 2017, breaking into motor vehicle, two counts, petit larceny, three counts, a possession of meth, receiving stolen goods and burglary third degree; 2018, possession of meth; and then 2020 is the possession with intent to distribute meth second offense.

(Plea Tr. pp. 21, l. 12-23, l. 10).

CURRENT ACTION BEFORE THIS COURT

In his application for post-conviction relief filed February 15, 2023, Applicant claimed he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel:
   a. Counsel was ineffective for not objecting to a offense that was not lesser included offense (*sic*)."

On August 26, 2024, Applicant, through PCR Counsel, amended his application for post-conviction relief to include the following allegations:

2. Ineffective assistance of Counsel:
   a. Failure to investigate and review discovery with the Applicant;
   b. Advising the Applicant that the plea would be negotiated and that he faced a potential sentence of fifteen years; and
   c. Failure to file a pretrial motion to suppress.
3. Involuntary Guilty Plea:
   a. Due process violations because the plea was not knowingly and voluntarily made.

Applicant requests relief in the form of this Court reversing and remanding his sentence.

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

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act[4] (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based on the following types of allegations:

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

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

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

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

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

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

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), SCRCP (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

Accordingly, set forth below are the relevant findings of facts and conclusions of law as required by § 17-27-80 of the South Carolina Code:

INITIAL FINDINGS

This Court finds applicable the strong presumption that at all stages of Plea Counsel's representation of Applicant, he rendered adequate assistance and exercised reasonable professional judgment in his representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992). See, e.g., State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) ("In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment."); Clemons v. Mississippi, 494 U.S. 738, 766 (1990) (Blackmun, J., concurring in part and dissenting in part) ("The trial judge who hears the witnesses live, observes their demeanor and in general smells the smoke of the battle is by his very position far better equipped to make findings of fact which will have the reliability that we need and desire.").

This Court makes the following findings from the record: 1. Applicant understood the charges and sentences he faced at his plea hearing (Plea Tr. pp. 5, l. 11-7, l. 7); 2. Applicant indicated Plea Counsel visited him at the jail (Plea Tr. p. 7, ll. 14-15); 3. Applicant indicated Plea Counsel discussed his cases with him during those visits (Plea Tr. p. 7, ll. 16-18); 4. Applicant indicated during those visits Plea Counsel went over his indictments with him, explained the State's accusations against him, explained the sentences that could be imposed if he were convicted, and Applicant understood those conversations (Plea Tr. pp. 7, l. 19-8, l. 5); 5. Applicant indicated Plea Counsel shared the discovery provided by the State with him, discussed that discovery with him, and discussed Applicant's version of the events in conjunction with the discovery with him (Plea Tr. p. 8, ll. 6-18); 6. Applicant indicated Plea Counsel discussed with him the defenses he had to each of the charges against him (Plea Tr. pp. 8, l. 19-9, l. 8); 7. Applicant indicated he had enough time with Plea Counsel (Plea Tr. p. 9, ll. 22-24); 8. Applicant affirmed his understanding that he would be giving up his right to assert any defense he may have by pleading guilty and indicated his desire to waive that right (Plea Tr. p. 9, ll. 3-21); 9. Applicant understood his right to a jury trial and that he waived those rights by pleading guilty (Plea Tr. pp. 9, l. 25-14, l. 6); 10. Applicant indicated no one offered him or promised him anything in return for his decision to plead guilty (Plea Tr. pp. 14, l. 7-15, l. 14); 11. Applicant indicated no one was forcing him to plead guilty, his decision to plead guilty was voluntary and he was satisfied with his decision (Plea Tr. p. 17, ll. 9-22); 12. Applicant understood the difference between a negotiated sentence and a recommended sentence (Plea Tr. pp. 14, l. 14-15, l. 10); 13. Applicant understood he was violating the terms of his probation by entering his guilty plea and the consequences of doing so (Plea Tr. pp. 16, l. 15-17, l. 18); 14. Applicant understood the difference between sentences that run concurrently and sentences that run consecutively (Plea Tr. p. 17, l. 3-8, l. 15.

Applicant agreed with the facts surrounding the State's case against him (Plea Tr. p. 23, ll. 19-25); 16. Applicant agreed with the State's recitation of his criminal history (Plea Tr. p. 24, ll. 1-5); 17. Applicant agreed with the State's recitation of his probation history (Plea Tr. pp. 24, l. 22-25, l. 9).

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS

Allegation 1: Plea Counsel Failed to Object to Lesser Included Offense

Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to his plea to a lesser included offense. Specifically, Applicant contends Plea Counsel was ineffective for allowing him to plead guilty to two counts of trafficking methamphetamine 28 to 100 grams; second offense, which he contends is not a lesser included offense of the charge against him. This Court finds this allegation to be without merit.

Ultimately, the "use and timing of objections at trial is a quintessential matter of strategy and discretion on the part of the trial attorney, and will very seldom constitute objectively deficient representation." United States v. Nguyen, 379 F. App'x 177, 181 (3d Cir. 2010); see Humphries v. Ozmint, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) ("[I]t is well established that failure to object to inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under Strickland."); cf. Bergmann v. McCaughtry, 65 F.3d 1372, 1380 (7th Cir.1995) (noting that deciding when to object is a matter of trial strategy that a lawyer has to make on the spot.).

When analyzing counsel's performance, the reviewing court will "strong[ly] presume[e] that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than sheer neglect. Yarborough v. Gentry, 540 U.S. 1, 8 (2003) (internal quotation marks omitted); cf. Sallie v. State of N.C., 587 F.2d 636, 640 (4th Cir. 1978) (Strickland standard was not developed to was not "intended to promote judicial second-guessing on questions of strategy as basic as the

handling of a witness"). Accordingly, when counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); see Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) ("Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel).

Here, the record reflects that Applicant was indicted for two counts of trafficking methamphetamine 200-400 grams (2021-GS-42-4394) and (2021-GS-42-6224), and Applicant subsequently pled to the lesser included offense of trafficking methamphetamine 28 to 100 grams—second offense on both of those indictments. In Rollinson v. State, 346 S.C. 506, 552 S.E.2d 290 (2001), the South Carolina Supreme Court reversed the circuit court's grant of relief on the grounds that counsel was ineffective for allowing Rollinson to plead guilty to two drug charges as a first and second offense when he had no prior drug convictions. The Supreme Court held in Rollinson that a defendant may, as part of a plea bargain, plead guilty to an offense for which he is not guilty. Id., 346 S.C. at 510. 552 S.E.2d at 292. The Rollinson Court noted that in Anderson v. State, 342 S.C. 54. 535 S.E.2d 649 (2000), "we held that an individual could plead guilty to voluntary manslaughter under an indictment charging him with murder even though the acts would not support such a lesser charge." Id. 346 S.C. at 511, 552 S.E.2d at 292.

As in Anderson, Applicant was offered and agreed to plead guilty to a reduced charge so as to reduce his exposure. Under Anderson, Applicant's plea is not rendered involuntary merely because the acts and evidence would not support the lesser weight range as opposed to the higher weight range of methamphetamine.

Findings

Accordingly, this Court finds the combination of the record, and Plea Counsel's **credible** testimony that Applicant has failed to meet the burden of showing Plea Counsel was constitutionally ineffective. This Court further finds Plea Counsel's representation of Applicant was not deficient, as this was a bargained-for advantage that the Applicant received in order to avoid a harsher minimum sentence in the event of a conviction. See State v. Stahlnecker, 386 S.C. 609, 617, 690 S.E.2d 565, 570 (2010) (citing State v. Nichols, 325 S.C. 111, 120, 481 S.E.2d 118, 123 (1997)) ("[a]n objection must be made on a specific ground."). Applicant knowingly and intelligently chose this alternative to trial and the risk of a mandatory twenty-five-year sentence. S.C. Code Ann. § 44-53-375(c)(5). Therefore, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED.**

Allegation 2: Plea Counsel Failed to Properly Investigate and Review Discovery with Applicant.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to investigate and review discovery with him. This Court disagrees and finds this allegation to be without merit.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). Likewise, in order to prevail on a claim that counsel did not review discovery with applicant, the applicant must demonstrate prejudice by showing what evidence could have been discovered or what other defenses could have been pursued. Id.

Furthermore, an applicant must also present evidence to show how the discoverable matters

or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is insufficient to support a relief grant. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Findings

This Court finds the combination of the record, and Plea Counsel's **credible** testimony that Applicant has failed to meet the burden of showing Plea Counsel was constitutionally ineffective. See Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) Applicant failed to present "any evidence of how additional preparation or communication would have resulted in a different outcome." Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012); see Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998) (explaining that, where an applicant failed to present any evidence of what counsel could have discovered or what other defenses he would have requested counsel pursue had counsel more fully prepared for the trial, applicant failed to show his counsel's lack of preparation prejudiced him); Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (finding that, when there is evidence counsel met with a defendant in preparation for trial and there is no evidence additional preparation on the part of counsel would have affected the outcome at trial, counsel cannot be said to have been ineffective), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

Moreover, to whatever extent Applicant was not entirely satisfied with the amount of time to review discovery and investigate the charges, he was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to proceed with his guilty plea. The record reflects via Applicant's admission, Plea Counsel shared the discovery

provided by the State with Applicant, discussed that discovery with him, and discussed Applicant's version of the events in conjunction with the discovery with him. (Plea Tr. p. 8, ll. 6-18).

This Court finds Applicant has offered no valid reason to be allowed to depart from the truth of the statements made under oath during his guilty plea. See Crawford v. United States, 519 F.2d 347 (4th Cir.1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976) (Statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements.). 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 3: Plea Counsel Erroneously Advised Applicant that His Plea Would be Negotiated and that He Faced a Potential Sentence of Fifteen Years

Applicant alleges Plea Counsel was constitutionally ineffective for erroneously advising him regarding his guilty plea. Specifically, Applicant alleges Plea Counsel was constitutionally ineffective for advising him that his plea would be negotiated and that he faced a potential sentence of fifteen years. This Court finds this allegation to be without merit.

In considering an allegation on post-conviction relief (PCR) that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. Stalk v. State, 375 S.C. 289, 652 S.E.2d 402 (Ct. App. 2007), aff'd as modified, 383 S.C. 559, 681 S.E.2d 592 (2009); Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984) ("[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing."); Roddy v. State, 339

S.C. at 33, 528 S.E.2d at 420 (holding when determining issues relating to guilty pleas, the Court will consider the entire record, including the transcript of the guilty pleas and the evidence presented at the PCR hearing.).

The transcript of the guilty plea directly refutes Applicant's claims that he was unaware that his plea would not be to a negotiated sentence or that he believed he faced a potential sentence of fifteen years. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977) ("A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed."); Edmonds v. Lewis, 546 F.2d 566 (4th Cir.1976) (holding statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements.); Boykin v. Alabama, 395 U.S. 238, 242, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969) (to find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him.); Pittman v. State, 337 S.C. 597, 600, 524 S.E.2d 623, 625 (1999) ("A defendant's knowing and voluntary waiver of the constitutional rights which accompany a guilty plea may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel, or both.").

Findings

Based on the **credible** testimony of Plea Counsel, as well as the information reflected in the record, this Court finds Applicant's testimony **not credible** and **not persuasive**. Rayford v. State, 314 S.C. 46, 48-49, 443 S.E.2d 805, 806 (1994) (where transcript of guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, grant of PCR was inappropriate notwithstanding applicant's claim lawyer misadvised him); Moorehead v. State, 329

S.C. 329, 333, 496 S.E.2d 415, 417 (1998) ("Respondent's explanation that he answered the trial court affirmatively on counsel's alleged advice that the questions were meaningless does not support the grant of PCR.").

The record indicates Applicant was fully informed of his constitutional rights, understood the crimes with which he was charged, and was cognizant of the maximum sentences he might receive. The record further reflects that Applicant understood the difference between a negotiated sentence and a recommended sentence and that the State had recommended a sentence of fifteen years in his case. (Plea Tr. pp. 14, l. 14-15, l. 10). Any possible misconceptions concerning his constitutional rights, the charges, or potential sentences on Applicant's part were cured by the colloquy during the plea proceeding conducted by the judge. See Pittman, 337 S.C. at 601, 524 S.E.2d at 625; Wolfe, 326 S.C. at 165, 485 S.E.2d at 370.

This Court finds Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (holding an applicant may attack the voluntary, knowing, and intelligent character of a guilty plea entered on the advice of counsel by demonstrating that counsel's representation was below an objective standard of reasonableness.).

Additionally, this Court finds Applicant has failed to meet his burden proving Plea Counsel's alleged deficiency prejudiced him. Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985) (The "prejudice," requirement focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process.); Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007) (The applicant must prove prejudice by showing that, but for

counsel's inadequacy, there is a reasonable probability he would not have pleaded guilty and, instead, would have insisted on going to trial.).

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

Allegation 4: Plea Counsel Failed to File a Pretrial Motion to Suppress

Applicant alleges Plea Counsel was constitutionally ineffective for failing to file a pretrial motion to suppress on his behalf. This Court finds this allegation to be without merit.

When analyzing counsel's performance, the reviewing court will "strong[ly] presume[e] that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than sheer neglect. Yarborough v. Gentry, 540 U.S. 1, 8 (2003) (internal quotation marks omitted); cf. Sallie v. State of N.C., 587 F.2d 636, 640 (4th Cir. 1978) (Strickland standard was not developed to was not "intended to promote judicial second-guessing on questions of strategy as basic as the handling of a witness"). Accordingly, when counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); see Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) ("Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel).

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland). Additionally, Applicant failed to present "any evidence of how additional

preparation or communication would have resulted in a different outcome." Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012); see Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998) (explaining that, where an applicant failed to present any evidence of what counsel could have discovered or what other defenses he would have requested counsel pursue had counsel more fully prepared for the trial, applicant failed to show his counsel's lack of preparation prejudiced him); Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (finding that, when there is evidence counsel met with a defendant in preparation for trial and there is no evidence additional preparation on the part of counsel would have affected the outcome at trial, counsel cannot be said to have been ineffective), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

Moreover, to whatever extent Applicant was not entirely satisfied with Plea Counsel's actions, he was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to proceed with his guilty plea. Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation 5: Involuntary Guilty Plea

Applicant alleges Plea Counsel was constitutionally ineffective rendering his guilty plea involuntarily made. Specifically, Applicant alleges due process violations where his plea was not knowingly and voluntarily made. This Court finds this allegation to be without merit.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a complete understanding of the consequences of the plea and the charges against him or her. Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991); see also Boykin v. Alabama, 395 U.S. 238, 244 (1969) (Courts must make sure defendants have "a full understanding

of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought and forestalls the spin-off of collateral proceedings that seek to probe murky memories."). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984) (finding the voluntariness of a guilty plea "is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.").

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001); Richardson v. State, 310 S.C. 360, 363, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

Findings

As an initial matter, this Court finds the record refutes Applicant's allegations and reflects that Applicant's guilty plea was knowingly and voluntarily entered with a complete understanding of the charges and consequences of the plea. This Court further finds Applicant was fully aware of the minimum and maximum sentencing ranges on all charges that he pleaded guilty to. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed

See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985)).

Furthermore, this Court finds Applicant has failed to show that Plea Counsel's representation fell below an objective standard of reasonableness, and that but for Plea Counsel's alleged errors, Applicant would not have pled guilty and proceeded to trial. See Roscoe v. State, 345 S.C.16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362 426 S.E.2d 795, 797 (1993). This Court finds the combination of the record and Plea Counsel's **credible** testimony at the evidentiary hearing provides Applicant knew the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty pursuant to the requirements of Boykin v. Alabama, 395 U.S. 238 (1969) and Roddy v. State, 339 S.C. 29 (2000).

Moreover, the plea colloquy cured any alleged deficiency regarding Plea Counsel's advice. The plea transcript reflects that Applicant entered his plea knowingly and voluntarily, engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the plea court's questions. Applicant has presented no valid reason why he should be able to depart from the statements made during his guilty plea as provided *supra*. See Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975), overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir. 1985) (finding that the accuracy and truth of an accused's statements at a guilty plea proceeding are "conclusively" established unless he makes some reasonable allegation why this should not be so).

Thus, based on the evidence presented at the plea proceeding and the evidentiary hearing,

this Court finds Applicant freely, knowingly, and voluntarily pled guilty. This Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Accordingly, this allegation must be **DENIED** and **DISMISSED**.

|CONCLUSION PAGE FOLLOWS|

CONCLUSION

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

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

IT IS THEREFORE ORDERED:

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

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

AND IT IS SO ORDERED this 13 **day of** December, **2024.**

THE HONORABLE R. LAWTON MCINTOSH
Presiding Judge
Seventh Judicial Circuit

Anderson, South Carolina

FILED
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SPARTANBURG COUNTY
BY W. COX

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICAL CIRCUIT

JOSHUA R. WINCHESTER, #373196 Applicant,

v.

STATE OF SOUTH CAROLINA, Respondent.

AFFIDAVIT OF SERVICE

The undersigned hereby certifies that a true copy of the filed Order of Dismissal with Prejudice has been served upon the applicant by mailing one copy in the United States mail, postage prepaid, addressed to:

Susannah C. Ross, Esquire
Ross & Enderlin, PA
330 East Coffee St.
Greenville, SC 29601

This 5th day of February, 2025.

Jordan H.
Legal Assistant for Respondent

SWORN to before me this 5th day of February, 2025.

Notary Public for South Carolina.
My Commission Expires: May 16, 2029