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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable William A. McKinnon, Circuit Court Judge

MICHAEL J. DENNIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000298

APPENDIX

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STATE OF SOUTH CAROLINA	)	
	)	GENERAL SESSIONS COURT
COUNTY OF RICHLAND	)	2021-GS-40-00319
	)	
	)	
	)	
	)	
	)	
STATE OF SOUTH CAROLINA,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
MICHAEL J. DENNIS,	)	
DEFENDANT.	)	
_____	)	

April 5, 2023
Columbia, South Carolina

B E F O R E:

THE HONORABLE DANIEL COBLE, JUDGE.

A P P E A R A N C E S:

KATHRYN CAVANAUGH, ESQ.
Attorney for the Plaintiff

MEGAN EIGENBROT, ESQ.
Attorney for the Defendant

Proceedings Recorded by DCRP
Transcribed by Penny M. Johnson

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I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits submitted.)

P R O C E E D I N G S

MS. CAVANAUGH: The State calls Michael Dennis.

MICHAEL DENNIS,

after being duly sworn, testified as follows:

MS. CAVANAUGH: Thank you, Your Honor. Standing before you is Michael Dennis represented by Megan Eigenbrot of the Richland County Public Defender's Office. Kathryn Cavanaugh for the State. Standing with me is Investigator Josiah McComb with the Richland County Sheriff's Department. He's one of the victims in the case. Leon Lott on behalf of the sheriff's department as Investigator McComb was shot at in one of the subsequent charges, shot towards.

He is pleading guilty today to two sets of charges. The first occurred, in March of 2020, burglary first, kidnapping and armed robbery. He's pleading guilty under Alford to those, Your Honor. That is indictment numbers 2021-GS-40-317 through 319.

He's, also, pleading guilty to attempted murder and kidnapping. That incident occurred on November 4th, 2020. That's indictment number 2021-GS-40-153 and 154. He is pleading guilty to a negotiated 25 years. He is set for trial April 24th of this year. Were he to be convicted of any of the most serious charges, he would be facing life without parole, but he has decided to accept a plea offer and plead guilty today, Your Honor.

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THE COURT: Thank you.

Ms. Eigenbrot, you represent Mr. Dennis; is that correct?

MS. EIGENBROT: I do, Your Honor.

THE COURT: Have you explained to him the nature, elements and possible punishments that these charges carry?

MS. EIGENBROT: I have.

THE COURT: Have you explained to him his Constitutional rights as well?

MS. EIGENBROT: I have, Your Honor.

THE COURT: Has he indicated to you that he understands all of that?

MS. EIGENBROT: He does understand.

THE COURT: And has he indicated to you how he wishes to plead to these charges?

MS. EIGENBROT: He wishes to accept the plea deal, Your Honor.

THE COURT: And has he talked to you about pleading guilty under North Carolina V. Alford?

MS. EIGENBROT: Yes, Your Honor.

THE COURT: Are there any competency issues with your client?

MS. EIGENBROT: Your Honor, we did have a little bit of a concern about a month ago. He was evaluated by the Department of Mental Health and they found him competent.

THE COURT: And are you in agreement with his guilty plea today?

MS. EIGENBROT: I am.

THE COURT: Good morning, Mr. Dennis. How old are you?

THE DEFENDANT: 25.

THE COURT: How far did you go in school?

THE DEFENDANT: (Indiscernible.)

THE COURT: Did you ever get your GED?

THE DEFENDANT: No, sir.

THE COURT: Are you currently married or have children?

THE DEFENDANT: No, sir.

THE COURT: Were you working before you were locked up?

THE DEFENDANT: Yes, sir.

THE COURT: What type of work did you do?

THE DEFENDANT: I was working as a (indiscernible.)

THE COURT: You currently under the influence of any alcohol or drugs?

THE DEFENDANT: No, sir.

THE COURT: You suffer from any mental or physical infirmities that would affect your ability to know what you're doing here today?

THE DEFENDANT: No, sir.

THE COURT: You know what you're doing here today?

THE DEFENDANT: Yes, sir.

THE COURT: You understand by pleading guilty you're

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giving up some of your Constitutional rights?

THE DEFENDANT: Yes, sir.

THE COURT: You understand you're giving up your right to a jury trial?

THE DEFENDANT: Yes, sir.

THE COURT: You understand you're giving up your right to remain silent?

THE DEFENDANT: Yes, sir.

THE COURT: You're, also, giving up your right to cross-examine any witnesses that the State would have to bring against you.

Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: You're represented by Ms. Eigenbrot here. Are you satisfied with that representation?

THE DEFENDANT: Yes, sir.

THE COURT: You need any more time to speak with her?

THE DEFENDANT: No, sir.

THE COURT: The State and your attorney have indicated that you wish to plead guilty under North Carolina V. Alford to some of these charges; is that correct?

THE DEFENDANT: Yes, sir.

THE COURT: You understand that that guilty plea still will carry the same consequences, penalty, jail time, fines and fees as a regular guilty plea; is that correct?

THE DEFENDANT: Yes, sir.

THE COURT: Is it your understanding that pleading guilty under North Carolina V. Alford, essentially, means you're not pleading guilty outright, but what you're saying is that the State would be able to prove beyond a reasonable doubt your guilt based on the evidence that they have? Is that your understanding?

THE DEFENDANT: Yes, sir.

THE COURT: The solicitor is going to go over the facts of this case. If you will, pay close attention.

MS. CAVANAUGH: Your Honor, the first incident which is the burglary first, armed robbery and kidnapping charge. He's pleading guilty under Alford. This occurred on March 17th, 2020 at [redacted] Crofts Avenue in Richland County. The Defendant and his codefendant, Catino Weathersbee, they were both armed with handguns. They forced their way into the back door of the victim's residence. At the time, 15-year-old J.W. [redacted] was home with his three-year-old brother. The victim was familiar with the codefendant, Catino Weathersbee, from school. They were demanding to know where his older brother's guns were.

This Defendant placed the victim in a head lock and becoming inpatient because he was taking too long and fired the gun into the floor. The victim and his toddler-aged little brother were put in separate rooms while the two

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defendants rummaged through his brother's bedroom. They took a PlayStation, a controller, two (indiscernible) stations and the 15-year-old's phone.

The victim did run to the neighbor's house and called 911 immediately giving a very detailed description of what the suspects looked like and were wearing. Both of the codefendants were located minutes apart by the canine officers and the victim did positively identify this Defendant and his codefendant in a show-up lineup.

On a jail call the next day, this Defendant said that he left the gun that he used in the transporting deputy's car, which was located the next day. So that is the first set of facts, Your Honor.

The second incident, which involved Investigator McComb and Ms. Curry, also, present in the courtroom occurred on November 4th, 2020 around 1:30 in the afternoon. The Defendant's ex-girlfriend, Brittany Wallace, is the one who called 911. She lived around the corner on Galada Drive.

She called 911 because she said Dennis was outside her yard firing a weapon. She described what he was wearing, which was a green basketball jersey, and gave the 911 dispatcher his name, Michael Dennis.

When Investigator McComb drove down Winter Park Drive, he immediately saw the Defendant who was wearing a green jersey with a rifle, an assault-type rifle in his right

hand.

As soon as Investigator McComb drove up, the Defendant started shooting towards Deputy McComb's car, actually, hitting the passenger side windshield. The bullet ricocheted off of the computer that was in the middle of the car and fell into a cap beside where Deputy McComb was sitting. The vehicle was, also, hit on the passenger side in the passenger tire.

A total of eight fired cartridge cases were collected from the area that Mr. Dennis was standing that matched one of the weapons he had on his person that day. The rifle that he was holding, actually, jammed at some point, so he fired with another pistol that he had on his person, which he tossed beside him when he held Ms. Curry hostage.

Ms. Curry, who lives at [redacted] Marathon Drive, which is right next to where McComb's car was parked. Ms. Curry was outside in her yard. And after this Defendant shot towards Investigator McComb, he grabbed Ms. Curry -- he still had the rifle in his hand. He grabbed Ms. Curry and put her physically in a head lock and choke hold in order to protect himself. And he had her on the porch when her husband, who has since passed away, her husband, Jermaine Curry, came and grabbed the rifle from the Defendant and placed it in the front yard.

Multiple deputies were on scene at this point asking

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for the Defendant to release Ms. Curry. He would not. Eventually, her husband starting hitting the Defendant to try to release his wife from the head lock. So that's when deputies intervened to finally release Ms. Curry from Mr. Dennis's choke hold.

DNA was performed on the rifle as well as the pistol that he emptied and threw on the porch beside where he was sitting with Ms. Curry. It matched Mr. Dennis's profile. His DNA was on both of those weapons.

Investigator McComb did return fire and ended up hitting the Defendant in the right arm. He was taken to the hospital and was treated at the hospital for that wound.

So that sums up the facts in this case, Your Honor. At the appropriate time, I know Ms. Curry would like to address Your Honor about what happened to her that day as well as Investigator McComb would like to address Your Honor as well.

THE COURT: Prior record?

MS. CAVANAUGH: He does have a prior record. 2015, reckless driving and driving without a license; 2016, participating in a riot; 2017, he has three convictions for attempted armed robbery and kidnapping for which he received a five-year sentence; 2019, giving false information to the police, assault and battery third and (indiscernible).

THE COURT: Thank you.

Mr. Dennis, those facts laid out by the solicitor, do you agree that those are the facts that would be brought against you at trial?

THE DEFENDANT: Yes, sir.

THE COURT: Is anybody forcing you or coercing you in any way to plead guilty today?

THE DEFENDANT: No, sir.

THE COURT: You're doing so under your own free will?

THE DEFENDANT: Yes, sir.

THE COURT: You need any more time to speak with your attorney about this?

THE DEFENDANT: No, sir.

THE COURT: Do you believe she's done everything she can do for your case at this point?

THE DEFENDANT: Yes, sir.

THE COURT: It's my understanding it's a negotiated sentence of 25 years.

Is that your understanding?

THE DEFENDANT: Yes, sir.

THE COURT: You understand you have ten days to appeal this guilty plea from today?

THE DEFENDANT: Yes, sir.

THE COURT: You have indicated to the Court that you wish to plead guilty under North Carolina vs. Alford for the March 2020 charges; is that correct?

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THE DEFENDANT: Yes, sir.

THE COURT: As to kidnapping for that incident, how do you wish to plead?

THE DEFENDANT: Guilty.

THE COURT: As to armed robbery, how do you wish to plead?

THE DEFENDANT: Guilty.

THE COURT: As to burglary in the first degree, how do you wish to plead?

THE DEFENDANT: Guilty.

THE COURT: All under North Carolina V. Alford, correct?

THE DEFENDANT: Yes, sir.

THE COURT: As to the charges from the November 2020 incident, attempted murder, how do you wish to plead?

THE DEFENDANT: Guilty.

THE COURT: As to the kidnapping charge, how do you wish to plead?

THE DEFENDANT: Guilty.

THE COURT: I find there is a substantial factual basis to accept these guilty pleas. They've been knowingly, voluntarily and intelligently made, represented by competent counsel.

At this point, we'll go ahead and hear from the victims of this case?

MS. CAVANAUGH: As far as the March 2020 victim, J.W. [redacted]'s mother, Ms. Washington, they are not present today. They have been contacted about this.

Ms. Curry would like to speak first.

MS. CURRY: Hello, my name is Jennifer Curry. This have changed my whole life forever. I have not slept in two years and five months. Also, I'm just all messed up. If you don't know, five days later after this incident, my husband get killed in a car wreck because he was up with me because both of us suffered a lot of stress and agony. And I still don't sleep. And I'm asking y'all please, please, please don't let him back out on the street so I can get some peace. I'm just all messed up. Please.

THE COURT: Thank you, ma'am. Thank you for being here today.

INVESTIGATOR MCCOMB: Thank you, Your Honor, for the opportunity to speak. I'd like to start by just saying in the open that I personally hold no animosity against Mr. Dennis, the situation that brought us together.

That being said, at the time of this incident, I was in a marked patrol unit, driving a marked vehicle. And the experience of having rounds come at you is an out-of-body experience and one that had a big mental and emotional impact on not only myself, but on my wife and one that took a lengthy process to kind of work through to keep that

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situation isolated. It affected interactions with other people.

I want to thank everyone for seeing justice done. I would ask that you do the citizens of Richland County a favor and not let Mr. Dennis out.

Thank you for your time.

THE COURT: Thank you, sir. Thank you for being here today.

SHERIFF LOTT: Your Honor, it's only by the grace of God that we're standing here today, Mr. McComb and Ms. Curry, not because the Defendant didn't try to kill people that day. They were very lucky. As you heard, he has a very lengthy record. He's a career criminal. He's demonstrated when he gets out on bond. He's just going to continue it. He should serve 25 years, every day of it.

THE COURT: Thank you, sir. Thank you for being here today.

MS. CAVANAUGH: Yes, Your Honor, I would just echo what Investigator McComb and the Sheriff said, but for the grace of God, Investigator McComb and Ms. Curry were not hurt. On behalf of the solicitor's office, we are just so thankful for that. This could have been a very, very tragic day.

THE COURT: Ms. Eigenbrot, happy to hear from you.

MS. EIGENBROT: Thank you, Your Honor, may it please the Court. Your Honor, I want to start with Mike's

childhood. Michael did not have an envious childhood. He grew up in Bluff Estates. He, one, had a negative relationship with law enforcement, unfortunately, but, also, saw a lot of violence. So Michael's grown up in an area where people pointing and shooting guns around him was, unfortunately, becoming normal. His grandmother was the one mostly raising him at this time. His mother, unfortunately, was dealing with some of her own substance abuse issues. She was there, but his grandmother was the one raising him and he lost her at the age of 14.

Michael kind of denotes that is the point where life kind of changed for him. And that's actually when he started getting in trouble. I think there's a lot of unresolved anger and grief that he has not been able to deal with. Unfortunately, we don't have the resources for young people like him to talk to somebody, to simply have somebody to work through some of those issues.

I think growing up in that neighborhood, seeing his mother arrested on occasions, seeing other people dragged away by law enforcement has developed a deep-seeded mistrust toward law enforcement, unfortunately.

And on that day with Investigator McComb, Michael explained to me he just looked up, saw the cop car and thought that he had a gun. We discussed why Investigator McComb was not wrong in that scenario, but his instinctive

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reaction at that time was to protect himself.

He, also, has maintained that he never wanted to cause harm to Ms. Curry. She is somebody he knew from the neighborhood that had always treated him well and he thought that she would protect him in that situation. And, unfortunately, her involvement did protect him.

He was hit in the arm, Your Honor. He's had some difficulties at the jail. I believe the correctional officers have reinjured the arm on multiple occasions. At one time, they did not take him to a doctor's appointment and he almost lost the arm because it became grossly infected and was sent to the hospital.

So this is not a light thing for him. 25 years is the amount of time he's been alive. So we would ask that you go along with the negotiations, Your Honor. And his mother is present, Your Honor.

THE COURT: Thank you for being here today.

Anything further from the State?

MS. CAVANAUGH: No, Your Honor.

THE COURT: And he is getting credit for 952 days; is that correct?

MS. EIGENBROT: Yes, Your Honor.

MS. CAVANAUGH: On the first set of charges. I believe it's slightly less on the second set, but we can sort that out in sentencing.

THE COURT: Very well.

(Pause.)

THE COURT: As to indictment 2021-GS-40 --

MS. CAVANAUGH: Judge, I thought we were going to defer sentencing.

THE COURT: Okay. We'll defer the negotiated sentence until the week of -- I accept the negotiated 25-year range and we'll defer until the week of May 8th.

Good luck to you, sir.

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CERTIFICATE OF TRANSCRIBER

I, PENNY M. JOHNSON, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; **that said proceedings were transcribed to the best of my ability from the audio recording and supporting information**; and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

June 22, 2024

Penny M. Johnson

Penny M. Johnson
Transcriber

FORM 5 2024CP4002372

STATE OF SOUTH CAROLINA)
County of Richland County)
Micheal Jayvone Dennis)
Full name and prison number (if any) of Applicant)
v.)
State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

RICHLAND COUNTY
FILED
2024 APR 17 AM 9:31
JEANETTE W. WALTERS
C.C.P. G.S.

INSTRUCTIONS – READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional institution, 990 Wisacky Hwy Bishopville, SC, 29501.
2. Name and location of Court which imposed sentence Richland, County 1701 Main Street Columbia South Carolina.
3. Name(s) of co-defendant(s) (if any) Kurtino Weathersbee.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
   (a) 2020A4010205532, 2020A4010205531, 2020A4010205530
   (b) 2020A4010201224, 2020A4010201223, 2020A4010201222 2020A4010201221.

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(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) May, 9, 2023 I was Sentenced to 25 years 85%

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

N/A

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. N/A

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. N/A

ii. _____

iii. _____

(c) the date of each such result:

i. N/A

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) I didn't appeal, Because I didn't go to trial, I wanted too But my public defender persuaded me too take a 25 year plea deal too avoid going too trial. When she knew for a fact I wasn't in my right state of mind

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) I am not guilty of all my charges I was manipulated into

(b) taken a plea deal Megan Eigenbrot Told me I could get Life

(c) if I got found guilty. She took advantage of my Mental illness I was scared to go to trial because I know my public defender.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) March 10, 2023 I went to a appointment for Mental Health issu

(b) My Lawyer knew I couldn't go to trial fully prepared because I w

(c) Scared and not in my Right State of mind. Megan held valuble information from that Could've help me in my case

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? N/A

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____

(d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

I haven't filed any motions this is my first application I filed.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) I didn't have the Resources at the time too Comminicate with
(b) Whoever these allegations may Concern. And I wasn't
(c) in my Right State of mind due too my PTSD and Mental healt

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Public defender Megan Eigenbrot
(b) your trial, if any? _____
(c) your sentencing? Public defender Megan Eigenbrot
(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

_____

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Richland County public defender Megan Eigenbrot
Post office Box 192 1701 Main Street Columbia
ii. South Caroling, 29202
_____
iii. _____
_____

(b) the proceedings at which each such attorney represented you:

i. Megan Eigenbrot Represented me in all my proceedings and Court hearings and plea offerings she once came too see me and told me I had
ii. a plea for 20 years, That the Solicerter offered me a few weeks Later She came back an told me that the offer was tooken back
iii. because Sherrif Leon Lott Reccomanded that I do 25 years. Megan Eigenbrot did not Represent me with good intentions too get me the the best deal available. She also knew I was being taken advantage of at Alvin S Glenn detention Center I was traumatize from being shot by a cop and constantly being Rayised and Harassed by officers. I feared for my life at the time of my Sentencing. Megan also knew that I wanted too go to trial I also asked her for a change of venue numerous times so I Could have a fair trial. She also Held back information from me.

19. State clearly the relief you seek in filing this application:
I would truly appreciate if the Judge will Reconsider My plea offering and Reduce my Sentence down to 15 years 85% I

20. Are you now under sentence from any other court that you have not challenged?
I am not under any court orders

STATE OF SOUTH CAROLINA)
County of Richland, Columbia, SC) VERIFICATION

I, Micheal Jayvone Dennis #371678, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Micheal J Dennis

SWORN to and subscribed before me this 10 day of April, 2024.

D. Walker (L.S.)
Notary Public

My Commission Expires: 3.27.34

APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, Michael Jayvone Dennis #371678, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Michael Jayvone Dennis
Applicant

SWORN or affirmed to and subscribed before me this 10 day of April, 2024.

D. Walton
Notary Public

My Commission Expires: 3.27.34

RICHLAND COUNTY
FILED
2024 APR 17 AM 9:31
JEANETTE W. McBRIDE
C.C.P. C.S. & F.C.

Revised 3/2003

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	2024-CP-40-02372
	)	
MICHAEL J. DENNIS, #371678	)	
	)	
Applicant,	)	
	)	
vs	)	CERTIFICATE OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent,	)	
	)	

2024 JUL -2 PM 2:42
JEANETTE W. WALKER

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the Return and Partial Motion to Dismiss in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Chelsey F. Marto, Esquire
The Law Office of Chelsey F. Marto
PO Box 8795
Columbia, SC 29201

DATED this 26th day of June, 2024.

Summer C. Etheredge
Legal Assistant for Respondent

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Michael J. Dennis, #371678, Applicant, v. State of South Carolina, Respondent.	)	CASE NO. 2024–CP–40–02372 **RETURN AND PARTIAL MOTION TO DISMISS** (Counsel Appointed)

In response to Applicant Michael J. Dennis' (Applicant) application for post-conviction relief (PCR) commenced on April 17, 2024, Respondent, the State of South Carolina, makes the following Return:[1]

PROCEDURAL HISTORY

Applicant is presently confined with the South Carolina Department of Corrections (SCDC) pursuant to the Richland County Clerk of Court's orders of commitment. During the April 2021 term, the Richland County Grand Jury indicted Applicant for Burglary—1st Degree (2021–GS–40–317), Kidnapping (2021–GS–40–318), Armed Robbery (2021–GS–40–319), and Assault and Battery—1st Degree (2021–GS–40–320). During the August 2021 term, the Richland County Grand Jury indicted Applicant for Attempted Murder (2021–GS–40–03153), Kidnapping (2021–

[1] Respondent's return was due to be filed within sixty days of receipt of Applicant's instant post-conviction relief application. See Rule 12(a), SCRCP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial."). Now, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, Respondent respectfully asks this Court to accept this return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

GS–40–03154), and Assault and Battery—1st Degree (2021–GS–40–03155). Applicant was represented by Fifth Circuit Assistant Public Defender Megan Eigenbrot, Esquire (Plea Counsel). Fifth Circuit Assistant Solicitor Kathryn Cavanaugh, Esquire, prosecuted the case.

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

Applicant did not appeal his convictions or sentences.

FACTS ADDUCED AT THE GUILTY PLEA

The facts presented are those read into the record by the Solicitor and agreed upon by the Applicant:

> Your Honor, the first incident which is the burglary first, armed robbery and kidnapping charge. He's pleading guilty under Alford. This occurred on March 17th, 2020 at [redacted] Crofts Avenue in Richland County. The Defendant and his codefendant, Catino Weathersbee, they were both armed with handguns. They forced their way into the back door of the victim's residence. At the time, 15-year-old J.W. [redacted] was home with his three-year-old brother. The victim was familiar with the codefendant, Catino Weathersbee, from school. They were demanding to know where his older brother's guns were.

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

This Defendant placed the victim in a head lock and becoming inpatient because he was taking too long and fired the gun into the floor. The victim and his toddler-aged little brother were put in separate rooms while the two defendants rummaged through his brother's bedroom. They took a PlayStation, a controller, two (indiscernible) stations and the 15-year-old's phone.

The victim did run to the neighbor's house and called 911 immediately giving a very detailed description of what the suspects looked like and were wearing. Both of the codefendants were located minutes apart by the canine officers and the victim did positively identify this Defendant and his codefendant in a show-up lineup.

On a jail call the next day, this Defendant said that he left the gun that he used in the transporting deputy's car, which was located the next day. So that is the first set of facts, Your Honor.

The second incident, which involved Investigator McComb and Ms. Curry, also, present in the courtroom occurred on November 4th, 2020 around 1:30 in the afternoon. The Defendant's ex-girlfriend, Brittany Wallace, is the one who called 911. She lived around the corner on Galada Drive.

She called 911 because she said Dennis was outside her yard firing a weapon. She described what he was wearing, which was a green basketball jersey, and gave the 911 dispatcher his name, Michael Dennis.

When Investigator McComb drove down Winter Park Drive, he immediately saw the Defendant who was wearing a green jersey with a rifle, an assault-type rifle in his right hand. As soon as Investigator McComb drove up, the Defendant started shooting towards Deputy McComb's car, actually, hitting the passenger side windshield. The bullet ricocheted off of the computer that was in the middle of the car and fell into a cap beside where Deputy McComb was sitting. The vehicle was, also, hit on the passenger side in the passenger tire.

A total of eight fired cartridge cases were collected from the area that Mr. Dennis was standing that matched one of the weapons he had on his person that day. The rifle that he was holding, actually, jammed at some point, so he fired with another pistol that he had on his person, which he tossed beside him when he held Ms. Curry hostage.

Ms. Curry, who lives at [redacted] Marathon Drive, which is right next to where McComb's car was parked. Ms. Curry was outside in her yard. And after this Defendant shot towards Investigator McComb, he grabbed Ms. Curry -- he still had the rifle in his hand. He grabbed Ms. Curry and put her physically in a head lock and choke hold in order to protect himself. And he had her on the porch when her husband, who has since passed away, her husband,

> Jermaine Curry, came and grabbed the rifle from the Defendant and placed it in the front yard.
>
> Multiple deputies were on scene at this point asking for the Defendant to release Ms. Curry. He would not. Eventually, her husband starting hitting the Defendant to try to release his wife from the head lock. So that's when deputies intervened to finally release Ms. Curry from Mr. Dennis's choke hold.
>
> DNA was performed on the rifle as well as the pistol that he emptied and threw on the porch beside where he was sitting with Ms. Curry. It matched Mr. Dennis's profile. His DNA was on both of those weapons.
>
> Investigator McComb did return fire and ended up hitting the Defendant in the right arm. He was taken to the hospital and was treated at the hospital for that wound.
>
> So that sums up the facts in this case, Your Honor.

(Plea Tr. pp. 7 – 10).

CURRENT APPLICATION

On April 17, 2024, Applicant filed this application for post-conviction relief, in which Applicant alleges he is being held in custody unlawfully based on the following:

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

Applicant requests relief as follows:

> "I would truly appreciate if the Judge will reconsider my plea offering and reduce my sentence down to 15 years 85%."

Attached to this return and incorporated by reference are the Richland County Clerk of

Court records regarding the subject's convictions and sentences, Applicant's records from the SCDC, Applicant's plea transcript[3], and the records of the current PCR action. Respondent reserves the right to amend this return upon receiving any relevant materials.

RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF PLEA COUNSEL

Applicant alleges Plea Counsel was constitutionally ineffective for various reasons. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a prima facie violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so [defective] as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel's performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler,

[3] The sentencing transcript was ordered on April 22, 2024, but has not been received by this Office yet. Once the Office has received that transcript, it will be filed and served on all parties.

286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, "does not guarantee perfect representation[—]only a 'reasonably competent attorney.'" Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is "no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities." Harrington, 562 U.S. at 110.

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential[, as] it is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 8 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Unlike a later reviewing court, the attorney observed the relevant proceedings; knew

of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690).

Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Id. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Reviewing courts "must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Strickland, 466 U.S. at 690. An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment." Id. The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." Id.

The Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. Harrington, 562 U.S. at 105. Unlike a later reviewing

court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," **not** whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. Thus, it is not enough "to show that the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to deprive the defendant of a fair trial." Id. at 693 (emphasis added).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel." Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel's performance was deficient; and second, evidence that counsel's deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. Hill, 474 U.S. 52.

The analysis of counsel's performance under the first prong of Strickland remains unchanged—the applicant must show counsel's representation fell below the 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 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).

Surmounting Strickland's high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." Lee, 582 U.S. at 368-369 (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 58 ("[R]equiring a

showing of 'prejudice' from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.'"). Reviewing "[c]ourts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney's deficiencies. Lee, 582 U.S. at 369. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences. Id. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the plea and the evidence presented at the PCR hearing. Harres, 282 S.C. at 134, 318 S.E.2d at 361.

The performance and prejudice standards, however, "do not establish mechanical rules[;] . . . [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." Id. at 696. Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Id. at 697. The court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

In the present case, Applicant has asserted that Plea Counsel was ineffective for various reasons. Because these allegations likely raises questions of fact not conclusively refuted by the record, the State requests an evidentiary hearing to fully resolve the issues. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are

not conclusively refuted by the record before the lower court").

RESPONSE TO ALLEGATION OF INVOLUNTARY GUILTY PLEA

Applicant further claims his plea was not entered knowingly or voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

The transcript reflects that the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. 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)). Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea 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. 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). 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.

The State submits Applicant cannot satisfy the requirements of Strickland or Hill. However, the record likely does not refute or disprove Applicant's allegations. Therefore, the State requests an evidentiary hearing to fully resolve the issues. See Sharper, 279 S.C. at 265, 305 S.E.2d at 248 (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

RESPONSE TO ALLEGATION OF FAILURE TO ADVISE ON A DIRECT APPEAL

Applicant alleges that he was denied the right to a direct appeal of his plea and sentence. Though counsel is required to make certain that a defendant is made fully aware of his or her right to appeal after a *trial*, a different standard applies to a guilty plea:

> Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.

Turner v. State, 380 S.C. 223, 224-25, 670 S.E.2d 373, 374 (2008) (citations omitted); see also Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000) (imposing the duty to consult when there is reason to think either that a rational defendant would want to appeal or that the particular defendant reasonably demonstrated interest in doing so); contra Frazer v. South Carolina, 430 F.3d 696 (4th Cir. 2005) (reading Flores-Ortega to mean counsel generally has a duty to consult with his client regarding whether to pursue an appeal). Therefore, in a collateral action attacking a guilty plea,

the "bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief." Jones v. State, 382 S.C. 589, 598, 677 S.E.2d 20, 23-24 (2009) (quoting Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995)).

Where an Applicant reasonably demonstrates an interest in appealing, or where there is a reason to think a rational defendant would want to appeal, and where Counsel fails to either initiate that appeal or comply with Anders procedure, "White permits consideration of the full trial record on [an] issue in conjunction with appellate review of the PCR proceeding under an exception to the prohibition against appellate courts considering appeals in the absence of notice of direct appeal given and timely served." Smith v. State, 309 S.C. 413, 415, 424 S.E.2d 480, 481 (1992) (citing Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986)).

Respondent lacks sufficient information to admit or deny this allegation at this time. Respondent requests an evidentiary hearing on this ground for relief. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

REQUESTED RELIEF UNAVAILABLE IN PCR ACTIONS

In his prayer for relief, Applicant requests the Court to allow him to "obtain his life back and regain [his] innocence." This relief is unavailable in a post-conviction relief action. If this Court finds a defect in the original proceedings, the appropriate relief would be a new trial on the original indictments. Gilstrap v. State, 252 S.C. 625, 168 S.E.2d 88 (1969); see also Smith v. State, 413 S.C. 194, 195, 775 S.E.2d 696, 696 (2015) ("We now clarify the proper remedy is a new trial.") Grant v. MacDougall, 244 S.C. 387, 391, 137 S.E.2d 270, 272 (1964) (relief of absolute release not available). Where an applicant seeks only relief to which he or she is not entitled, "it is not incumbent upon [the] court to pass upon what relief, if any, he [or she] might, perchance, be entitled to." Young v. State, 250 S.C. 476, 479, 158 S.E.2d 764, 765 (1968).

For these reasons, if the application is not otherwise amended before the evidentiary hearing to reflect a desire for appropriate relief, Respondent would respectfully request this Court engage in a *thorough* colloquy with Applicant to apprise him of the relief available in a PCR. If at the evidentiary hearing, Applicant indicates no desire for appropriate relief but a desire to proceed, Respondent will at that time move to dismiss the application.

ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has retained an attorney, the attorney, not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to Love v. State, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. Id., 428 S.C. at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) ("If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.").

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last-minute resulting in undue prejudice to the State. See Love, 428 S.C. 231, 834 S.E.2d 196.

CONCLUSION

WHEREFORE, Respondent respectfully requests an evidentiary hearing be held on the claims of ineffective assistance of Plea Counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

D. RUSSELL BARLOW, II
Assistant Attorney General

By: D. Russell Barlow II
ATTORNEYS FOR RESPONDENT
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June 26, 2024

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Michael Dennis, #371678, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2024-CP-40-02372 **APPLICANT'S AMENDED APPLICATION**

NOW COMES Applicant, Michael Dennis, amending his application filed April 17, 2024. In addition to the allegations raised in his initial application, Mr. Dennis, through PCR Counsel, submits the following:

RICHLAND COUNTY
FILED
2024 AUG 13 AM 11:50
JEANETTE W. McBRIDE
C.C.P., G.S. & F.C.

1. Applicant's plea is invalid because he was coerced into pleading guilty.
2. Ineffective assistance of plea counsel for failure to get a more favorable plea offer.
3. Ineffective assistance of plea counsel for failure to exploiting Mr. Dennis' PTSD to force him into pleading.
4. Ineffective assistance of plea counsel for failure to failure to investigate the facts and circumstances concerning the case, including the fact that a victim died.
5. Ineffective assistance of plea counsel for failure to meet with Applicant enough.
6. Ineffective assistance of plea counsel for failure to properly prepare for trial.
7. Ineffective assistance of plea counsel for failure to move for change of venue because of Columbia Police Department's involvement in the incident.
8. Ineffective assistance of plea counsel for failure to show Applicant a complete copy of the discovery.
9. Ineffective assistance of plea counsel for failure to communicate to Applicant that he was pleading to a violent offense and would have to serve 85% of his sentence.
10. Applicant felt rushed into pleading because of the state of turmoil Alvin Glenn Detention

Center was in at the time.

11. Conflict of interest between the Solicitor and Plea Counsel.

Conclusion

Based upon the above, Mr. Dennis requests that this Court grant relief, vacate the convictions, and remand the case to the court of general sessions for a new trial.

Chelsey F. Marto
Attorney at Law
S.C. Bar No. #104191

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For Applicant Michael Dennis

AUG. 7, 2024

STATE OF SOUTH CAROLINA: COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT: RICHLAND COUNTY

Michael J. Dennis	)
	) Docket No.
Applicant,	) 2024-CP-40-02372
	)
V.	)
	)
State of South Carolina	) **PCR HEARING**
	)
Respondent.	)

September 25, 2024
Richland, South Carolina

B-E-F-O-R-E:

THE HONORABLE WILLIAM A. MCKINNON

A-P-P-E-A-R-A-N-C-E-S:

CHELSEY F. MARTO, ESQ.
Attorney for the Applicant

D. RUSSELL BARLOW, II, ESQ.
Attorney for the State of South Carolina

Maria DiScioscia, RPR
Official Court Reporter

I N D E X

WITNESS	EXAMINATION BY	PAGE
MICHAEL DENNIS	DIRECT BY MS. MARTO	7
	CROSS BY MR. BARLOW	16
MEGAN EIGENBROT	DIRECT BY MS. MARTO	26
	CROSS BY MR. BARLOW	36

THE COURT: Good morning. You may call the case.

MR. BARLOW: Thank you, your Honor.

May it please the Court.

Assistant Attorney General, Russ Barlow, on behalf of the State of South Carolina. This is the Postconviction Relief matter of Michael J. Dennis versus the State, case number 2024-CP-40-02372, out of Richland County.

During the April 2021 term, the Richland County Grand Jury indicted Applicant for burglary first-degree 2021-GS-40-317, kidnapping 2021-GS-40-318, armed robbery 2021-GS-40-319, and assault and battery, first-degree 2021-GS-40-320.

During the August 2021 term the Richland County Grand Jury indicted Applicant for attempted murder 2021-GS-40-03153, kidnapping 2021-GS-40-03154, and assault and battery first-degree 2021-GS-40-03155. Applicant was represented by the Fifth Circuit Assistant Public Defender, Megan Eigenbrot, and Fifth Circuit Assistant Solicitor, Katherine Cavanaugh, prosecuted the case.

On April 5, 2023 Applicant appeared before the Honorable Daniel Coble and plead guilty to burglary in the first-degree, kidnapping, armed robbery, attempted

murder and kidnapping. Judge Coble deferred sentencing and on --

THE COURT: -- Mr. Barlow, slow down. Give me what he plead guilty to one more time... Burglary first.

MR. BARLOW: Sure. Kidnapping, armed robbery, attempted murder, and kidnapping.

Your Honor, basically, what they did was they nolle prosed the two assault and battery first-degrees and he plead to everything else.

THE COURT: Okay.

MR. BARLOW: On May 8, 2024 Judge Coble accepted the negotiated plea and sentenced Applicant to 25 years for burglary first, 25 years for kidnapping, 25 years for armed robbery, 25 years for attempted murder, and 25 years for kidnapping, all sentences to run concurrently. Applicant did not appeal his conviction or sentence.

Applicant timely commenced this PCR action on April 17, 2024. And in that initial application he alleged that he was unlawfully detained for various reasons of ineffective assistance of plea counsel, actual innocence, and involuntary guilty plea.

On August 7, 2024 Applicant, through counsel, amended his application with the following allegations:

That he was coerced into pleading guilty.

That plea counsel failed to get a more favorable plea offer.

That plea counsel failed or plea counsel exploited his PTSD and forced him to plead guilty.

That plea counsel failed to investigate and to include a fact that a victim died.

And plea counsel failed to meet with Applicant enough.

Plea counsel failed to properly prepare.

Plea counsel failed to move for change of venue because of Columbia Police Department's involvement in the incident.

Plea counsel failed to show Applicant a complete copy of discovery.

Plea counsel failed to communicate to Applicant that he was pleading to a violent offense and would have to serve 85 percent of his sentence.

And Applicant felt rushed into pleading because of the state of turmoil at Alvin S. Glenn Detention Center at the time.

And a conflicted of interest between the solicitor and plea counsel.

He is requesting relief in the form of a new trial. And before this Court are the Richland County Clerk of Court records, the plea transcript, Applicant's

SCDC records, and the record of this PCR action.

And your Honor, what the Court does not have is a copy of the sentencing transcript and that is because it was ordered in April. Unfortunately, Ms. Harris, the court reporter at that time, has suffered a medical incident and has not been able to transcribe that particular transcript. The only thing we have is the actual plea transcript right now.

THE COURT: If it was negotiated why was the sentencing and the plea not done at the same time?

MR. BARLOW: Your Honor, I am not entirely sure. Maybe Ms. Eigenbrot can give us some insight on that.

THE COURT: Ms. Eigenbrot, can you give us -- there's nothing wrong with that, it's just unusual in a negotiated plea.

MS. EIGENBROT: Yes, your Honor. During the time Mr. Dennis was incarcerated his mother had also been incarcerated for a period of time. She had been sentenced and released from the detention center shortly prior to his plea. He asked for some additional time to be able to communicate with her at the jail before being sent to SCDC --

THE COURT: -- it was a deferred sentence at his request so he could talk to his mom?

MS. EIGENBROT: Yes, sir.
THE COURT: Okay.
Alright, Ms. Marto. All yours.
MS. MARTO: Thank you, Judge.
We'd call Michael Dennis.
THE COURT: Mr. Dennis, raise your right hand.
Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you god.
MR. DENNIS: Yes, sir.

DIRECT EXAMINATION

BY MS. MARTO:

Q. Morning, sir. So you plead to two counts of kidnapping, one count armed robbery, and one count attempted murder; correct?

A. Yes, ma'am.

Q. And you were represented by Ms. Eigenbrot?

A. Yes, ma'am.

Q. And do you feel like you knew what you were doing when you entered that plea?

A. Not really, ma'am. I felt like I was discombobulated, because a lot been going on with me at the time. Like she came at me with my plea and stuff when I was locked up and stuff. And I was suffering from a lot of stuff that was going on in lockup at the

time.

Q. So is that -- you and I talked about the amended application we filed in your case; correct?

A. Ma'am?

Q. You and I talked about the amended application we filed in your case; correct?

A. Yes, ma'am.

Q. And so what you were just saying, does that fit under your allegation that you felt rushed into pleading because of what was going on at Alvin Glenn?

A. Yes, ma'am. And I know I had some videos and stuff that I had posted of Alvin S. Glenn. I feel like they was trying to rush me out the county and stuff like that; so they wouldn't get in much trouble about what was going on back then and stuff.

Q. Do you feel like you were forced into pleading?

A. Yes, ma'am.

Q. Did you want to plead in this case?

A. No, ma'am. I never did. The only case that I was willing to plead to was my gun charges. Like, the attempt on a police officer and stuff. But as far as the kidnapping and all, in my first case with the armed robbery and kidnapping stuff, I never wanted to plead that case.

Q. Is there any other reason besides the state of Alvin Glenn that caused you to plead?

A. January 19th I got indicted on gun charges and all. My lawyer had told me the feds was willing to pick up my charges. But she said, if I took a plea, they were willing to throw out my charge with the feds or whatever.

Q. So you plead because you were afraid of additional charges --

A. -- yes, ma'am --

Q. -- if you didn't plea?

A. Yes, ma'am.

Q. Did you want counsel to get you a better plea offer?

A. Yes, ma'am. At one time I did have a plea offer for 20 years, but my codefendant -- (inaudible) -- like a few weeks later and told me that the deal is off the table. And that Leon Lotts said that anything under 25 years would be a slap to the police force face. So I had a plea offer for 20 years and when she came back she told me if was off the table.

Q. Did you want counsel to enforce that plea offer or get it reinstated?

A. Ma'am?

Q. Did you want counsel to get that plea offer

reinstated?

A. I mean, it would be better than what I have now.

Q. Now, you have PTSD; correct?

A. Yes, ma'am.

Q. Do you have any other mental health issues?

A. I mean, I have PTSD and not really. Like, really, I just suffer from PTSD and stuff like that.

Q. And how do you feel like your PTSD impacted your plea or decision to plead?

A. Man, I was really going through a lot at the time. I was really just barely getting around, because I was going through a lot. I can show y'all my arm and stuff too. Like my arm, I messed up real bad. I was going through a lot and they knew that. I guess they were trying to rush me out the county with the plea and stuff. It's like that came out of nowhere. I feel like I was really rushed to court, like, without -- I feel like wouldn't have had a fair trial.

Q. Do you feel like your PTSD was used against you in order to get you to plead?

A. Yes, ma'am. I had a meeting March 10th. I went to a meeting March 10th to see if I was in my right state of mind to go to Court and stuff. But I was still in lockup at the time at Alvin S. Glenn and stuff like

that. So I feel like they was basically using that against me to get me to plead out. Then when January 19th -- when they came -- when the feds picked up my charge, I was like:

Why they didn't pick up my charges before?

Why did they wait until January 19th to do that, like, right before I was about to go to court?

Q. Do you feel like counsel prepared your case for trial?

A. No, ma'am.

Q. Did that impact your decision to plead?

A. Ma'am?

Q. Did that impact your decision to plead?

A. Somewhat. I really just ain't want -- like you said earlier with the additional charges and stuff, like, with federal and stuff like that.

Q. How many times did Ms. Eigenbrot meet with you?

A. I can't really tell you, ma'am.

Q. Do you feel like you communicated with her about everything you needed to in your case?

A. Not really.

Q. What do you feel like you didn't communicate with her about?

A. Like with my case and stuff. I feel like -- I

just feel like -- I just feel like my lawyer wasn't on my side, like, as far as helping me. I feel like she was working with the people or with the solicitor whatever.

Q. And do you feel like counsel investigated the facts and circumstances concerning the case well enough?

A. No, ma'am.

Q. What do you think she should have investigated. What facts did you not know before the plea?

A. I was saying, in my first case, like, a victim passed away and I didn't find that out until I talked to my auntie and my little cousin. His lawyer has told him that one of my victim's passed away and I never knew that or whatever.

Q. When did you find that out?

A. I found it out on the phone with my auntie. I can't tell you the date, I just found out. And I told her when she came to visit me.

Q. Were you in Alvin Glenn?

A. Ma'am?

Q. Were you in Alvin Glenn or were you in SCDC?

A. I was at Alvin S. Glenn at the time.

Q. So was this before your plea?

A. Yes, ma'am.

Q. Okay. You wanted counsel to move for a change of venue; is that correct?

A. Yes, ma'am.

Q. Can you explain to us why you wanted counsel to move for a change of venue?

A. As far as with -- I feel like I was targeted by Richland County. And the reason I say that, I know Richland County and Alvin S. Glenn work together too. Like things that I've been experiencing and stuff in there, I just feel like everybody's been in cahoots with each other.

Q. Was one of the officer's a victim --

A. -- I done got assaulted through multiple times for no reason and stuff like that. And they know my arm messed up, I'm really not no threat. I'm not no threat, I barely can swing my arm or lift it up and stuff like that.

Q. Was one of the officers a victim in your second case?

A. You said, "my second case"?

Q. Yeah.

A. You talking about the COs at Alvin S. Glenn?

Q. No, sir. I'm asking, 'cause in one of your cases the State alleged that you were firing at a police car and at a police officer; is that correct?

A. Yes, ma'am.

Q. Is that part of the reason why you wanted the change of venue?

A. Yes, ma'am.

Q. Did you know that you were pleading to violent offenses?

A. Yes, ma'am. I knew I was pleading to that at the time.

Q. Did you know that you were going to receive a minimum of 85 percent or you would have to serve out a minimum of 85 percent of your charges?

A. I don't know really how all that worked at the time.

Q. What did you think that you'd have to serve, how much of your sentence?

A. I didn't really know too much about the 85 percent at the time. I was thinking like 65 or something like that.

Q. You thought you'd have to serve out 65 percent of your sentence?

A. Yes, ma'am.

Q. If you knew you'd have to serve out 85 percent of your sentence would you have plead?

A. No, ma'am. You could ask Megan, I was telling her I wanted to go to trial from day one with my case.

I know I can't really go against a police force. I really ain't got no win with a police force. But with my other case, like, the reason I wasn't willing to take no plea for that, 'cause I really was innocent in that case and I told Megan that from the beginning.

Q. Did you get a complete copy of your discovery in this case?

A. Yes.

Q. There was nothing missing in the discovery?

A. I had different -- I had two different cases though. At the end, I know I had a lot. She had brought a big -- most of discovery and stuff so... I did have -- I had eventually got everything.

Q. Now, you said there was a conflict of interest between solicitor and plea counsel; is that correct?

A. Yes, ma'am.

Q. Can you explain what you thought that was?

A. I had a lawyer visit one time and I told you, when she came with the 20 years and I didn't take it. When she came back, she said that was off the table. But the reason I said, "conflict of interest was done". I remember one time she told me that they was at dinner one time and she was asking about my case, like, trying to get a deal whatever, but she wasn't trying to -- the solicitor wasn't trying to do it.

Q. Basically, that the State and -- the solicitor and plea counsel were friends outside of work; is that what you're saying?

A. Yes, ma'am.

MS. MARTO: Nothing further, your Honor.

THE COURT: Mr. Barlow?

MR. BARLOW: Thank you, your Honor. May it please the Court.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. BARLOW:

Q. Good morning, Mr. Dennis. How are you doing?

A. How you doing, sir.

Q. Good, thank you. If at any time you cannot hear me or understand me, just let me know.

A. Yes, sir.

Q. But I want to talk to you at first. Do you understand what relief you get in PCR?

A. To be honest I really don't know the process of this stuff. I know Postconviction Relief means that you can get some relief on your sentence and stuff like that.

Q. So that's not entirely true. Let me explain to you how Postconviction Relief works. If this court

were to grant your Postconviction Relief, you go back to square one. You go back to county jail and all of your indictments that come back on you. On both of those cases, every indictment comes back on and you face a trial on all of those.

What was your sentence in this case?

A. 25.

Q. Do you know what your maximum exposure is at a new trial?

A. No, sir.

Q. So for burglary first, it's life. For kidnapping it's 30. For armed robbery it's 30. For assault and battery it's 10. For attempted murder it's 30. For kidnapping it's 30 and for assault and battery first it's 10.

So if you were -- if the Court were to stack those charges on you, and you have to serve them consecutive, you're looking at life plus 140 years at a new trial.

Do you understand that?

A. Yes, sir.

Q. And are you still willing to move forward with this?

A. What if I wanted to like take my first case to trial with my attempted murder and stuff like that. I

don't want to take that trial. I'm talking about my first case, I never wanted to plead to none of those charges.

Q. All I can tell you is that in PCR, here, this was a global plea. You plead in both instances in one plea. So it is a plea deal. It is a package. Both of these sets of charges was a package. So you go back on everything.

A. Oh. I don't know what to say on that one. I didn't want to take all my charges to trial. I feel like I was convicted on some charges that I was innocent on.

Q. I guess Ms. Marto --

MR. BARLOW: your Honor, at this point would Ms. Marto like to have a moment with her --

MS. MARTO: Yeah, that would be, I think, the wisest decision.

If I could have a brief call with Mr. Dennis and we take a brief recess? I think that would be in my client's best interest.

THE COURT: Mr. Dennis, is there a corrections officer in the room there with you?

MR. DENNIS: Yes, sir.

THE COURT: Would you ask her to give the phone number to your attorney, Ms. Marto, so she can call and

speak to you on the phone.

Mr. Dennis, I'm gonna mute you so nothing you say on the phone call can be heard by anybody else. Okay?

MR. DENNIS: Yes, sir.

THE COURT: Okay. So your attorney should be calling shortly.

(Whereupon, there was a recess taken.)

MS. MARTO: Judge, we're ready to proceed.

THE COURT: Okay. Yes, ma'am.

MS. MARTO: Judge, I just spoke with Mr. Dennis, He wants to go forward with his PCR here today.

THE COURT: Okay.

Mr. Barlow, you may continue your cross.

MR. BARLOW: Thank you, your Honor.

CONTINUED CROSS-EXAMINATION

BY MR. BARLOW:

Q. Mr. Dennis, so one of your claims is that you were coerced and you didn't know what you were doing; correct?

A. Yes, sir.

Q. Do you recall having a competency evaluation?

A. Sir?

Q. Do you recall having a competency evaluation?
A. You said, "competency"?
Q. Correct. A competency evaluation.
A. I believe that was March 10th.
Q. What was the finding of that competency evaluation?
A. You said the "finding"?
Q. Yeah.
A. I never had no -- ain't nobody ever tell me anything about that. I think my lawyer had told me that the people, whoever had evaluated me said that I was faking or something like that.
Q. Exactly how were you coerced into pleading guilty?
A. When I was -- I feel like when I was in lockup and them knowing that I was in lockup, I feel like that was the best time for them to contact -- they thought that it was the best time and come with a plea.
Q. And I believe you said on direct that you were rushed into it; correct?
A. Yes, sir.
Q. Okay. You plead on April 5, 2023; correct?
A. Yes, sir.
Q. And do you recall when your trial date was set?

A. I can't remember.
Q. Your trial date was set --
A. -- I think it was March 6th or something like that. I'm not --
Q. -- your trial date was actually set for April 24th. You already had a trial date set. It was a date certain.
Do you recall that?
A. Yes. Yes, sir.
Q. You still feel that you were rushed even though your trial date was already set?
A. Yeah, I feel like I was rushed.
Q. -- who rushed --
A. -- the trial was rushed.
Q. Who did that?
A. Really 'cause the trial -- I feel like when they came at me with trial, I feel like it was just rushed at the time. And then reason I say that, 'cause like, I had some videos of the, kind of like, of the toilets and stuff like that. I feel like I was getting retaliated on and they was trying to rush me out of Alvin S. Glenn at the time.
Q. Failure to get a more favorable plea, how is that plea counsels fault?
A. Can you say that again.

Q. One of your allegation is: Failure to get a more favorable plea.

How is that plea counsels fault?

A. Telling me about the 20 years that was on the table at first, and then really it was just off the table. I had no time to even think on that plea.

Q. Do you understand that plea counsel does not control the solicitor's offers?

A. Sir?

Q. Do you understand that plea counsel does not control the solicitor's offers in their offers?

A. Does Leon Lott control the offers?

Q. The question for you is, do you understand that plea counsel does not control the offers of the solicitor's office?

A. I'm just saying, sir, I feel like Leon Lott basically controls the solicitor's office.

THE COURT: Mr. Dennis, your claim is that your attorney, Ms. Eigenbrot, did a bad job. How is she able to get you a better plea offer than what the solicitor is offering?

Do you understand, whether it's Leon Lott or the assistant solicitor, how is that Ms. Eigenbrot's fault?

MR. DENNIS: Can you say that again?

THE COURT: Sure. Your claim is that Ms. Eigenbrot did a bad job as your lawyer. If Leon Lott is controlling the plea offers, how is that in Ms. Eigenbrot's control?

MR. DENNIS: I never said that it was in her control. This is what I'm saying: I feel like she could have got me a better plea. I believe that she got me the 20 years plea at first, then came back with 25.

THE COURT: Go ahead Mr. Barlow.

MR. DENNIS: I'm pretty sure ain't she supposed to negotiate as best she can for me?

Q. (By Mr. Barlow) Would you say Mr. Dennis, that a negotiated plea of 25 years is better than life plus 140?

A. No, I'm saying -- ain't like I hurt anyone in any of my cases. I feel like I don't deserve 25 years. At the end of the day, I'm the one that got injured in my case and stuff like that, sir.

Q. The question is, sir. Do you not feel that 25 years is better than the life plus 140 years you were facing?

A. No number is better, sir. Serving time is not, there's nothing good about it.

Q. And how was plea counsel not prepared?

A. How was she not prepared? I feel like she

wasn't prepared, sir.

Q. How so?

A. I feel like she didn't do her best job, as far as, getting me the best plea offer she could do. And there's a lot more stuff, like, with my case, as far as the victim passing away, that's something I'm supposed to know.

Q. That is something that is curious to me. Tell me, what does the victim passing away have to do with whether or not you were guilty of a crime?

A. 'Cause from the beginning I was already saying that I was not guilty of that case, sir.

Q. But how does the victim passing away have any relevance to this?

A. I know at the trial without a victim there's no case. I'm just being realistic about the -- I'm just being realistic, sir.

Q. Which case was that?

A. My first case.

Q. And which one was that one, how many victim's were in that?

A. There's only one.

MR. BARLOW: Beg the Court's indulgence

THE COURT: Yes, sir.

Q. (By Mr. Barlow) I believe on direct you said

that realized you did know that you were pleading to a violent offense, but you were not understanding it was 85 percent; correct?

A. Sir?

Q. Was that a response, I didn't hear you?

A. Sir?

Q. I said, on direct you testified that you knew you were pleading to violent offenses, but you did not know it was 85 percent; is that correct?

A. Yes, sir.

Q. What did you think you were going to serve?

A. I guess half of it.

Q. What would give you that impression that you would only serve 50 percent?

A. I just thought that's how the system works, sir.

Q. So plea counsel never told you that?

A. I mean, I never really knew how it worked really.

MR. BARLOW: Nothing further, your Honor.

THE COURT: Ms. Marto, redirect?

MS. MARTO: No redirect, your Honor.

THE COURT: Ms. Marto any other witnesses?

MS. MARTO: Yes, Judge. We'd call Megan Eigenbrot.

THE COURT: Alright. *Ms. Eigenbrot, do you swear to tell the truth, the whole truth, and nothing but the truth, so help you god.*

MS. EIGENBROT: I do, your Honor.

THE COURT: Go ahead, Ms. Marto.

MS. MARTO: Thanks, Judge.

DIRECT EXAMINATION

BY MS. MARTO:

Q. You represented Michael Dennis?

A. That's correct.

Q. You represented him on both his cases?

A. Yes.

Q. So what plea deals were on the table in this case?

A. So the 20-year offer that Michael is referring to was one of those tentative offers the solicitor had discussed with me. Her initial offer was the 25, I think even higher than that. I discussed with her 20. Because one of the victims in this case was an officer, she was dealing with the sheriff's department. The officer that was involved in the shooting, I don't think had any objection to the 20 years. But she also had talked to Sheriff Lott and at that time asked me to discuss the 20 years with Michael to see if he'd even

consider taking it, and that's when we had that conversation about the 20. I hate when solicitor's ask us to do that, because our clients do tend to get confused.

But he is right, in that, we talked about the offer. He was definitely considering it. Told me to let the solicitor know that he would do that. But then Sheriff Lott did come back and tell her, "anything under 25 was gonna be a slap in the face." Those were the exact words that Michael definitely remembers. And therefore, she would not put the 20 back on the table. Even thought, she didn't really have an objection to it, nor did the officer involved in the shooting --

Q. Do you think it was made clear to Mr. Dennis that it was a tentative offer?

Q. As you can kind of tell, sometimes Michael misunderstands. I found I had to repeat myself a lot with him. I had him evaluated a couple of times, out of concerns for his understanding of things and due to some -- him exhibiting some paranoia and mental health concerns. I did discus it with him. I did tell him it was a tentative offer. But as you can see, sometimes he has a difficult time understanding certain things.

Q. Were you aware that Mr. Dennis had PTSD?

A. -- I never received any type of true diagnoses

for PTSD. But I will tell you, when he was initially arrested for the shooting with the officer, the attempted murder case. During his arrest, Michael was very agitated, very paranoid. Very different from the Michael I had meet when he was initially arrested. So immediately -- and I also have hospital records because he was shot during that incident. The hospital also cited a lot of psychosis type behavior. So I did have some concerns about his mental health at that time. And I forgot where I was going with this.

What was the question again? Sorry.

Q. Did you know he had PTSD, there was nothing confirmed of that?

A. They did not mention that. They were mostly, at that time, concerned about psychosis. And that is what I was mostly concerned about as he was released into the jail's custody. I continued to see a lot of that behavior exhibited.

I actually had a private evaluation done with a doctor. By the time she was able to really meet with him a few times, I think things had mellowed out, like he had been placed on some type of medication. So she ultimately found that he was competent at the time. She did not mention PTSD, but I also did not tell her to evaluate for PTSD.

It would not surprise me considering his history. It would not surprise me considering what was going on at the jail at the time that he was there.

Q. Was it your understanding that his mental health may have impacted his ability to understand the plea in y'all's discussions?

A. The doctors all told me that he was competent. That there were no outstanding mental health issues that would cause him to not understand what we were talking about. They didn't mention anything about his I.Q. or anything like that. So I would also have conversations with Michael where I do believe he understood me.

Again, listening to him now, I know I've had these conversations with him, but he still doesn't really seem to understand, which is strange.

Q. Do you feel like he may have been coerced into pleading?

A. No. I understand what he's referencing when he's talking about "issues at the jail". He was there detained during COVID, when Alvin S. Glenn had taken a huge turn for the worst. We were having issues with CO's assaulting our clients. We were having issues with CO's retaliating against our clients. Michael was one of the individuals that was in a really bad dorm with, like, really big plumbing issues, unhealthy living

conditions. And he had gotten his hands on a cellphone and actually Snapchatted some videos out about the conditions at the jail. He was in trouble for that. Those videos were released to the media. They were able to determine the people involved, Michael being one of them. He was placed on lockup and I do believe he was assaulted multiple times by correctional officers. It's always very hard to prove those things. I always believe my clients, but the officers have a way of hiding those things. I think that's probably what he's talking about. I do know he was really ready to leave Alvin S. Glenn because the conditions were so poor.

Q. Do you recall a discussion about federal gun charges coming up?

A. Yes. That actually came out of nowhere. I think the solicitor brought that to my attention. We were coming up on the second trial date. He was originally scheduled for March 6th in 2023. He had been brought over to the courthouse for me to meet with him, his mother, and my co-counsels to discus all the discovery, do some trial prep. And that was one of the times that his mental health has taken a turn, which prompted the second evaluation.

I'm sorry. Again, I lost my space. What was the question one more time.

Q. It was about the federal charges and whether or not that impacted the plea?

A. Yeah. After the second -- after the evaluation and the second trial date was scheduled, that was when I was notified by the State that the feds were threatening an indictment if he refused to plead and went to trial. I think there was some concern about possibly getting a lessor included charge. And basically, they wanted to make sure he got the amount of time they thought was appropriate. So the feds at that point did threaten it.

I did speak to the AUSA that would have taken on the case. And he did acknowledge at that time that he would not seek charges if Michael received at least 25 years.

Q. Do you think that impacted his decision to plead?

A. Yes, it did. It was shortly after that conversation that Michael changed his tune. He had been all about trial up until that point. I think I meet with him, gave him that information. The next time I went down to the jail to do a very serious discovery review with him to prep for trial, is when he told me he would plead. It was after he got that information.

Q. Roughly how many times did you meet with him,

do you recall?

A. I have -- give me just one second. I have noted I meet with him 25 times. But again, this was during COVID, so not all of these were fact-to-face meetings. Some of these were phone calls. Some of them were booth visits at the jail. Some of them were through zoom. He was put into Well Path for a while. One of the things the jail allowed to happen is, his arm got drastically infected. He had to spend about three months at Well Path receiving treatment. So not all of them were in-person, which is what I typically try do with my clients, especially when you're facing such serious charges.

Q. Do you feel like there was anything that y'all failed to discuss during those meetings?

A. Sorry. What was that?

Q. Was there anything that you think you may have not discussed with Mr. Dennis in those meetings?

A. I will acknowledge that once he got his second arrest, my focus was those charges, not so much the burglary and the prior kidnapping charge. I knew the State was going to be going to trial on the new set of charges. So I, kind of, focused more on those. He was aware of what those allegations were. We originally talked about those before he bonded out on the first set

of charges. But as far as the other charges... No, we talked about everything. He actually -- he didn't want to see all of the discovery initially, but we went over the videos. Especially with the officer involved in the shooting.

Q. Was there any discovery that y'all didn't review in preparation for the trial or the plea?

A. I don't recall him seeing literally every single piece of paper I had in discovery. But he was definitely aware of the major bits and pieces of it.

Q. Did you provide him with a copy of the paper discovery?

A. In truth, I cannot remember. I generally don't like to leave my client's discovery down at the jail, especially when they're in the situation he was in with CO's, because the CO's take it and spread it around. I don't recall doing it, but I also cannot say that I did.

Q. Now did you ever consider moving for a change of venue in this case?

A. No, I didn't legally believe there was any reason to. I understood Michael's concerns, but in my experience, the CO's did what the CO's were doing because, they're not good people, not because this was related to the sheriff's department. In fact, I don't

think the sheriff's department had a working relationship at all with the correctional officers at Alvin S. Glenn.

Q. Now, if Mr. Dennis had decided to go to trial would you have been prepared to try the case?

A. Yes. I would have done everything I could for him.

Q. And did you take any steps towards trial prep when you thought that he was going to decide to go to trial instead of pleading?

A. Yes. I had brought in two other attorneys to work on the case with me. I know we had met with the solicitor's office to do a double check on discovery to make sure everything had been provided.

Again, I was planning on meeting with him the day he decided to plea to go ever everything with him and discuss his testimony if he choose to testify. We had some of those conversations at that time.

Q. Did you ever learn or find out that one of the victims in the first case had passed away?

A. Yes. I learned that after he did his plea. The reason that is important is because that victim is the only eyewitness to the incident. And I don't think the State could have proved the case without that victim. I was notified by his aunt, but it was only

after the plea that I found out about that. And again, I think that is in part because I, kind of, put those charges on the back burner. Had I known, I would have advised him not to plead to those charges. And I would have told the solicitor those can't be apart of any plea deal, as they can't prove it.

Q. Now, did you discuss with Mr. Dennis that he would have to serve a minimum of 85 percent of the sentence?

A. Yes. I have an extensive Advice of Rights sheet that I go over, it's four pages, with my clients who are pleading to violent charges. Part of that discussion is, always that there's no parole and you will serve a minimum of 85 percent.

Q. And you think that Mr. Dennis fully understood that?

A. He said he did when we went over it. And it's not -- I believe he's actually served time on a violent offense before, so I also assumed that he would understand that.

Q. Were there any red-flags at the plea hearing that indicated to you that he didn't understand what he was doing by pleading?

A. No. I think he kind of had resigned himself to do the plea at that time. It went off without a

hitch. He behaved himself in the courtroom and there weren't any issues.

Q. Do you think there was any conflict of interest between you and the State in this case?

A. No. I do work with Ms. Cavanaugh regularly. Her and I have both been in our offices 10 plus years. I don't consider her a friend outside of the office. We do work well together in the office, but I don't believe there's a conflict there.

MS. MARTO: Nothing further, your Honor.

THE COURT: Mr. Barlow?

MR. BARLOW: Thank you, your Honor. May it please the Court.

CROSS-EXAMINATION

BY MR. BARLOW:

Q. Ms. Eigenbrot, you testified that the feds came in and said that -- I believe you said, that they came in, out of nowhere, and that they were going to also charge him?

A. That's correct. They were going to indict him on the federal guns laws.

Q. And to which case was that going to apply?

A. The attempted murder, as he was in unlawful possession of a gun at that time.

Q. Okay. You informed him of that; correct?
A. Yes, I did.
Q. Was it your testimony that that coerced him into pleading or was that just a factor?
A. I believe it was a factor in him choosing to plead.
Q. On the victim that passed away, did Ms. Cavanaugh, the solicitor in this case, or do you have any reason to believe that she withheld that from you?
A. No. We did discussed it prior to sentencing. And I, at that time, did ask her if she would consider allowing Michael to withdraw his plea to those charges. And she said that she would fight against it. We did have a brief conversation with Judge Coble about it and he just said, let's just get the sentencing done.
So I don't know she withheld it, but it was unclear if she knew beforehand.
Q. And was this on the record?
A. No. I don't believe any of those conversations were on the record.
Q. But it was your testimony that if you had known that prior to this, you would have advised him not to plead?
A. That's correct. I think he would have had a

fair chance at trial at that time. The victim in that case was the one that identified Michael's cousin as the co-defendant which lead to Michael. He was the one that provided the descriptions. He's the one that called 911. He was basically the entire case for the State, aside from what cops did to find Michael and his cousin when they arrested them.

Q. What was the evidence in that case?

A. The teenager who was the victim at that time, called police that two individuals had broken into his home at gunpoint -- and held him at gunpoint and had stolen, I think it was gaming equipment of some sort. He gave a description of the outfits and I think actually had relationship with Michael's cousin or had some prior issue with him, so knew him. The cops begin circulating the area. At that time Michael fit that description that he had provided, therefore, the cops chased Michael. He was at that time arrested. I believe the victim later did a photo lineup and also identified Michael as the second person in that burglary.

Q. Was there any other physical evidence in that case?

A. A gun was collected later. If I recall correctly, Michael had the gun on him when he was

arrested, but law enforcement didn't find it and he left it in the cop car and they collected it maybe a day or two later. Other than that, that was it as far as I can remember.

MR. BARLOW: Beg the Court's indulgence.

Your Honor, I have nothing further for Ms. Eigenbrot.

THE COURT: Ms. Eigenbrot, I wanted to ask about the timing of the passing of the victim in the case. Did the death occur after the original plea?

MS. EIGENBROT: No. When I looked it up, it had been prior to that. I cannot remember what the circumstances of his death were. I remember finding the obituary online. It was shortly after -- I want to say his aunt told me right after the plea and I came to look it up. So it was definitely before he plead.

THE COURT: Do you think your performance was deficient in any way in not finding that information out prior to the plea?

MS. EIGENBROT: I feel like I should have a least checked on that before I advised him to plead to those, to see if the State still had their witnesses available.

MR. BARLOW: Your Honor, under the circumstances and based off her testimony here, I would

ask that we keep the record opened and let me get Ms. Cavanaugh in for her testimony on this. Since we -- I think that would be the best thing to do.

THE COURT: Okay. Is she available or do we need to continue it?

MR. BARLOW: What we can do is, I can reach out to her now and see if she is available. And then if she is not, if she is available maybe tomorrow to appear.

THE COURT: Okay. I think -- why don't you reached out and see.

MR. BARLOW: Your Honor, if can I have a moment, I'm going to make a phone call real quick.

THE COURT: Okay. Let's go off the record.

(Discussion off the record.)

MR. BARLOW: Your Honor?

THE COURT: Yes, sir.

MR. BARLOW: I spoke with Ms. Cavanaugh, she was in the middle of something.

But your Honor, I think I'm going to withdraw my request to keep the record open and just go on argument.

THE COURT: I was going say, it's a factually interesting question, but I've been thinking about it to. I don't think that falls below the Strickland

standard. If I make that ruling, that means every defense attorney in the state has to Google people's obituaries before pleading a client guilty. I just don't think that's the standard --

MR. BARLOW: -- I don't mean to jump in this. But I was gonna say, the other part of this is: He also received -- the sentencing that he received is exactly the same on the attempted murder for the second set, which arguably he testified too; he wasn't gonna fight that, he wanted to fight the first set. So not sure where we reach prejudice in that even if you reach deficiency.

THE COURT: Okay. So any witnesses Mr. Barlow?

MR. BARLOW: No, your Honor, I don't have any witnesses.

THE COURT: Ms. Marto, I should have asked you first. Any additional witnesses on behalf of Mr. Dennis?

MS. MARTO: No, Judge.

THE COURT: I'd be happy to hear from you Ms. Marto. But also, I've been thinking about this and I understand the issue with the notification of the death, but I don't think the law requires that every criminal defense attorney in South Carolina Google every

witnesses name prior to doing a guilty plea. That is a significant -- that would be a significant addition to the criminal -- responsibility for a criminal defense attorney. But I'm happy to hear argument.

MS. MARTO: Judge, I understand. But at the same time, this does I think go to A: Newly discovered evidence. But also B: Whether or not my client knew what he was doing by pleading.

And I think that the Court can look at this holistically and say that: Ms. Eigenbrot, admitted that Mr. Dennis seemed to have significant issues in understanding because of mental health issues and that even if she were to tell him something, he didn't necessarily always understand it. Coupled with the fact that he didn't want to plea to that set of charges from the beginning. And then you throw on top of that the fact that the victim had passed away and that counsel probably should have been notified of that by the prosecutor, because I know they have a duty to contact the the victims prior to the plea. But also, I do think that even if the this court doesn't want to find ineffective assistance of counsel, I think this court can still find that the plea is invalid or that evidence of the victim passing away is newly discovered.

And then beyond that, I do think that morning

my client was under duress or was otherwise coerced into pleading, because of the combination of the perfect storm. Because certain facts weren't relayed in time, plus his mental health issues, plus the conditions of Alvin Glenn, plus the threat of additional charges if he didn't plead, pretty much, immediately.

So we would just request relief on those grounds and ask that this court grant Mr. Dennis a new plea or trial.

THE COURT: Mr. Barlow?

MR. BARLOW: Your Honor, in response, I appreciate Ms. Marto's position on the newly discovered evidence, but I would argue that it is not newly discovered. In fact, they knew of it when he was sentenced. So it was known during the process itself.

As far as whether that effects his ability to plead, knowing that a victim was present or not. Ms. Eigenbrot did testify that the gun was found. That there was other evidence to suggest he was in the area. He had a gun on him. Also, I just find it hard to believe that the state -- or excuse me, Ms. Eigenbrot had a duty to check obituaries online before allowing her client to plead guilty.

As to the threats and any coercion, I just don't think that there's any evidence of that even with

the United States Government coming in with their federal charges. Your Honor, that's their choice. They can choose to do that or not. That has no bearing on what happened with the State and what the State does. And his trial date was set and he plead about -- well, in the record, it says that his trial date was set for April 24th, although, there's testimony it was set for March 4th. In any event, he plead on April 5th and that's still just less than a month then when he was set to go to trial on both sets of charges.

So also to the argument that his mental health is at issue. Again, that's a very high bar and he had a competency evaluation. I don't know how Ms. Eigenbrot -- I don't know what else Ms. Eigenbrot could have done that she didn't do. She understood that he had some problems understanding stuff. She had him evaluated. He was found competent. So I don't know how that is -- I don't know how Ms. Eigenbrot was deficient or any prejudice came from that.

And your Honor, I think that sums up my argument, but I would request this court deny relief and with prejudice.

THE COURT: I'll take this matter under advisement counsel, but I'll let you know pretty quickly I think.

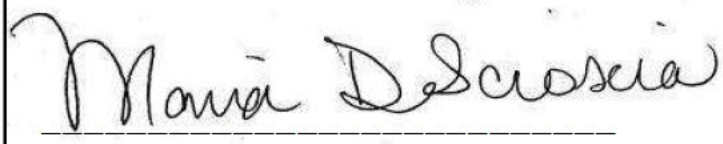
MR. BARLOW: Thank you, your Honor.

(Whereupon, the above-captioned hearing was concluded.)

C E R T I F I C A T E

I, the undersigned Maria DiScioscia, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the record of all the proceedings in the captioned case, in the Circuit Court for Richland, South Carolina, on the 25th day of September, 2024.

I do further certify that I am not related, either by blood or marriage, to any of the parties in this action; and that I am in no way interested in the outcome of this matter.



Maria DiScioscia
Official Court Reporter

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Michael J. Dennis, #371678, Applicant, v. State of South Carolina, Respondent.	)	CASE NO. 2024–CP–40–02372 **ORDER OF DISMISSAL WITH PREJUDICE**

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

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

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

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

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

PROCEDURAL HISTORY

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

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

Applicant did not appeal his convictions or sentences.

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[1] North Carolina v. Alford, 400 U.S. 25 (1970).

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

SUMMARY OF RELEVANT FACTS

First Set of Charges

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

Second Set of Charges

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

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

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

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

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

CURRENT ACTION BEFORE THIS COURT

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

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

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

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

the facts and circumstances concerning the case, including the fact that a victim died.

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

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

SUMMARY OF EVIDENTIARY HEARING TESTIMONY

Applicant's Testimony

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Plea Counsel's Testimony

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STANDARD OF REVIEW

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

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

S.C. Code Ann. § 17-27-20(A).

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

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d

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

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

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

An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the range of competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56. However, the second, or "prejudice" prong

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

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility. See, e.g., State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) ("In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment."); Clemons v. Mississippi, 494 U.S. 738, 766 (1990) (Blackmun, J., concurring in part and dissenting in part) ("The trial judge who hears the witnesses live, observes

their demeanor and in general smells the smoke of the battle is by his very position far better equipped to make findings of fact which will have the reliability that we need and desire.").

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), 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 the time they were made. Strickland, 466 U.S. at 689; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

This Court makes the following findings from the record: 1. Plea Counsel affirmed that she explained to Applicant the elements of the charges, the potential punishments, and the

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

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS

Allegation: Involuntary Guilty Plea

Applicant alleges Plea Counsel's representation was constitutionally ineffective for coercing him into pleading guilty. This Court finds this allegation to be without merit.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of the plea and the charges against him or her. Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991); see also Boykin v. Alabama, 395 U.S. 238, 243 (1969) (Courts must make sure defendants have "a full understanding of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought, and forestalls the spin-off of collateral

proceedings that seek to probe murky memories."). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

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

Findings

Applicant argues his plea is invalid because he was coerced into pleading guilty. Specifically, he claims he felt forced to plead guilty due to the turmoil at the Alvin Glenn Detention Center at the time and because he was told that if he pleaded to state charges, his federal gun charges would be dismissed. However, this Court finds that Plea Counsel **credibly** testified she did not believe Applicant was coerced into pleading guilty, although she recognized that Alvin Glenn had indeed deteriorated during that period. (PCR Tr. pp. 29-30). Furthermore, this Court finds from the record and Plea Counsel's **credible** testimony that Applicant has failed in his burden to prove Plea Counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead.

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

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

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

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

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

within the bounds of judicial restraint. Id.

Findings

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

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

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

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

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

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

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. This Court finds Plea Counsel **credibly** testified that though she had concerns about his mental health after he was shot, there was no evidence presented to her that Applicant struggled with PTSD. (PCR Tr. p. 28). Plea Counsel **credibly** testified that she had Applicant evaluated, and he was deemed competent. (PCR Tr. pp. 28–29). Plea Counsel **credibly** testified that she was unaware of any outstanding mental health issues that would impact his understanding of the plea. (PCR Tr. p. 29).

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

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

Allegation: Plea Counsel Failed to Investigate

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

Strickland makes clear that defense counsel "has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." 466 U.S. at 691. "The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Id. "Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the

defendant." Id. "In particular, what investigation decisions are reasonable depends critically on such information." Id.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). At the PCR hearing, Applicant is required to present evidence or witnesses he alleges counsel did not properly investigate. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Additionally, whether Applicant was prejudiced by counsel's failure to investigate is contingent on whether the evidence presented would have led counsel to change his recommendation regarding the plea. Stalk v. State, 383 S.C. 559, 562, 681 S.E.2d 592, 594 (2009). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. This Court finds that Plea Counsel's failure to investigate the victims' obituaries to determine if they had passed away prior to a guilty plea is *not reasonable*. Nevertheless, Applicant testified that he knew that the victim passed away *before* he pled, but he did not provide that information to Plea Counsel.

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

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

Allegation: Plea Counsel Failed to Sufficiently Meet with Applicant

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

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

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

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

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

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. This Court finds Applicant's testimony on this matter **not credible** or **persuasive**. Applicant testified that he did not think that Plea Counsel met with him enough and did not communicate with him about the case enough. (PCR Tr. 11-12). Whereas Plea Counsel **credibly** testified to multiple discussions about the case with Applicant.

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

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

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

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

Allegation: Plea Counsel Failed to Prepare for Trial

Applicant alleges Plea Counsel's representation was constitutionally ineffective for failing to properly prepare for trial. This Court finds this allegation to be without merit.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the

alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Findings

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

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

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

his guilty plea.

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

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

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

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. This Court finds Plea Counsel **credibly** testified that there was no legal basis to move for a change of venue. This Court also finds that Applicant has presented no evidence supporting that he was entitled to a change of venue. Applicant's mere wish to be tried elsewhere has fallen far short of the burden required to show that Plea Counsel should have sought such a change. Furthermore, Applicant has failed to present any credible evidence that had Plea Counsel moved for a change of venue, he would not have pleaded guilty and proceeded to trial.

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

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

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

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

An applicant who alleges his or her defense attorney was ineffective in failing to provide a copy of the discovery materials must show how the outcome of trial would have been different had the attorney provided such a copy; the applicant must show what evidence could have been discovered or what other defense could have been prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)).

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. This Court finds Applicant failed to present any credible evidence of what defenses or matters could have been discovered had he had a full copy of his discovery prior to pleading guilty that would have changed his mind about pleading guilty and instead he would have chosen to proceed to trial. In short, Applicant has failed to carry his burden of proof on this allegation.

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

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

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

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

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

Findings

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

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

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

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

DISMISSED.

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

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

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

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

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. This Court finds Plea Counsel **credibly** testified at the PCR evidentiary hearing that the twenty-year offer was a tentative, non-formal offer that was never officially extended to Applicant. Plea Counsel **credibly** testified that the tentative nature of the offer was communicated to Applicant.

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

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

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

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

Findings

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

voluntarily entered the plea.

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

Allegation: Conflict of Interest Between Plea Counsel and Assistant Solicitor

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

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

Findings

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

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

Allegation: Prosecutorial Misconduct

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

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

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

[5] Brady v. Maryland, 373 U.S. 83 (1963).

Findings

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

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

Allegation: Newly Discovered Evidence

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

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

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

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

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

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

Findings

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

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

|CONCLUSION AND SIGNATURE PAGE FOLLOWS|

CONCLUSION

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

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

IT IS THEREFORE ORDERED:

1. Post-conviction relief is denied and the application for post-conviction relief be dismissed with prejudice; and

2. Applicant be remanded to the custody of the State.

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

WILLIAM A. MCKINNON
Presiding Judge
Fifth Judicial Circuit

Richland, South Carolina.

WITNESSES

(S) Inv. Taima D. Jordan – RCSD

129

ARREST WARRANT NUMBER

2020A4010201221

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: APR 15 2021

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2021GS4000317

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2021

116

THE STATE
vs.

Michael Jayvone Dennis

Indictment for
BURGLARY (AFTER JUNE 20, 1985) – 1ST DEGREE

SC Code: **16-11-0311**
CDR Code: **0079**

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on April 13, 2021, the Grand Jurors of Richland County present upon their oath:

BURGLARY, 1ST DEGREE

That Michael Jayvone Dennis did in Richland County on or about March 17, 2020, enter the dwelling of J. W. [redacted] located at [redacted] Frost Ave, without consent and with the intent to commit a crime therein and when, in effecting entry or while in the dwelling or in immediate flight, the defendant was armed with a deadly weapon and/or the defendant used and threatened the victim with a dangerous instrument by displaying and/or firing a firearm. All in violation of Section 16-11-0311(A), S.C. Code of Laws, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

BYRON E. GIPSON, SOLICITOR

WITNESSES

131 (S) Inv. Taima D. Jordan – RCSD

ARREST WARRANT NUMBER

2020A4010201222

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury 2021
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2021GS4000318

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2021

116

THE STATE
vs.

Michael Jayvone Dennis

Indictment for
KIDNAPPING

SC Code: **16-03-0910**
CDR Code: **0095**

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED COPY
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
) **INDICTMENT**
COUNTY OF RICHLAND)

At a Court of General Sessions, convened on APRIL 13, 2021, the Grand Jurors of Richland County present upon their oaths:

KIDNAPPING

That Michael Jayvone Dennis did in Richland County on or about March 17, 2020, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one J. W. [redacted], without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

BYRON E. GIPSON, SOLICITOR

WITNESSES

(S) Inv. Taima D. Jordan – RCSD

133

ARREST WARRANT NUMBER

2020A4010201223

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: APR 15 2021

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2021GS4000319

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

April TERM 2021

116

THE STATE
vs.

Michael Jayvone Dennis

Indictment for
ARMED ROBBERY

SC Code: **16-11-0330(A)**
CDR Code: **0139**

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____ hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED
OF
RICHLAND
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
) **INDICTMENT**
COUNTY OF RICHLAND)

At a Court of General Sessions, convened on April 13, 2021, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That Michael Jayvone Dennis did in Richland County on or about March 17, 2020, commit robbery by feloniously taking from the person or presence of J. W. [redacted], by means of force or intimidation, goods or monies of, such goods or monies being described as the victim's rose gold iPhone and/or a PlayStation 4 with controller, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of §16-11-330(A), S.C. Code of Laws (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

BYRON E. GIPSON, SOLICITOR

WITNESSES

135 (S) Sgt. Andrew R. Caldwell – RCSD

ARREST WARRANT NUMBER

2020A4010205531

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: AUG 11 2021

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2021-GS-40-03153

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

116 August TERM 2021

THE STATE
vs.

Michael Jayvone Dennis

Indictment for
ATTEMPTED MURDER

SC Code: **16-03-0029**
CDR Code: **3410**

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____ hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF RECORDED
COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on 8/10 2021, the Grand Jurors of Richland County present upon their oath:

ATTEMPTED MURDER

That Michael Jayvone Dennis did in Richland County on or about November 2, 2020, did with the intent to kill, attempt to kill Deputy Josiah McComb with malice aforethought, either expressed or implied. All in violation of S.C. Code of Laws § 16-3-29 (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

BYRON E. GIPSON, SOLICITOR

WITNESSES

137 (S) Sgt. Andrew R. Caldwell – RCSD

ARREST WARRANT NUMBER

2020A4010205532

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: AUG 11 2021

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2021-GS-40-03154

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

116 August TERM 2021

THE STATE
vs.

Michael Jayvone Dennis

Indictment for
KIDNAPPING

SC Code: **16-03-0910**
CDR Code: **0095**

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:
C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on 8/10 2021, the Grand Jurors of Richland County present upon their oath:

KIDNAPPING

That Michael Jayvone Dennis did in Richland County on or about November 2, 2020, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Jennifer Curry, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

BYRON E. GIPSON, SOLICITOR

Deferred per J. Coble 4-5-23 (15 yrs. - life)

STATE OF SOUTH CAROLINA
COUNTY OF Richland

IN THE COURT OF GENERAL SESSIONS

STATE

VS.

Michael Jayvone Dennis
AKA:
Race: BLACK Sex: M Age: 25
DOB: SS#:
Address: [redacted] Shorecrest Dr
City, State, Zip: Columbia, SC 29209
DL#: SID#:

INDICTMENT/CASE#: 2021-GS-40-00317

A/W#: 2020A4010201221
Date of Offense: 3/17/2020
S.C. Code §: 16-11-0311
CDR Code #: 0079

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO: Burglary / Burglary (After June 20, 1985) - First degree

In violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Kathryn Cavanaugh 72690 Michael Dennis 25 years active 101190
Cavanaugh, Kathryn SC Bar # Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction, ☐ County Detention Center, for a determinate term of 25 days/months/years/Time Served ☐ Youthful Offender Act not to exceed ___ years and/or to pay a fine of $ _____; provided that upon the service of ___ days/months/years/Time Served and or payment of $ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: ~~4/5/2023~~ DMC 5/9/2023

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. 994 days/months

☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

CERTIFIED TRUE COPY
CLERK OF COURT
RICHLAND COUNTY
SOUTH CAROLINA

SCANNED

STATE VS. Michael Jayvone Dennis INDICTMENT/CASE#: 2021-GS-40-00317

SPECIAL CONDITIONS:

☐ **PTUP** after _____ months/years

And Other Terms Listed Below:

☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing

☐ Attend Voc. Rehab. or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program

☐ Mental Health Counseling ☐ May serve W/E beginning: _____

☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours

☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

☐ Other: _____

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**

Total: $ _____ plus 20% fee: _____ $ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ Beginning _____ $ _____

§14-1-206 (Assessments 107.5 %)		$
§14-1-211(A)(1) (Conv. Surcharge)	$100	$100
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
§14-1-212 (Law Enforce. Funding)	$25	$25
§14-1-213 (Drug Court Surcharge)	$150	$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	$41	$
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)	TBD	$ 3.75

☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees. $500 $

☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund TBD $

TOTAL $ 128.75

Clerk of Court/ Deputy Clerk: Jeanette W. McBride DCR Harris 5-9-23

Court Reporter:

Presiding Judge:

Judge Code: 7114

Sentence Date: ~~4/5/2023~~ 5/9/2023 DMC

SCCA/217 (07/2021)

SCANNED

Deferred per J. Cable (0-3.0 years)
4-5-23

STATE OF SOUTH CAROLINA
COUNTY OF Richland

IN THE COURT OF GENERAL SESSIONS

STATE
VS.
Michael Jayvone Dennis
AKA:
Race: BLACK Sex: M Age: 25
DOB: SS#:
Address: [redacted] Shorecrest Dr
City, State, Zip: Columbia, SC 29209
DL#: SID#:

INDICTMENT/CASE#: 2021-GS-40-00318
A/W#: 2020A4010201222
Date of Offense: 3/17/2020
S.C. Code §: 16-03-0910
CDR Code #: 0095

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Kidnapping / Kidnapping
in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Kathryn Cavanaugh 77690 Michael Dennis 25 years active 101190
Cavanaugh, Kathryn SC Bar # Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction, ☐ County Detention Center, for a determinate term of 25 days/months/years/Time Served ☐ Youthful Offender Act not to exceed ___ years and/or to pay a fine of $ ____; provided that upon the service of ___ days/months/years/Time Served and or payment of $ ____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: ~~4/5/2023~~ 5/9/2023 amc

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. 994 days/months

☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or §16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

CERTIFIED COPY
RICHLAND COUNTY
SOUTH CAROLINA

SCANNED

STATE VS. Michael Jayvone Dennis INDICTMENT/CASE#: 2021-GS-40-00318

SPECIAL CONDITIONS:

☐ **PTUP** after _____ months/years

And Other Terms Listed Below:

☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing

☐ Attend Voc. Rehab. or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program

☐ Mental Health Counseling ☐ May serve W/E beginning: _____

☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours

☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

☐ Other: _____

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**

Total: $ _____ plus 20% fee: _____ $ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ Beginning _____ $ _____

§14-1-206 (Assessments 107.5 %)		$
§14-1-211(A)(1) (Conv. Surcharge)	$100	$100
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
§14-1-212 (Law Enforce. Funding)	$25	$25
§14-1-213 (Drug Court Surcharge)	$150	$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	$41	$
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)	TBD	$3.75
☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.	$500	$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	$
	TOTAL	$128.75

Clerk of Court/ Deputy Clerk: Jeanette W. McBride DCR Harris 5-9-23

Court Reporter:

Presiding Judge: 2774

Judge Code:

Sentence Date: 4/5/2022 5/9/2023

SCCA/217 (07/2021)

SCANNED

Deferred per J. Coble (10 - 30 years)
4-5-23

STATE OF SOUTH CAROLINA
COUNTY OF Richland

IN THE COURT OF GENERAL SESSIONS

STATE

VS.

Michael Jayvone Dennis
AKA:
Race: BLACK Sex: M Age: 25
DOB: SS#:
Address: [redacted] Shorecrest Dr
City, State, Zip: Columbia, SC 29209
DL#: SID#:

INDICTMENT/CASE#: 2021-GS-40-00319
A/W#: 2020A4010201223
Date of Offense: 3/17/2020
S.C. Code §: 16-11-0330(A)
CDR Code #: 0139

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Kathryn Cavanaugh 77690 + Michael Dennis (25 years active) 101190
Cavanaugh, Kathryn SC Bar # Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction, ☐ County Detention Center, for a determinate term of 25 days/months/years/Time Served ☐ Youthful Offender Act not to exceed ___ years and/or to pay a fine of $ ____; provided that upon the service of ___ days/months/years/Time Served and or payment of $ ____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 4/5/2023 5/9/2023 JMC

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. 994 days/months

☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

CERTIFIED TRUE COPY
OF RECORD
[illegible]
CLERK OF COURT
RICHLAND COUNTY
SOUTH CAROLINA

SCANNED

STATE VS. Michael Jayvone Dennis INDICTMENT/CASE#: 2021-GS-40-00319

SPECIAL CONDITIONS:

☐ **PTUP** after _____ months/years

And Other Terms Listed Below:

☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing

☐ Attend Voc. Rehab. or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program

☐ Mental Health Counseling. ☐ May serve W/E beginning: _____

☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours

☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

☐ Other: _____

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**

Total: $ _____ plus 20% fee: _____ $ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ Beginning _____ $ _____

§14-1-206 (Assessments 107.5 %)		$
§14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
§14-1-212 (Law Enforce. Funding)	$25	$ 25
§14-1-213 (Drug Court Surcharge)	$150	$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	$41	$
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (If paid in installments)	TBD	$ 3.75
☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.	$500	$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	$
	TOTAL	$ 128.75

Clerk of Court/ Deputy Clerk: Jeanette W. McBride DCR Harris 5-9-23

Court Reporter:

Presiding Judge:

Judge Code: 778

Sentence Date: 5/9/2023 JMC

SCCA/217 (07/2021)

SCANNED

Deferred per J. Coble
4-5-23-

(0 - 30 years)

STATE OF SOUTH CAROLINA
COUNTY OF Richland

IN THE COURT OF GENERAL SESSIONS

STATE

VS.

Michael Jayvone Dennis
AKA:
Race: BLACK Sex: M Age: 25
DOB: SS#:
Address: [redacted] st Dr
City, State, Zip: Columbia, SC 29209
DL#: SID#:

INDICTMENT/CASE#: 2021-GS-40-03153

A/W#: 2020A4010205531
Date of Offense: 11/2/2020
S.C. Code §: 16-03-0029
CDR Code #: 3410

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Attempted Murder
in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Kathryn Cavanaugh 77690 — Cavanaugh, Kathryn — SC Bar #
Micheal Dennis 25 years active — Defendant
101190 — SC Bar#

WHEREFORE, the Defendant is committed to the ☒ **State Department of Correction,** ☐ **County Detention Center,** for a determinate term of 25 days/months/years/Time Served ☐ **Youthful Offender Act** not to exceed ___ years and/or to pay a fine of $ ____; provided that upon the service of ___ days/months/years/Time Served and or payment of $ ____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 4/5/2023 5/9/2023

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. 917 days/months

☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

CERTIFIED COPY
SOUTH CAROLINA

SCANNED

STATE VS. Michael Jayvone Dennis INDICTMENT/CASE#: 2021-GS-40-03153

SPECIAL CONDITIONS:

☐ **PTUP** after _____ months/years

And Other Terms Listed Below:

☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing

☐ Attend Voc. Rehab. or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program

☐ Mental Health Counseling ☐ May serve W/E beginning: _____

☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours

☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

☐ Other: _____

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**

Total: $ _____ plus 20% fee: _____ $ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ Beginning _____ $ _____

§14-1-206 (Assessments 107.5 %)		$
§14-1-211(A)(1) (Conv. Surcharge)	$100	$100
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
§14-1-212 (Law Enforce. Funding)	$25	$25
§14-1-213 (Drug Court Surcharge)	$150	$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	$41	$
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)	TBD	$3.75
☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.	$500	$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	$
	TOTAL	$ 128.75

Clerk of Court/ Deputy Clerk: Jeanette W. McBride DCR8 Harris 5-9-23

Court Reporter:

Presiding Judge:

Judge Code: 774

Sentence Date: 5/9/2023

SCCA/217 (07/2021)

SCANNED

Deferred per J. Cable (0-30 years)
4-5-23

STATE OF SOUTH CAROLINA
COUNTY OF Richland

IN THE COURT OF GENERAL SESSIONS

STATE
VS.
Michael Jayvone Dennis
AKA:
Race: BLACK Sex: M Age: 25
DOB: SS#::
Address: [redacted] Shorecrest Dr
City, State, Zip: Columbia, SC 29209
DL#: SID#:

INDICTMENT/CASE#: 2021-GS-40-03154
A/W#: 2020A4010205532
Date of Offense: 11/2/2020
S.C. Code §: 16-03-0910
CDR Code #: 0095

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Kidnapping / Kidnapping
in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Kathryn Cavanaugh 77690 — Cavanaugh, Kathryn / SC Bar #
Michael Dennis (25 years active) — Defendant
101190 — SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction, ☐ County Detention Center, for a determinate term of 25 days/months/years/Time Served ☐ Youthful Offender Act not to exceed ___ years and/or to pay a fine of $ ____; provided that upon the service of ___ days/months/years/Time Served and or payment of $ ____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 4/5/2023 5/9/2023 OMC

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. OMC 917 days/months

☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

CERTIFIED TRUE COPY
RICHLAND COUNTY
SOUTH CAROLINA

SCANNED

STATE VS. Michael Jayvone Dennis INDICTMENT/CASE#: 2021-GS-40-03154

SPECIAL CONDITIONS:

☐ **PTUP** after _____ months/years

And Other Terms Listed Below:

☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing

☐ Attend Voc. Rehab. or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program

☐ Mental Health Counseling ☐ May serve W/E beginning: _____

☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours

☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

☐ Other: _____

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**

Total: $ _____ plus 20% fee: _____ $ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ Beginning _____ $ _____

§14-1-206 (Assessments 107.5 %)		$
§14-1-211(A)(1) (Conv. Surcharge)	$100	$100
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
§14-1-212 (Law Enforce. Funding)	$25	$25
§14-1-213 (Drug Court Surcharge)	$150	$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	$41	$
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)	TBD	$3.75
☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.	$500	$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	$
	TOTAL	$128.75

Clerk of Court/ Deputy Clerk: Jeanette W. McBride DCRO Harris 5-9-23

Court Reporter:

Presiding Judge:

Judge Code: RJH

Sentence Date: 4/5/2023 5/9/2023 DMC

SCANNED