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**May 23 2025**

**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA  
In The Supreme Court

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On Petition for Writ of Certiorari to Florence County  
Honorable Thomas A. Russo, Trial Judge  
Honorable George M. McFaddin, Jr., Post-Conviction Relief Judge

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Appellate Case No. 2024-001270

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Justin M. Pringle, #379795,

Petitioner,

v.

State of South Carolina,

Respondent.

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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**PETITIONER'S STATEMENT OF ISSUE ON CERTIORARI**

- I. Did the PCR Court err in finding plea counsel provided effective assistance when counsel failed to conduct a reasonable investigation by not confirming with co-defendant Nelson's attorney whether Nelson would provide a statement based on Nelson's exonerating testimony at the PCR hearing that Petitioner was not present or involved in the murder and that he would have testified on Petitioner's behalf?
  
- II. Did the PCR Court err in finding Petitioner knowingly, intelligently, and voluntarily pled guilty?

**RESPONDENT'S COUNTERSTATEMENT OF ISSUE ON CERTIORARI**

- I. Did the post-conviction relief court properly find that plea counsel was not ineffective for failing to interview Petitioner's co-defendant, Curtis Nelson, where plea counsel testified all three co-defendants implicated Petitioner as the shooter and the plea transcript corroborates her testimony, and where the post-conviction relief court found Nelson's testimony not credible?
  
- II. Did the post-conviction relief court properly find that Petitioner knowingly, intelligently, and voluntarily pleaded guilty, where Petitioner indicated he understood the sentence he was pleading to during his plea and by signed affidavit prior to his plea?

## STATEMENT OF THE CASE

In November 2018, the Florence County Grand Jury indicted Petitioner Justin M. Pringle for Murder, Armed Robbery, Burglary—1<sup>st</sup> Degree, and Criminal Conspiracy (2018-GS-21-2117). Petitioner was represented by Assistant Public Defender Karen Parrott. Assistant Solicitor J. Ryan White prosecuted the case.

On April 12, 2019, Petitioner pleaded guilty under Alford<sup>1</sup> to the lesser-included offense of Voluntary Manslaughter and Armed Robbery before the Honorable Thomas A. Russo. Judge Russo accepted Petitioner's guilty plea and sentenced him as negotiated to concurrent sentences of thirty (30) years for each charge.

Plea Counsel filed a timely Notice of Appeal, along with a statement pursuant to Rule 203(d)(1)(B)(iv), SCACR, with the Court of Appeals on April 16, 2019. The Court of Appeals dismissed the appeal by Order filed on July 31, 2019, for failing to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv), SCACR. The Remittitur was returned on August 16, 2019.

Petitioner filed his post-conviction relief application on October 28, 2019, asserting he was being held in custody unlawfully based on the following reasons:

1. Ineffective assistance of counsel:
  - a. Involuntary guilty plea;
  - b. Failure to investigate; and
  - c. Failure to move to quash the indictment

On August 27, 2020, Petitioner filed an amended application for post-conviction relief, alleging the following additional allegations:

1. Prior to the guilty plea, Applicant's counsel failed to explain the details of the Applicant's guilty plea and sentencing to applicant.
2. Applicant's counsel failed to provide a copy of the state's evidence to the Applicant.
3. Applicant's counsel failed to meet with applicant a sufficient number of times to properly review the evidence.
4. Applicant's counsel failed to ensure that the sentencing sheets were properly

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

- filled out to indicate the status of the charges.
5. Applicant's counsel failed to interview co-defendants Curtis Nelson and Anthony Hudson regarding these charges.
  6. Applicant's counsel failed to interview Amos Cameron or Barbara McGill, who were present during the incident.
  7. Applicant's counsel failed to interview Johnny Cameron, who provided information to law enforcement.<sup>2</sup>
  8. Applicant's counsel failed to interview Sgt. Josie Royal and inmate William Dilmer and Quant Bryant regarding a letter related to co-defendant Curtis Nelson.
  9. Applicant's counsel failed to interview inmate Carl McDowell regarding a letter reported as being from applicant.
  10. Applicant's counsel failed to retain a ballistics expert or a DNA expert to review the evidence in this case.<sup>3</sup>
  11. Applicant's counsel coerced the applicant into entering the guilty plea by stating to the applicant that he could not "win a trial."

An evidentiary hearing was convened before the Honorable George M. McFaddin, Jr., on June 15, 2022, at the Florence County Courthouse. Petitioner was present and represented by Ola A. Johnson, Esquire (PCR Counsel). Senior Assistant Deputy Attorney General D. Russell Barlow, II, represented Respondent. At the hearing, Petitioner proceeded on the claims in his original and amended application.<sup>4</sup>

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<sup>2</sup> Allegation number seven was stricken from the record as it was a mistake. Johnny Cameron was the murdered Victim in this case, so Plea Counsel could not be deficient for not interviewing the decedent. See Plea Tr. pp. 15–16.

<sup>3</sup> As noted *supra fn. 1*, Applicant withdrew allegation number ten.

<sup>4</sup> Applicant indicated he was not proceeding on number ten from the amended application.

## STATEMENT OF THE FACTS

The crime Petitioner was convicted of occurred on Christmas Eve in 2017. Petitioner and four co-defendants loaded up in a vehicle and drove to Johnny Cameron's (Victim) residence in Lake City with the intent to rob Victim. (App. pp. 13–14). When they arrived at Victim's home, two co-defendants remained in the vehicle, while Petitioner and the two other co-defendants went and knocked on Victim's door. (App. p. 14). When Victim answered the door, he and a co-defendant got into a struggle. (App. p. 14). During the struggle, gunshots were fired, and Victim was fatally hit three times. (App. p. 14).

Investigator Tilton with the Florence County Sheriff's Department investigated the case. Investigator Tilton was able to identify and detain three of Petitioner's co-defendants. (App. p. 14). All three co-defendants identified Petitioner as the shooter. (App. p. 14). The co-defendants indicated that all three men who got out of the car at Victim's home were armed with handguns. (App. p. 14). Petitioner was armed with a .40 caliber handgun, and the other two co-defendants were armed with a .380 caliber handgun and a nine-millimeter handgun. (App. p. 14). In this case, the pathologist would have testified that all three shots that killed the Victim were consistent with a .40 caliber handgun. (App. p. 14).

On that Christmas Eve night after Victim was murdered, Petitioner did not return to his mother's home, where he was living at the time. (App. pp. 14–15). Law enforcement began searching for Petitioner but was unable to locate him. (App. Tr. p. 15). Law enforcement went to speak with Petitioner's mother, and she called Petitioner in their presence on speakerphone. (App. Tr. p. 15). In that phone call, Petitioner claimed to be at the beach, informed his mother that he was not returning, and hung up on her. (App. Tr. p. 15). Ultimately, the marshal's task force

located and arrested Petitioner in Ohio, where he was extradited back to South Carolina. (App. Tr. p. 15).

## **STANDARD OF REVIEW**

The standard of review for post-conviction relief depends on the specific issue before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, the appellate courts defer to the post-conviction relief court's factual findings and will uphold them if any probative evidence in the record supports them. Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40. However, pure questions of law will be reviewed *de novo* without deference to the post-conviction relief court. Id. Appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

## ARGUMENT

- I. **The post-conviction relief court properly found that plea counsel was not ineffective for failing to interview Petitioner's co-defendant, Curtis Nelson, where plea counsel testified all three co-defendants implicated Petitioner as the shooter and the plea transcript corroborates her testimony, and where the post-conviction relief court found Nelson's testimony not credible.**

On petition for certiorari, Petitioner argues that the post-conviction relief court erred in finding plea counsel effective, given that counsel failed to confirm with Petitioner's co-defendant, Curtis Nelson's, attorney whether Nelson intended to provide a statement exonerating Petitioner. Petitioner avers that the post-conviction relief court failed to provide a basis for finding Nelson's testimony not credible and neglected to address plea counsel's duty to conduct a reasonable investigation by interviewing Nelson. However, Petitioner conveniently overlooks that the post-conviction relief court found credible plea counsel's testimony that she confirmed the co-defendants were implicating Petitioner as the shooter, based on her discussions with law enforcement and the co-defendants' attorneys, with the plea transcript corroborating plea counsel's account. Additionally, Petitioner claims that Nelson's testimony would have exonerated him, and the significance of that testimony is heightened considering Petitioner pled pursuant to Alford. Again, Petitioner overlooks that there were three other co-defendants who implicated him as the shooter, along with plea counsel referencing a letter in her notes from Charlie McDowell pointing to Petitioner as the shooter. Moreover, Petitioner contends that although he did not raise the argument on post-conviction relief, he is entitled to relief "in the interest of justice" as Nelson's testimony constitutes newly discovered evidence pursuant to S.C. Code Ann. § 17-27-45(C). Petitioner improperly raised this issue on appeal, where it was not preserved. Nonetheless, Nelson's testimony does not qualify as newly discovered evidence warranting a new trial. The

post-conviction relief court rightly determined that Nelson's insufficient testimony was not credible, while finding plea counsel's testimony credible, as it was corroborated by the record and notes within the defense file. Furthermore, Petitioner cannot demonstrate prejudice, as all three co-defendants implicated Petitioner as the shooter, and Nelson's testimony alone does not exonerate Petitioner.

Initially, Respondent would submit that Petitioner's argument that Nelson's testimony constitutes newly discovered evidence pursuant to S.C. Code Ann. § 17-27-45(C) is not preserved for appellate review. Petitioner concedes that the issue was not raised as newly discovered evidence with the post-conviction relief court. As such, the issue was not raised to and ruled upon by the post-conviction relief judge and is not preserved for review by this Court. See Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) ("It is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review."). Further, if Petitioner intended to argue newly discovered evidence at the circuit level, a post-trial motion to alter or amend the final order should have been filed in order to preserve that issue for review. As no such motion was filed, this issue is not preserved for review by this Court. See Noisette v. Ismail, 304 S.C. 56, 58, 403 S.E.2d 122, 124 (1991) (holding that where a trial court does not explicitly rule on an argument raised, and appellant makes no Rule 59(e), SCRPC motion to obtain a ruling, the appellate court may not address the issue). Regardless, this issue does not succeed on the merits.

In a post-conviction relief action, the Petitioner bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is insufficient to warrant granting relief. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine

whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. Strickland v. Washington, 466 U.S. 668, 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 due to 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 that 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 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 the circumstances surrounding the plea, would have pleaded guilty—**not** whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999) (emphasis added).

As it concerns counsel's duty to investigate, at a minimum, counsel must interview potential witnesses and make independent investigations regarding the facts and circumstances of the case. Ard. v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007). Counsel's performance is not deficient if he decided not to present a witness as a tactical and strategic move, nor if the witness was unlikely to appear or present testimony that could have made a difference at trial. See, e.g., Smith v. State, 404 S.C. 493, 502, 745 S.E.2d 378, 383 (2012) (finding that counsel was not deemed ineffective when petitioner failed to introduce any evidence that established prejudice to the petitioner).

Here, the post-conviction relief court properly found that plea counsel was not ineffective for failing to ascertain whether Nelson would provide a statement exonerating Petitioner, finding that plea counsel credibly testified that she contacted law enforcement and the co-defendants' attorneys to establish the co-defendants' positions. At the evidentiary hearing, plea counsel testified that based on her defense notes, she contacted law enforcement, and they indicated that

Petitioner's co-defendants pointed to Petitioner as the shooter and were cooperating. (App. pp. 81–82). Additionally, plea counsel testified she attempted to contact Nelson's attorney; however, his attorney failed to contact plea counsel. (App. pp. 80–81). Further, plea counsel testified that as Nelson was represented, she could not contact him directly. (App. p. 81). Notably, during the State's recitation of the facts at Petitioner's plea hearing, the State indicated that Petitioner's co-defendants were apprehended by Investigator Tilton, and each pointed to Petitioner as the shooter. (App. p. 14). It is evident based on plea counsel's testimony presented to the post-conviction relief court and the plea transcript, that plea counsel thoroughly investigated Petitioner's case, ascertaining the co-defendant's positions prior to Petitioner's plea, and obtaining a favorable Alford plea for Petitioner where he was pointed to as the shooter by each co-defendant. Suber v. State, 371 S.C. 554, 640 S.E.2d 884 (2007) ("In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing.").

Petitioner contends that the post-conviction relief court provided no basis for finding Nelson's testimony not credible. Petitioner's argument is misguided, as it is the duty of the post-conviction relief court to assess the credibility of the witnesses. 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."). Nelson testified that Petitioner had no involvement in the murder, and he would have testified to the same if he had been given the chance. This not only contradicts plea counsel's testimony concerning her investigations into Petitioner's case, but

also contradicts the State's representation that all the co-defendants, including Nelson, implicated Petitioner and pointed to him as the gunman. Further, it contradicts plea counsel's testimony that Petitioner informed her he was present at the burglary but was not the shooter. (App. p. 76).

Nelson failed to provide why his testimony concerning Petitioner's involvement was different now than at the time of Petitioner's plea, or why the State's understanding concerning his position as to Petitioner's involvement was mistaken. Additionally, Nelson failed to provide why he did not advise his attorney or the State of his critical exonerating testimony concerning Petitioner. Nelson merely testified that plea counsel failed to contact him for his testimony. (App. p. 71). But this was not the only medium through which Nelson could have made his exculpatory testimony known, and there is no indication in the record, other than Nelson's brief testimony at the evidentiary hearing, that any of Petitioner's co-defendants did not implicate him in the murder. In comparison, plea counsel provided detailed testimony of her discussions with Petitioner prior to his plea, his representations to her of his involvement, and the extent of her investigations, most of which are corroborated by the plea transcript.

Further, plea counsel clearly fulfilled her duty to investigate Petitioner's case when she contacted law enforcement and all of the co-defendants' attorneys to ascertain the co-defendant's positions. At minimum, counsel has a duty to interview potential witnesses and conduct an independent investigation. See Ard, 372 S.C. at 597. In Petitioner's case, plea counsel contacted multiple sources to obtain the necessary information to aid Petitioner in his decision whether to plead or proceed to trial. Petitioner contends that plea counsel's decision not to follow up with Nelson's attorney was objectively unreasonable—without more. However, as plea counsel testified, Nelson's attorney was not responsive to her attempt to contact him, and she could not contact Nelson directly. See Ard, 372 S.C. at 597 ("Without a doubt, "[a] criminal defense attorney

has a duty to investigate, but this duty is limited to reasonable investigation.""); See also Rule 4.1, RPC, Rule 407, SCACR.; see also In re Chan, 271 F. Supp. 2d 539 (S.D.N.Y. 2003) (Criminal defense attorney's misconduct, in communicating with represented co-defendant, warranted censure, despite attorney's contentions that he was motivated solely by desire to represent his client zealously, that client, not attorney, initiated contact, and that co-defendant had expressed dissatisfaction with his attorney.). Based on this, there is probative evidence in the record to support the post-conviction relief court's findings that Nelson's testimony was not credible and plea counsel's was, and to support the court's finding that plea counsel was effective in her investigation of Petitioner's case. See Buckson, Smalls supra.

Regarding the prejudice prong, prejudice will generally be found if the testimony was significant and favorable enough to the Applicant so that the trial proceedings' results may have been different because of the testimony. See, e.g., Lounds v. State, 380 S.C. 454, 670 S.E.2d 646 (2008) (finding that counsel was deficient by failing to call witnesses, for no other reason than lack of preparation, that may have corroborated or bolstered defendant's credibility so that the findings at trial could have been favorable to the defendant); Thomas v. State, 308 S.C. 123, 417 S.E.2d 531 (1992) (finding that uncalled witness' testimony would have cast doubt on the sole witness' identification of the petitioner and, thus, would have made a difference at trial).

Petitioner argued that he suffered prejudice as the significance of Petitioner's exonerating statement was enhanced by the fact that he pleaded pursuant to Alford. However, Petitioner merely provided brief testimony from *one* of his co-defendants, disregarding the inculpatory statements of his three other co-defendants. Nelson's seemingly exonerating statement bears no significance when the inculpatory statements of the rest of the co-defendants are considered alongside the lack of recantation presented by Petitioner at the evidentiary hearing. Additionally, the record and plea

counsel's testimony provide that Petitioner admitted to being present at the burglary. Plea counsel testified that the State advised her that they would be pursuing hand of one hand of all, and that it was their theory that Petitioner was the shooter. (App. p. 78). Therefore, Petitioner failed to convince the post-conviction relief court that it would have been reasonable for him to reject the favorable plea offered under the circumstances. See Padilla, supra (An applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances.).

Lastly, Petitioner improperly asserted he should be granted a new trial in the interest of justice based on the newly discovered evidence of Nelson's statement. First, as stated initially, Petitioner failed to raise this issue before the post-conviction relief court, and therefore, it is not preserved for this Court's review. B & A Dev., Inc. v. Georgetown Cnty., 372 S.C. 261, 641 S.E.2d 888 (2007) (An issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review.); Bean v. S.C. Cent. R. Co., 392 S.C. 532, 709 S.E.2d 99 (Ct. App. 2011) (Railroad employee's argument was not preserved for appellate review where circuit court did not rule on employee's discovery argument in its order granting summary judgment and employee did not file a motion to alter or amend judgment asking the circuit court to rule on the issue of insufficient discovery.).

However, assuming *arguendo* that the issue was preserved, Nelson's testimony is not "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." Jamison v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 1040 (2014). The Court in Jamison noted that

In so holding, we caution that it will be the rare case indeed where the interests of justice will require that a knowing and voluntary guilty plea be vacated through post-conviction relief on the basis of newly discovered evidence, for an unconditional guilty plea involving an admission of guilt and a waiver of trial and

all defenses will generally preclude any subsequent challenge to factual guilt. Cf. Reise, 192 P.3d at 955 (finding a defendant may withdraw his guilty plea on the basis of newly discovered evidence only when necessary to correct manifest injustice). Such a determination will not be resolved in a formulaic manner, but will necessarily be context dependent.

Id. As noted *supra*, there were various codefendants, all of whom pointed the finger at Petitioner as the shooter and implicated him. (App. p. 14). Further, Petitioner implicated himself, advising plea counsel he was present at the burglary. Id. at 471 ("Although Respondent might have pled differently had he known Bellamy could provide eyewitness testimony, Respondent is bound by his plea and conviction unless he can demonstrate the interest of justice requires that they be vacated. To grant relief under these circumstances would undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea.").

Based on the foregoing, Petitioner failed to show that the post-conviction relief court erred in finding that plea counsel was effective in investigating whether Nelson would provide an exonerating statement. There was ample evidence of probative value before the post-conviction relief court to support the post-conviction relief court's finding that Nelson's testimony was not credible, especially where Petitioner failed to provide testimony from the remaining co-defendants exonerating Petitioner. Further, the issue of whether Nelson's testimony constituted newly discovered evidence entitling him to a new trial in the interest of justice is not preserved for this Court's review. Therefore, this Court should deny certiorari and uphold the findings of the post-conviction relief court.

**II. The post-conviction relief court properly found that Petitioner knowingly, intelligently, and voluntarily pleaded guilty, where Petitioner indicated he understood the sentence he was pleading to during his plea and by signed affidavit prior to his plea.**

Additionally, Petitioner argued on appeal that the post-conviction relief court improperly determined that Petitioner knowingly, intelligently, and voluntarily pleaded guilty. Specifically, Petitioner avers that plea counsel "failed to sufficiently explain the issues related to the sentencing sheets based on the lesser included offense of voluntary manslaughter." (PWC p. 17). Also, Petitioner argued he was prejudiced as he was confused and did not sufficiently understand his plea. However, Petitioner's contention rests on a procedural oversight, overlooking the abundant qualified advice Petitioner received prior to his plea and during his plea concerning his negotiated sentence. Specifically, the plea affidavit Petitioner signed, presented by plea counsel at the evidentiary hearing, signified that he understood what he was pleading to, and Petitioner's colloquy with the plea court during his plea further supports Petitioner understood the proceedings. Therefore, the post-conviction relief court properly found that Petitioner pled knowingly, intelligently, and voluntarily, and this Court should deny certiorari.

The voluntariness of a guilty plea "is not determined by an examination of the specific inquiry made by the sentencing judge alone but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997); *cf.* Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that where the transcript of the guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain,

granting PCR was inappropriate notwithstanding applicant's claim his lawyer misadvised him).

The plea transcript in Petitioner's case reflects that the State advised the plea court, in the presence of Petitioner, that Petitioner was initially indicted for murder and armed robbery, and was pleading to the lesser included offense of voluntary manslaughter. (App. p. 3). Petitioner indicated to the plea court that he understood what he was pleading to. (App. pp. 4–10). At the evidentiary hearing, plea counsel testified that the unchecked boxes on Petitioner's sentencing sheet did not prejudice him, as she discussed with Petitioner that voluntary manslaughter was the lesser-included and the armed robbery was as indicted. (App. p. 80). Petitioner merely testified he was confused about whether his charges were indicted or if he waived presentment, as it was unmarked on his sentencing sheets. (App. p. 19).

Petitioner presented no valid reason to the post-conviction relief court why he should have been able to depart from the statements made during his guilty plea as provided. See Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975), overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir. 1985) (finding that the accuracy and truth of an accused's statements at a guilty plea proceeding are "conclusively" established unless he makes some reasonable allegation why this should not be so). Therefore, this Court should uphold the post-conviction relief court's findings and deny certiorari.

**[SPACE INTENTIONALLY LEFT BLANK]**

**CONCLUSION**

For the reasons stated above, this Court should deny the Petition for Writ of Certiorari and affirm the post-conviction relief court's denial of relief. Should this Court grant certiorari, Respondent requests permission under the rules to brief the issues discussed above fully.


Respectfully submitted,

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