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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

HONORABLE G.D. MORGAN

2023-CP-42-00564

BENJAMIN A. DOYLE, SCDC# 42730

APPELLANT,

vs.

STATE OF SOUTH CAROLINA,

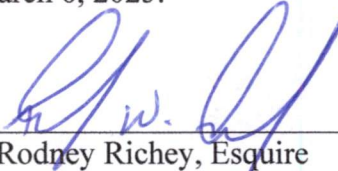
RESPONDENT.

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**NOTICE OF APPEAL**

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Benjamin A. Doyle appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable G.D. Morgan, Circuit Judge on November 1, 2023 an Order issued on February 25, 2025 and filed on March 6, 2025. The Appellant received notice of the judgment on March 6, 2025.



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**PROCEDURAL HISTORY**

The records before this Court establish Applicant is presently incarcerated according to an order of commitment of the Spartanburg County Clerk of Court. During its September 2020 term, the Spartanburg County Grand Jury indicted Applicant for attempted murder and possession of a weapon during commission of a violent crime (2020-GS-42-5570). Assistant Public Defender Katherine Sieber of the Seventh Circuit Public Defender's Office represented Applicant. Assistant Solicitor Spenser H. Smith of the Seventh Circuit Solicitor's Office prosecuted the case.

On July 11, 2022, Applicant appeared before the Honorable J. Mark Hayes, II, circuit court judge and pled guilty to the lesser included offense of assault and battery of a high and aggravated nature and possession of a weapon during the commission of a violent crime. Judge Hayes sentenced Applicant to consecutive terms of fifteen years' imprisonment for assault and battery of a high and aggravated nature and five years' imprisonment for possession of a weapon during the commission of a violent crime, which is suspended upon the time served followed by five years' supervision.

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:

Your Honor, these cases arose on February 16, 2020 around 3:30 in the afternoon of Prince Hall, Spartanburg County. Mr. Wilkes was found shot outside of an apartment. He was rushed to the hospital. [Applicant] was quickly developed as a suspect from some of the people in the area. There were people that will testify that they had seen him with a gun earlier. It appeared like he was looking for somebody. Ultimately he was apprehended about two hours after the incident. He did confess to shooting Mr. Wilkes. So he gave a self-defense story which essentially involved that Mr. Wilkes had thrown a cup of liquid on him before that and there had been some events

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that had happened in the weeks leading up to this event that he felt left him with no choice that day other than to shoot him. The State's position is that he basically became fed up with whatever was going on between them, dissatisfied with the response he was getting from the police and decided to handle it himself and ambushed Mr. Wilkes as he left the apartment. That is essentially what happened in this case [...].

(Plea Tr. p. 169, ll. 6 - 25).

**CURRENT ACTION BEFORE THIS COURT**

In his application for post-conviction relief filed February 13, 2023, Applicant claimed he was being held in custody unlawfully for the following reasons (excerpts verbatim):

1. Ineffective Assistance of Counsel:
  - a. Failure to Appeal
    - i. "Counsel never advised me that I could appeal. Counsel never informed me of my rights to Appellate Review nor did the Court after sentencing."
  - b. Excessive Sentencing
    - i. "Under the sentence I'm held unlawfully [due] to the facts ABHAN sentence to 15 years excess doesn't the minimum of 10 years."
    - ii. "The statute provides the maximum to be sentence of 10 years."

On October 23, 2023, Applicant, through PCR Counsel, amended his application for post-conviction relief to include the following allegations (excerpts verbatim):<sup>1</sup>

1. Ineffective assistance of Counsel:
  - c. Involuntary Guilty Plea:
    - i. "Trial Counsel was ineffective for coercing the Applicant to plead guilty;"
  - d. Failure to Object:
    - i. "Trial Counsel was ineffective for not objecting to the Solicitor stating that he had a violence background;"
  - e. "Trial Counsel was ineffective for not preparing and presenting a defense;"
  - f. "Trial Counsel was ineffective for not assisting Applicant in getting the recommended sentence;"

<sup>1</sup> At the conclusion of Applicant's evidentiary hearing, Applicant, through PCR Counsel, indicated that he would only be proceeding on the allegations contained in his Amended Application for PCR. (PCR Tr. p. 47, ll. 17-24).

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- g. "Trial Counsel was ineffective for not proceeding with trial by jury;"
- h. Failure to Investigate:
  - i. "Trial Counsel was ineffective for not investigating the charges against the Applicant;"
  - i. "Trial Counsel was ineffective for not trying to get Applicant a favorable result from his case."

Applicant requests relief in the following form:

The ABHAN sentence excess 10 years which is the maximum of ABHAN 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<sup>2</sup> (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).

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<sup>2</sup> S.C. Code Ann. §§ 17-27-10 to -160.

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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 (2010).

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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).

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**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, she rendered adequate assistance and exercised reasonable professional judgment in her representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at

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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 indicated that he was satisfied with the work that Plea Counsel had done for him (Plea Tr. 167, 5, ll. 12-14); 2. Applicant indicated no one had threatened him or made any promises to him in order to coerce his guilty plea and his decision to plead guilty was freely and voluntarily made (Plea Tr. p. 167, ll. 15-24); 3. Applicant understood his right to a jury trial and that he waived those rights by pleading guilty (Plea Tr. pp. 167, l. 25-168, l. 12); 4. Applicant affirmed his understanding that he would be giving up constitutional rights in entering his guilty plea including his right to confront and cross-examine the State's witnesses and his right to assert any defense he may have by pleading guilty and indicated his desire to waive those rights (Plea Tr. pp. 168, l. 13- 169, l. 1; 170, ll. 3-12); 5. Applicant agreed with the facts surrounding the State's case against him (Plea Tr. p. 170, ll. 13-16); 6. Applicant understood that his pleas were presented to the court as negotiated pleas and therefore the court would be bound by the negotiations and have to impose the sentences that were announced by the Solicitor (Plea Tr. p. 170, ll. 17-22); 7. Applicant confirmed that he wished for the court to accept the negotiated pleas (Plea Tr. p. 170, ll. 17-24); 8. Applicant understood the assault and battery of a high and aggravated nature charge he faced at his plea hearing was

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classified as violent and serious (Plea Tr. pp. 170, l. 25 - 171, l. 4); 9. Applicant indicated he had the opportunity to discuss with Plea Counsel the consequences and ramifications of that offense being classified as violent and serious (Plea Tr. p. 171, ll. 5-9); 10. Applicant indicated that, understanding the violent and serious classification, he still wished to enter his guilty plea to that charge. (Plea Tr. p. 171, ll. 5-12); 11. Applicant stated that he was guilty of the charge of assault and battery of a high and aggravated nature (Plea Tr. p. 171, ll. 13-16); 12. Applicant stated that he was guilty of the charge of possession of a weapon during the commission of a violent crime (Plea Tr. p. 171, ll. 17-19); 13. Applicant affirmed that all of his answers to the court's questions were truthful and honest (Plea Tr. p. 171, ll. 20-22).

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

**Allegations C, E, G: Involuntary Guilty Plea; Plea Counsel was Ineffective for not Preparing and Presenting a Defense; and Plea Counsel was Ineffective for not Proceeding with Trial by Jury.**

Applicant alleges Plea Counsel was constitutionally ineffective rendering his guilty plea involuntarily made. Specifically, Applicant alleges Plea Counsel was ineffective for “coercing [him] to plead guilty;” “for not preparing and presenting a defense;” and “for not proceeding with trial by jury.” This Court finds these allegations 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,

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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

During Applicant's plea hearing Applicant indicated that he was satisfied with the work that Plea Counsel had done for him. (Plea Tr. 167, 5, ll. 12-14). Applicant indicated no one had threatened him or made any promises to him in order to coerce his guilty plea and his decision to plead guilty was freely and voluntarily made. (Plea Tr. p. 167, ll. 15-24). Applicant understood his right to a jury trial and that he waived those rights by pleading guilty. (Plea Tr. pp. 167, l. 25-168, l. 12). Applicant affirmed his understanding that he would be giving up constitutional rights in entering his guilty plea including his right to confront and cross-examine the State's witnesses and his right to assert any defense he may have by pleading guilty and indicated his desire to waive those rights. (Plea Tr. pp. 168, l. 13- 169, l. 1; 170, ll. 3-12).

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The record reflects that Plea Counsel presented the following at the conclusion of Applicant's plea hearing:

Thank you, Your Honor. I think it's important to Mr. Doyle that you know he did not intend to kill Mr. Wilkes. He is here pleading before you because of the reduction in the charge, to the assault and battery, high and aggravated. You've heard of prior incidents that happened between he and them. Mr. Doyle and I have had discussions about self-defense defense, which was our intention if we were to move forward with the trial. Ultimately he has decided not to do that. We discussed the fact the threat from Mr. Wilkes was not imminent at that point and immediately after this. He does want, Your Honor, to know he did feel like eventually this was going to come to blows with the situation that happened between the two of them and that he would eventually be injured at some future date.

(Plea Tr. p. 174, ll. 8 - 22).

#### **PCR Evidentiary Hearing**

During the PCR evidentiary hearing on direct-examination, Applicant testified that he informed Plea Counsel that he did not wish to plead guilty, but Plea Counsel advised him to do so because he was facing a sentence of thirty years' incarceration. (PCR Tr. pp. 9, l. 14 – 10, l. 25; 13, ll. 6-13). When asked what act Plea Counsel did to coerce Applicant into entering his guilty plea, Applicant testified that Plea Counsel was not prepared for his trial. (PCR Tr. pp. 9, l. 14 – 10, l. 25). Applicant testified that his belief that Plea Counsel was not prepared for his trial was based on the following:

Well, the reason why I believe that is because, you know, they took a jacket from me that they wanted to take for evidence to say that the guy threw the liquid on me, so forth, so on. Not only the jacket, Ms. Sieber send her investigators out to the young lady's house who was subpoenaed. The investigator came back and stated: I hear them in the house, but no one is not answering the door. I asked Ms. Katy Sieber could we get a continuance. I asked Ms. Katy Sieber, could we get a continuance. She said: Well, we can't get a continuance. The judge is going to put you back in jail. I was out on bond. I was out there two-and-a-half years on bond. Not only that, I asked her - she said that she can not get the 911 calls that I made from the

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Sheriff's Department, yet she have my number and my phone is there and I made those calls.

(PCR Tr. p. 12, ll. 9-24).

Applicant testified to his belief that Plea Counsel was ineffective for failing to pursue a jury trial despite his previous testimony. (PCR Tr. pp. 12, l. 25 – 13, l. 5). Applicant testified that his decision to plead guilty was based upon Plea Counsel's concerns that he would receive a heavier sentence if he proceeded to a jury trial. (PCR Tr. p. 13, ll. 6-13). When asked why he answered the plea court's questions affirmatively at his guilty plea hearing if his answers were not true, Applicant testified that he did so because he was aware that he did not have a viable defense that would persuade the jury and therefore he believed it was in his best interest to plead guilty. (PCR Tr. pp. 29, l. 18 – 30, l. 3).

During the PCR evidentiary hearing on cross-examination, Applicant testified that Plea Counsel never overpowered him to override his intent on proceeding to a jury trial. (PCR Tr. pp. 16, l. 21 – 17, l. 1). Applicant testified that he was coerced by Plea Counsel into taking his plea where Plea Counsel informed him that he was facing a thirty year sentence which placed him under duress. (PCR Tr. p. 17, ll. 1-7). Applicant testified that Plea Counsel never threatened him in order to coerce his guilty plea, but he ultimately pleaded guilty to the negotiated sentence because he was afraid to receive the thirty year sentence he was facing if he proceeded to a jury trial. (PCR Tr. p. 17, ll. 8-10).

During the PCR evidentiary hearing on direct-examination, Plea Counsel testified that throughout her representation of Applicant he was adamant about proceeding to a jury trial using a defense of self-defense. (PCR Tr. p. 31, ll. 3-21). Plea Counsel testified that Applicant had initially been offered a plea offer of twenty years, and was presented the fifteen year offer following the conclusion of Applicant's stand your ground hearing. (PCR Tr. pp. 31, l. 22 – 32, l. 19)

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4). Plea Counsel testified that Applicant was initially wavering on what to do following the State's offer of a guilty plea to a negotiated fifteen year sentence, and at that time that she advised him that she believed accepting the plea offer to be in his best interest. (PCR Tr. p. 32, ll. 10-17). Plea Counsel testified that her belief was based upon her concerns that Applicant would receive a heavier sentence if he were to proceed to a jury trial following his loss at the stand your ground hearing. (PCR Tr. p. 32, ll. 10-24).

Plea Counsel testified to her belief that it was highly likely that Applicant would be convicted if he proceeded to a jury trial. (PCR Tr. p. 32, ll. 24-25; 34, ll. 21-24). Plea Counsel testified that in advising Applicant to plead guilty she considered the entirety of the case including the fact that Applicant had confessed to shooting the victim, and had repeatedly stated during his confession that his reason for shooting the victim was that the victim had disrespected him by spitting on him. (PCR Tr. pp. 34, l. 25- 35, l. 7) Plea Counsel testified that she discussed with Applicant at length that the jury would not consider his explanation for shooting the victim reasonable and her concerns about that. (PCR Tr. p. 35, ll. 7-9).

Plea Counsel ultimately testified on both direct and cross-examination that, had Applicant requested she do so, she would have proceeded to a jury trial on his behalf despite her belief that pleading was in Applicant's best interest. (PCR Tr. p.36, ll. 14-18;42, l. 21 – 43, l. 3).

### 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,

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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).

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

**Allegation D: Plea Counsel Failed to Object**

Applicant alleges Trial Counsel was constitutionally ineffective for failing to make certain objections. Specifically, Applicant alleges Plea Counsel was ineffective for failing to object to “the Solicitor stating that he had a violence background.” This Court finds this allegation to be without merit

An ineffective assistance claim based on a failure to object is tied to the admissibility of the underlying evidence." Hough v. Anderson, 272 F.3d 878, 898 (7th Cir. 2001). "If evidence admitted without objection was admissible, then the complained of action fails both prongs of the Strickland test: failing to object to admissible evidence cannot be a professionally 'unreasonable' action, nor can it prejudice the defendant against whom the evidence was admitted." Id.; see Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence). Also, "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691.

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 Smith

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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, 540 U.S. at 8 (internal quotation marks omitted); cf. Higgs v. United States, 711 F. Supp. 2d 479, 515 (D. Md. 2010) ("Defense counsel constantly must decide what questions to ask and how much time to spend on a particular witness. These are precisely the types of tactical decisions a court is not supposed to second guess.") (citing Byram v. Ozmint, 339 F.3d 203, 209 (4th Cir. 2003)); Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Strickland standard was not developed "to promote judicial second-guessing on questions of strategy as basic as the handling of a witness.").

Also, "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691. To establish prejudice, Applicant is required to show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694.

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. Lecke, 282 S.C. 131, 334, 318 S.E.2d 360, 361 (1984). "A defendant's knowing and voluntary waiver of the constitutional rights

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accompany a guilty plea may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel, or both." Pittman v. State, 337 S.C. 597, 600, 524 S.E.2d 623, 625 (1999).

### Guilty Plea Hearing

In this case, the record reflects during Applicant's plea hearing the State Set forth Applicant's prior criminal history as follows:

The Court: Any prior record?  
Solicitor: You just want the last ten years, Your Honor.  
The Court: Sure.  
Solicitor: Nothing matters for enhancements or anything. In the last ten he had 2002, DUI/DUS, open container, possession of marijuana. 2003, public disorderly. 2010, possession of marijuana. 2014, shoplifting. 2015, PC. 2016, malicious injury and shoplifting. He does have record that goes beyond that but nothing is like this. Certainly not anything aggravated like this. I think he has one assault and battery would be the only thing that would've involved violence towards another.  
The Court: Thank you, sir.

(Plea Tr. pp. 172, ll. 1-17).

### PCR Evidentiary Hearing

During the PCR evidentiary hearing on direct-examination, Applicant testified that the Solicitor stated at his plea hearing that he had a violent assault and battery charge on his record, but that he had never committed assault and battery or a non-violent crime prior to the incident from which his current charges arose. (PCR Tr. pp. 10, ll. 1-6; 20, l. 21 - 21, l. 10).

During cross-examination, Applicant confirmed that his criminal record as stated on page 172 of his guilty plea hearing was correct. (PCR Tr. pp. 18, l. 9 - 19, l. 17). Applicant testified that he was convicted of malicious injury as well as shoplifting in 2016. (PCR Tr. pp. 19, l. 17).

### Findings

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This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Here, Applicant has failed to provide what legal basis Trial Counsel would have had to make the objection and must prove that the objections would have been sustained. This Court is not persuaded with this and finds that even if Trial Counsel had objected, the objection would have been overruled. See Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence).

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 Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

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**.

**Allegations F, I: Plea Counsel was Ineffective for not Assisting Applicant in Getting the Recommended Sentence and for not Trying to get Applicant a Favorable Result from his Case.**

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Applicant alleges Plea Counsel was constitutionally ineffective. Specifically, Applicant alleges Plea Counsel was ineffective for failing to assist Applicant in “getting the recommended sentence;” and for “not trying to get Applicant a favorable result from his case.” This Court finds this allegation to be without merit.

### Guilty Plea Hearing

The record reflects that Plea Counsel presented the following at the conclusion of Applicant’s plea hearing:

Thank you, Your Honor. I think it's important to Mr. Doyle that you know he did not intend to kill Mr. Wilkes. He is here pleading before you because of the reduction in the charge, to the assault and battery, high and aggravated. You've heard of prior incidents that happened between he and them. Mr. Doyle and I have had discussions about self-defense defense, which was our intention if we were to move forward with the trial. Ultimately he has decided not to do that. We discussed the fact the threat from Mr. Wilkes was not imminent at that point and immediately after this. He does want, Your Honor, to know he did feel like eventually this was going to come to blows with the situation that happened between the two of them and that he would eventually be injured at some future date.

(Plea Tr. p. 174, ll. 8 - 22).

### PCR Evidentiary Hearing

During the PCR evidentiary hearing on direct-examination, Applicant testified to his belief that Plea Counsel could have obtained a more favorable offer than the fifteen year offer he received. (PCR Tr. p. 13, ll. 14-17). Applicant testified that his belief was based upon the following:

Because with me pleading guilty, I got 15 years with five years running consecutive with five years probation, which is a 25-year sentence. I assumed that it was 15 years that I was pleading to. And now I look at my sentencing sheet, it says zero to 20. That is on the sentencing sheet that wasn't on there. It's a negotiated and EG. That wasn't on that paperwork when I signed it. And it was only 15 years on he paperwork. All this other stuff that is on the paperwork was

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not announced in my transcript from the judge, anything. So if I knew that the charge was carrying zero to 20 years, I wanted to go to the jury. I would definitely say I want a jury trial because it's just five-year difference.

(PCR Tr. pp. 13, l. 19- 14, l. 5).

### 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. The record reflects that Applicant pleaded guilty to a negotiated sentence of fifteen years' imprisonment for the lesser included offense of assault and battery of a high and aggravated nature and five years' imprisonment suspended to five years' probation, sentences to run consecutively. (Plea Tr. p. 165, ll. 2-14). The record further reflects that Applicant was sentenced to the negotiated sentences of fifteen years' imprisonment for the lesser included offense of assault and battery of a high and aggravated nature and five years' imprisonment suspended to five years' probation, sentences to run consecutively. (Plea Tr. p. 176, ll. 8-17).

Additionally, this Court 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)).

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

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

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

**Allegation H: Plea Counsel Failed to Investigate the Charges Against Applicant**

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Applicant alleges Plea Counsel was constitutionally ineffective for failing to investigate the charges against 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)).

### PCR Evidentiary Hearing

During the PCR evidentiary hearing on direct-examination, Applicant testified that he informed Plea Counsel that he did not wish to plead guilty, but Plea Counsel advised him to do so because he was facing a sentence of thirty years' incarceration. (PCR Tr. pp. 10, 12, 13, ll. 6-13). When asked what act Plea Counsel did to coerce Applicant into entering his guilty

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plea, Applicant testified that Plea Counsel was not prepared for his trial. (PCR Tr. pp. 9, l. 14 -- 10, l. 25). Applicant testified that his belief that Plea Counsel was not prepared for his trial was based on the following:

Well, the reason why I believe that is because, you know, they took a jacket from me that they wanted to take for evidence to say that the guy threw the liquid on me, so forth, so on. Not only the jacket, Ms. Sieber send her investigators out to the young lady's house who was subpoenaed. The investigator came back and stated: I hear them in the house, but no one is not answering the door. I asked Ms. Katy Sieber could we get a continuance. I asked Ms. Katy Sieber, could we get a continuance. She said: Well, we can't get a continuance. The judge is going to put you back in jail. I was out on bond. I was out there two-and-a-half years on bond. Not only that, I asked her - she said that she can not get the 911 calls that I made from the Sheriff's Department, yet she have my number and my phone is there and I made those calls.

(PCR Tr. p. 12, ll. 9-24).

During the PCR evidentiary hearing on cross-examination, Applicant testified that he has admitted to being the individual who shot the victim from the beginning of the proceedings. (PCR Tr. p. 29, ll. 4-7). Applicant testified that the issue of whether gunshot residue appeared on his jacket or the other evidence was not at issue in his case. (PCR Tr. p. 29, ll. 8-11).

During the PCR evidentiary hearing on cross-examination, when asked to explain her initial investigation into Applicant's case following her appointment to represent him, Plea Counsel testified as follows:

So in this situation, because I came in kind of on the later end of it, this case was already popping up on trial dockets by the time I got it. I had asked for a few continuances at that time. I knew we needed the time to get ready for it. My initial conversation with Mr. Doyle would've happened over the phone. At that point I would've explained his rights to him, explain what he was facing in this case, and then asked him to come in to meet with me. Mr. Doyle came in to meet with me a few months after that. And, unfortunately, I got pulled into court, a plea hearing at that time. I had asked him to stay into the afternoon and meet with me. I think he had a job hearing

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he wasn't able to stay. He had to go home. We ended up having that meeting over the phone, which is how that happened. I spoke with him multiple times in the about eight or nine months between the time I picked up the case and the time his case went to trial. He had told me about the prior incidents that he had with this victim. A large part of what we did was trying to investigate those prior claims to try to show why he would've been in fear for his life in this type situation. So we had reached out to Spartanburg County 911, trying to look for this 911 call. I had given Spartanburg County his phone number, and they told me that they did not have a call. So I went to the city police department to review the evidence in this case. Got Mr. Doyle's phone that was in evidence. Went through it, looking for communication between him and the victim, communication between him and 911, anything that we could use. We were not able to find anything along those lines. We had gone out to Prince Hall Apartments, which is where this incident happened and tried to talk to people. There had been like a prior incident where Mr. Doyle said he was assaulted by the victim and 911 was called. We had pulled the police reports on that, the body cam, and went looking for his neighbor, who was a victim of Mr. Wilkes. We were not able to find the neighbor. I think he had moved to New Jersey at that point. We also spent some time talking to a few other women who lived in the area surrounding the apartment where this happened. We had found one of them. She was able to articulate some bullying that she remembered happening. We had got her under subpoena. I believe her name was Tiffany Hardy. She was subpoenaed for trial. We couldn't find her when trial time came. I had requested a continuance from Judge Hayes at that time. He denied that request. We had -- Mr. Doyle was the person that we had to testify.

(PCR Tr. pp. 37, l. 8 – 39, l. 7).

Plea Counsel testified that they had no other witnesses aside from Applicant who could testify to his state of mind at the time of the crime. (PCR Tr. p. 39, ll. 8-11). Plea Counsel testified that, despite various efforts, they were unable to find any record of any kind of 911 call made by Applicant. (PCR Tr. p. 39, ll. 15-23). Plea Counsel testified that she provided Applicant with all of the discovery in his case via mail. (PCR Tr. p. 40, ll. 10-15). Plea Counsel ultimately testified on both direct and cross-examination that, had Applicant requested she do so, she would have

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proceeded to a jury trial on his behalf despite her belief that pleading was in Applicant's best interest. (PCR Tr. p.36, ll. 14-18;42, l. 21 – 43, l. 3).

### Findings

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

Moreover, to whatever extent Applicant was not entirely satisfied with the amount of time allotted for by Plea Counsel to investigate the charges, he was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to proceed with his guilty plea. (Plea Tr. 167. 5, ll. 12-14)

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

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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**.

**|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**.

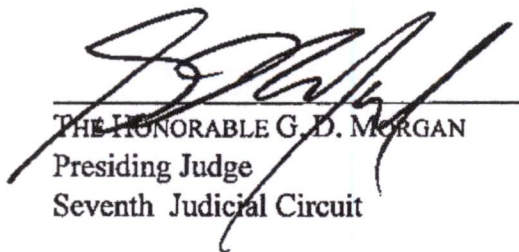
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This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to 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 25<sup>th</sup> day of February, 2025.

  
THE HONORABLE G. D. MORGAN  
Presiding Judge  
Seventh Judicial Circuit

Spartanburg, South Carolina

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