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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable David P. Caraker, Jr., Circuit Court Judge

Case No. 2022-CP-32-00833

Davanta T. Johnson, 386285, ... Petitioner,

v.

State of South Carolina, ... Respondent.

NOTICE OF APPEAL

Applicant, Davanta T. Johnson, appeals the order of the Honorable David P. Caraker, Jr., filed on or about May 20, 2025, and received by the undersigned on May 29, 2025.

May 29, 2025

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FILED

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON 2025 MAY 27 PM 3:40	)	IN THE COURT OF COMMON PLEAS FOR THE ELEVENTH JUDICIAL CIRCUIT
Davanta T. Johnson, #386285 LISA M. COMER CLERK OF COURT LEXINGTON SC	)	CASE NO. 2022–CP–32–00833
Applicant,	)	
v.	)	**ORDER OF DISMISSAL WITH PREJUDICE**
State of South Carolina,	)	
Respondent.	)	

Presiding Judge:	Hon. David P. Caraker
Applicant's Attorney:	Ashley A. McMahan, Esq.
Respondent's Attorney:	D. Russell Barlow, II., Esq.
Plea Counsel:	Andrew B. Farley, Esq.
Prosecutor:	John B. Conrad, Esq.
Date of Hearing:	August 28, 2024
Court Reporter:	Mary Ragsdale

This matter comes before the Court by way of Davanta T. Johnson's (A/K/A "Cheddar") (Applicant) application for post-conviction relief (PCR) filed on March 10, 2022. Respondent, the State of South Carolina, filed its Return and Motion for a More Definite Statement on July 15, 2022. Applicant, through appointed counsel Ashley A. McMahan, Esquire (PCR Counsel), subsequently filed an Amended application for PCR on August 23, 2024.

An evidentiary hearing convened on August 28, 2024, at the Lexington County Courthouse before the Honorable David P. Caraker. Applicant was present and represented by PCR Counsel. Senior Assistant Deputy Attorney General D. Russell Barlow, II, of the South Carolina Attorney General's Office, represented Respondent. At the hearing, Applicant proceeded on the claims in his original and amended applications. Applicant testified on his own behalf at the evidentiary

hearing. Respondent presented the testimony of Andrew B. Farley, Esquire (Plea Counsel), and Assistant Attorney General John B. Conrad (AAG Conrad).

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice.

PROCEDURAL HISTORY

The records before this Court establish that Applicant is presently confined at the South Carolina Department of Corrections pursuant to the Lexington County Clerk of Court orders of commitment. On February 15, 2018, the State Grand Jury of South Carolina indicted Applicant by superseding indictment for two (2) counts of Attempted Murder (2018-GS-47-00001 Ct. 1 & 3) and two (2) counts of Discharging a Firearm into a Dwelling (2018-GS-48-00018 Ct. 2 & 4). Thereafter, on April 19, 2018, the State Grand Jury of South Carolina indicted Applicant by superseding indictment for two (2) counts of Conspiracy (2018-GS-47-00027 Ct. 1 & 14), two (2) counts of Second-Degree Burglary (2018-GS-47-00027 Ct. 2 & 4), Petit Larceny (2018-GS-47-00027 Ct. 3), two counts of Grand Larceny (2018-GS-47-00027 Ct. 5 & 16), six (6) counts of Breaking into a Motor Vehicle (2018-GS-47-0027 Ct. 6, 7, 8, 9, 10, 15), Resisting Arrest with a Deadly Weapon (2018-GS-47-00027 Ct. 18), Failure to Stop for a Blue Light (2018-GS-47-00027 Ct. 19), Possession of a Stolen Vehicle (2018-GS-47-00027 Ct. 20), Conspiracy (2018-GS-47-00028 Ct. 1), Murder (2018-GS-47-00028 Ct. 2), two (2) counts of Attempted Murder (2018-GS-47-00028 Ct. 3 & 4), and Discharging a Firearm into a Dwelling (2018-GS-47-00028 Ct. 5). All indictments stemmed from Applicant's participation in illegal gang activity with a particular emphasis on a two-week crime spree in Lexington County and surrounding counties.

On October 21, 2021, Applicant, alongside counsel, appeared before the Honorable DeAndra G. Benjamin[1] via Judge Benjamin's virtual courtroom on the WebEx platform.[2] Applicant was represented by Plea Counsel, and AAG Conrad prosecuted the case. Applicant entered guilty pleas as to nine (9) charges: Voluntary Manslaughter as the lesser-included offense of Murder (2018-GS-47-028 Ct. 2), Discharging a Firearm into a Dwelling (2018-GS-47-00018 Ct. 2), First-Degree Assault and Battery as a lesser-included offense of Attempted Murder (2018-GS-47-00018 Ct. 1), Possession of a Stolen Vehicle (2018-GS-47-00027 Ct. 20), Conspiracy (2018-GS-47-00027 Ct. 14), Breaking into a Motor Vehicle (2018-GS-47-00027 Ct. 15), Failure to Stop for a Blue Light (2018-GS-47-00027 Ct. 19), Resisting Arrest with a Deadly Weapon (2018-GS-47-00027 Ct. 18) and Grand Larceny (2018-GS-47-00027 Ct. 16), as part of a global plea agreement entered into between Applicant and the State for the disposition of all pending State Grand Jury charges for an aggregate fifteen (15) year term of imprisonment and the dismissal of all remaining charges[3]. After a colloquy wherein Judge Benjamin ascertained Applicant was freely, knowingly, and intelligently entering his pleas, Judge Benjamin accepted Applicant's pleas and sentenced him to an aggregate fifteen (15) year term of imprisonment pursuant to the plea agreement[4].

Applicant did not appeal his convictions and sentences.

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[1] Since the hearing was on WebEx in a virtual courtroom, Judge Benjamin was in Richland County, and Applicant was in Lexington County. Judge Benjamin stated that her jurisdiction at that time was for Richland County. Applicant waived his right to venue in Lexington County so that he could be heard in Richland County via WebEx. (Plea Tr. p. 23, ll. 11 – 25).

[2] During the plea hearing, Applicant affirmed he wished to proceed forward with this plea virtually and waived his right to appear in person. (Plea Tr. p. 10, ll. 1 - 14).

[3] Applicant's plea deal was a global plea that was constructed between Plea Counsel and the South Carolina Attorney General's Office. It covered gang-related crimes across multiple counties in the state, including Richland County and Lexington County.

[4] Applicant was given 2,014 days of credit for time served. He has been incarcerated since his arrest on April 8, 2016. (Plea Tr. p. 32, ll. 23 – pp. 34, ll. 25).

FACTS GIVING RISE TO THE CONVICTION

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

> Your Honor, this case was a state grand jury investigation that went by the name of taint. And this involved a series of crimes over about a two-week span that started in Lexington County and more or less culminated in the death of an individual by the name of Daryl Goodwin, which actually occurred in Richland County. And I'll walk through it step-by-step to try to give the large overview of what occurred here. Your Honor, the -- and this involved a number of co-defendants who all participated in these series of crimes. Most of them, I believe including Mr. Johnson here, have been identified as blood gang members. And all of them more or less spent their time or residing or came from the Cayce into West Columbia area of Lexington County. This sequence started back on March 30th of 2018, and there was -- and this is conduct the defendant is not going to be pleading guilty and the State has agreed to dismiss, but I think for the Court's information I need to give at least an overview of what happened. There was a couple of burglaries of some auto dealerships out in Lexington County near Santee, South Carolina. And what the individuals who broke into those car dealerships -- they broke in, they took keys and then drove several cars out of the lot. The State -- the defendant was charged in those burglaries, along with numerous accompanying crimes that have been dismissed. The State's agreed to dismiss those, so he's not pleading guilty to those. I believe he pretty adamantly was assisting with his defense attorney that he did not participate in the burglaries, at least. But, there are several automobiles stolen out of those car dealerships. And those automobiles were used in several other crimes which are not going forward today. But, essentially, were all recovered by law enforcement across the area as they were abandoned. This led to, on the morning of April 8th of 2018, I believe the defendant and his co-defendants all needed or wanted a car to continue wherever they had planned to go. So at about 5:30 in the morning at 2 Paisley Lane, which is I believe up in the St. Andrews area, but lives on the West End County side of the line, there was a red Avalanche that was stolen. I believe the owner had started it early to warm it up and left it in their driveway. And then several individuals jumped in it and took off. That, that incident is what count 14 of indictment 47-27 for conspiracy; count 15, the auto breaking; and count 16, a grand larceny over 10,000 are all related to it. The red Avalanche was next spotted, I believe, just a couple hours or just maybe an hour later up in Newberry County where a -- and this is conduct which the defendant is not pleading guilty to today, but there was a white Impala stolen out of a gas station, Chevy Impala. And on video there was a red Avalanche, almost certainly the one stolen from Lexington, was seen where a couple of individuals got out of the red Avalanche and went over to the white Impala. So that all occurred the morning of April 8th of 2016. By about 8:30 in the morning, now we're back down in Lexington County, there was an individual by the name of Edie Palmer, who admitted that he was a member of the Crip gang. And this was over on Double Branch Road in West Columbia. Mr.

Palmer was sitting at a bus stop, I guess waiting to go to school that morning, when several shots rang out. And none of them hit Mr. Palmer, but he took off and a couple, at least one or two of those shots that were fired after he ran, were -- impacted the building or house, excuse me, at 1608 Double Branch Road. There were witnesses, although no witness could identify who was inside the car. The witnesses were identified, and I believe Mr. Palmer, shots came from a white Chevy Impala. Now, Mr. Palmer, was -- I would describe his cooperation as minimal at the most and I don't think he wanted to have anything to do with this plea today, but that's the -- was originally charged with attempted murder. It's now a charge -- and also the discharge of a firearm. As the case was developing, and I'll talk about the next facts in a second, several of the co-defendants of Mr. Johnson were corroborated. And at least two of them identified Mr. Davanta Johnson as the driver of the white Impala during the shooting incident at Double Branch Road. And that's count -- indictment 2007 -- 2018-47-18, count two and count one, and an assault and battery first, which was reduced, and discharging into a dwelling. So those -- that's, that's the events all the way up through the morning of April 8th of 2016. And all those events occurred in Lexington County. The next event was indictment number 2018-47-48, count two originally charged with murder. He's pleading to a voluntary manslaughter. And this incident occurred later that night on the same day, April 8th, 2016, around 8:30 p.m. This occurred at 921 Marlboro Street, which is in Richland County. And on that evening, Mr. Daryl Goodwin, who is actually also invalidated as a blood gang member, which is the same gang as the co-defendants in this case, was outside the apartments. And there were several other people ---

. . . .

Okay, Your Honor. I'll review that incident to the voluntary manslaughter. So that occurred later in the evening after the West End county shooting of Double Branch, specifically about 8:30 in the evening on April 8th of 2016. That was at 921 Marlboro Street, which is an apartment complex. Mr. Daryl Goodwin was outside with some other individuals and two cars drove by and subsequently multiple shots rang out from those cars. Our witnesses did identify the cars as a red Chevy Avalanche and a white Chevy Impala. And both cars fled after the shots rang out. Mr. Daryl Goodwin was the victim in the case. After the cars had fled, he was discovered with a gunshot wound to his head, and he would shortly pass away. I think he was taken to the hospital and passed away there. So that's the voluntary manslaughter. And I'm gonna go ahead and cover the last incident here, Your Honor, which occurred in the early morning hours, just a couple hours, just a few hours after the Marlboro Street shooting. And that was at approximately 12:30 in the morning on April 9th of 2016. After the shooting in Columbia, there was a BOLO put out for that red Avalanche and white Chevy Impala that, you know, multiple agencies were keeping an eye out for it. Cayce police in Lexington County were patrolling through the Cayce Aderonza Apartments and they spotted a red Avalanche with a -- a red Chevy Avalanche, which fit the description of the Marlboro Street Shooting. They approached the vehicle. It was unoccupied. And discovered after running it that it was stolen. Based off of its, you know, at that

point what they considered a likely connection with the shooting in Columbia, they actually backed off and set up some surveillance to see if anybody came out to retrieve the vehicle or to see if maybe that white Impala might show up. In fact, it wasn't too long when a white Chevy Impala did go into the apartment complex while it was under surveillance from Cayce police. Based off the totality of the circumstances and the matching of the description of the shooting, they attempted to stop the Impala. The Impala then attempted to flea. In the process of the flea, it actually impacted one of the police cars, which is where the resisting arrest with a deadly weapon results from. There was a short chase. The car wrecked. I believe there was a foot passenger who was able to escape. However, Mr. Davanta Johnson was arrested and he was the driver of the white Impala when it wrecked. So that would cover the failing to stop for a blue light and a possession of a stolen motor vehicle, 2 to 10,000. And investigation did reveal that that white Impala was the same Impala that had been stolen early those morning hours up in Newberry County. Your Honor, from there the investigation continued. In the back seat of the Impala there was a .22 caliber pistol recovered. As it turns out, shell casings from that pistol matched both Double Branch, shell casings found at the double branch location and at the Marlboro location in Richland County. From there, the various investigations identified several co-defendants who were arrested, who then agreed to cooperate. And at that point there are co-defendants who identified Mr. Johnson, Davanta Johnson, as the driver of the white Impala through most of the night, including the chase at the end and the wreck. He identified him as the driver during the drive-by shooting at Marlboro Street and the drive-by shooting at the Double Branch Road. So based off that, Mr. Davanta Johnson was charged with all the applicable crimes and is pleading guilty to, in addition to the numerous ones that the State is going to dismiss as a result of this plea. And subsequently, Your Honor, and because of the multi-county nature of this crime spree, there was a state grand jury case initiated that was called taint, I stated, and then took evidence for all these incidents and ultimately issued numerous indictments for every defendant and his co-defendants. Your Honor, the -- what the State relays is the fatal shooter in the Marlboro drive-by was a gentleman with the name of Saquan Sindell. He pled guilty in front of Judge Keesley back in December, I believe, of last year. He received a 25-year sentence. The information that the State has to present at trial, if necessary, was that Mr. Sindell was a backseat passenger to the vehicle driven by this defendant, Davanta Johnson. And, excuse me. And also as the driver of the white Impala during the drive-by at Double Branch Road early the next -- early hours.

(Plea Tr. pp. 12–21).

CURRENT ACTION BEFORE THE COURT

Applicant is currently incarcerated in the South Carolina Department of Corrections (SCDC pursuant to orders of the Lexington County Clerk of Court. In his original application for

post-conviction relief filed March 10, 2022, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
   a. "Counsel ineffective for failing to disclose and explain discovery evidence to [Applicant]".
   b. "Counsel ineffective for failing to prepare for [Applicant's] case by not investigating the evidence, facts, and the circumstances of the case".
   c. "Counsel failed to give [Applicant] discovery material".

On August 23, 2024, Applicant, through appointed counsel Ashley A. McMahan, Esquire, filed an Amended Application to incorporate the allegations in the initial application and to include the following new allegations:

2. Ineffective Assistance of Counsel
   a. "The case was on the trial docket, but Applicant felt that Mr. Farley was not prepared to go to trial. Applicant felt he had no choice but to plead guilty even though the Applicant wanted to go to trial."
   b. "Mr. Farley never discussed possible defenses that could have been raised at trial."

As requested relief, Applicant states he is seeking "sentences vacated to a lower plea or conviction and sentences dismiss [sic]".

Before this Court are the State Grand Jury Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's plea hearing transcript, and the records of the PCR action.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act[5] ("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;

[5] S.C. Code Ann. 17-27-10 to -160 *et seq.*

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 other conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint;
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 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. Strickland v. Washington, 466 U.S. 668 at 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687-88; Cherry v. State, 300 S.C. 115, 117—18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that

"[without proof of both deficient performance and prejudice to the defense... it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

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

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

This inquiry "focuses on a defendant's decisionmaking" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. 357, 367 (2017). However, an applicant must convince the

court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—**not** whether counsel would have still advised him or him to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999) (emphasis added).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard evidence presented at the evidentiary hearing and observed 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, he rendered adequate assistance and exercised reasonable professional judgment in his representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

This Court makes the following findings from the record: 1. Plea Counsel confirmed with the plea court that he had reviewed with Applicant the indictments, the possible punishments, and his constitutional rights (Plea Tr. pp. 7–8); 2. Plea Counsel affirmed that he had met with Applicant on multiple occasions and reviewed his case in detail while working closely with the State to reach a plea deal (Plea Tr. p. 8); 3. Plea Counsel agreed with Applicant's decision to plead guilty (Plea Tr. p. 8); 4. Applicant affirmed that he was present virtually to plead to nine charges and was apprised of each charge (Plea Tr. p. 9); 5. Applicant waived his right to appear in person (PCR Tr. p. 10); 6. Applicant indicated he had not consumed any alcohol or ingested any medication in the last twenty-four (24) hours (PCR Tr. p. 11); 7. Applicant agreed with the facts as read into the record by the Assistant Solicitor (Plea Tr. pp. 11–23); 8. Applicant waived venue (Plea Tr. p. 23);

9. Applicant affirmed that he knew the charges and maximum time he could receive by pleading guilty (Plea Tr. pp. 23–24); 10. Applicant affirmed that he was aware there were two (2) reductions in charges, and the negotiated sentence was fifteen (15) years (Plea Tr. pp. 24–25); 11. Applicant affirmed he was aware of the classification of the charges and his sentence would be an 85% sentence (Plea Tr. pp. 26–27); 12. Applicant understood his right to a jury trial and that he waived those rights by pleading guilty (Plea Tr. pp. 27–28); 13. Applicant affirmed he was satisfied with Plea Counsel's representation (Plea Tr. p. 28); 14. Applicant affirmed that he had enough time to meet with Plea Counsel (Plea Tr. p. 28); 15. Applicant affirmed that he had asked Plea Counsel all the questions he had and Plea Counsel had reviewed everything with him (Plea Tr. p. 28)[6]; 16. Applicant affirmed that no one was forcing him to plead guilty, and his decision to plead guilty was voluntary (Plea Tr. p. 30); 17. Applicant's plea was qualified as freely, knowingly, and voluntarily entered into (Plea Tr. p. 31).

ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF PLEA COUNSEL

Allegation 1(a): **"Counsel ineffective for failing to disclose and explain discovery evidence to [Applicant]."**
Allegation 1(c): **"Counsel failed to give [Applicant] discovery material."**

Applicant alleges that Plea Counsel's representation was constitutionally ineffective for failing to disclose and explain discovery to Applicant. This Court finds this allegation to be without merit.

An applicant who alleges his or her defense attorney was ineffective in failing to spend more time preparing or providing a copy of the discovery materials must demonstrate prejudice by showing what evidence could have been discovered or what other defenses could have been

[6] Applicant did have a question on violent vs non-violent and the plea court allowed Plea Counsel to counsel his client. (PCR Tr. p. 28).

pursued. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by Smalls, 422 S.C. 174, 810 S.E.2d 836. Furthermore, an applicant must also show how the new evidence or defenses would have resulted in a different outcome. Id. (citing David 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)).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Plea Counsel never brought any evidence to review with him, and he never saw or read anything in his discovery. (PCR Tr. pp. 9–10). Applicant testified that he never brought the discovery to him. (PCR Tr. p. 10). Applicant testified that Barney Giese, Esquire (Giese), represented him from 2018 to 2020, and Plea Counsel was appointed in August or September of 2021. (PCR Tr. p. 11). Applicant testified that he had no complaints about Giese. (PCR Tr. p. 11).

On cross-examination, Applicant testified that when Giese represented him, he reviewed the discovery. (PCR Tr. p. 14). Applicant testified that Plea Counsel did not receive any new discovery that Giese had already reviewed with him. (PCR Tr. p. 14). Applicant testified that he reviewed his discovery with Giese and not Plea Counsel. (PCR Tr. p. 14).

On direct examination of AAG Conrad, the following occurred:

Q. Mr. Conrad, thank you for that. Let me ask you this question briefly, how does -- the state grand jury being different, how does discovery work in state grand jury?

A. And -- and that's a big difference between the way this grand jury operates in -- in general criminal practice in the state. In every grand jury case we present to the assigned grand jury judge a protective order. And to my

> knowledge, you know, there's been a couple cases where there's been some objections from some defense counsel that have been kind of negotiated through. But to my knowledge, every single case has always had a protective order. And generally, that protective order is going to prevent the defense attorney from giving any physical copies of any discovery to a Defendant, whether that Defendant's in the jail or that Defendant's on bond. And what the defense attorney is -- is to -- when they discuss the case with their client and go through discovery, if their -- if the client's on bond, the expectation is – is the client would come to the defense attorney's office and review discovery. And if the client's in jail, the expectation would be that the -- the attorney takes the discovery up to jail to -- and reviews it with the -- the Defendant. But however, the attorney would, in both cases, would be prevented from allowing the Defendant to leave with a copy of that discovery. In -- in -- in our cases, and -- and, you know, particular narcotic cases and our gang cases we -- we have a lot of folks who cooperate and it is our intention to protect those folks. And that's one mechanism we -- we do. And you know there have been problems in the past in other cases where discovery gets out there and it's known that someone's cooperated and, you know, they become targets of -- of – of gangs, of narcotics organizations. It's happened before, and that's the reason we do that. You know, one other thing I'll mention is -- is that, you know, that's for the -- just the general discovery, and that's reports, videos all that stuff. That is turned directly over to defense attorney. One exception to that is transcripts of state grand jury testimony, we do not turn over copy, and that's because of the Supreme Court restriction on party sharing transcripts in all cases. What we do is when the defense attorney, it – it -- the defense attorney can purchase a set of transcripts if they so wish. But if they don't do that, what we allow them to do is come up to our office and -- and -- and review our copy of them. But because the Supreme Court restriction, we never send out copies of transcripts from testimony of grand jury. That would be one other difference from normal kind of criminal practice in the state, so –

(PCR Tr. pp. 27–29).

On direct examination, Plea Counsel testified that he initially met with Applicant regarding these charges on September 14, 2021. Plea Counsel testified that Applicant, over a phone call, indicated that he had already reviewed the discovery made available to him with prior counsel, Giese; however, portions of the discovery were under a protective order. (PCR Tr. p. 37). Plea Counsel testified that he formally requested discovery pertaining to Applicant's case on July 21, 2021, and subsequently received a portion of the requested materials. Plea Counsel testified that

he made arrangements to review the complete discovery at the Attorney General's Office on October 6, 2021. Plea Counsel testified that he meticulously recorded notes on the transcripts within the discovery and convened with Applicant the following day to deliberate on the details of these transcripts as they related to his co-defendants and the strategic aspects of his case. (PCR Tr. pp. 37–38).

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*. Plea Counsel **credibly** testified that he properly and adequately disclosed and reviewed the available discovery with Applicant. Notably, Applicant testified that there was no new discovery provided to Plea Counsel that had not already been reviewed with his prior counsel. (PCR Tr. p. 14). Additionally, discovery restrictions in state grand jury cases prevent defense counsel from providing their clients with copies of discovery materials, which also applied to the Applicant's case. Thus, Applicant has failed to meet his burden of proving Plea Counsel's representation was constitutionally deficient or any prejudice from that alleged deficiency.

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

Based on the foregoing, this Court finds the Applicant has failed to present sufficient

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

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

Allegation 1(b):	**"Counsel ineffective for failing to prepare for [Applicant]'s case by not investigating the evidence, facts, and the circumstances of the case."**
Allegation 2(b):	**"Mr. Farley never discussed possible defenses that could have been raised at trial."**

Applicant alleges that Plea Counsel's representation was constitutionally ineffective for failing to prepare Applicant's case by not investigating the evidence, facts, and the circumstances of the case. Additionally, Applicant contends Plea Counsel failed to discuss possible defenses that could have been raised at trial. This Court finds these allegations to be without merit.

"[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 690-91. "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Id. at 691. "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Id.

"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)). 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)).

PCR Evidentiary Hearing

On cross-examination, the following colloquy occurred with Applicant:

Q. And what exactly, there's an allegation of failure to investigate. What did he fail to investigate?
A. (Inaudible).
Q. Such as?
A. (Inaudible) he – he – he ain't never get no prior problem investigated. So I – so I can go over the DNA and all that stuff like that. Then only thing – thing he was really telling me that he would rush – rush me and take a plea. I told him – I told him I'll go to trial, but he kept saying his co-defendants was going to roll him, was going testify on. So I was kind of nervous, so went and took the plea.

(PCR Tr. pp. 14, ll. 22 – pp. 15, ll. 8).

On cross-examination, Applicant testified that Plea Counsel "ain't never get no prior problem investigated." (PCR Tr. p. 15). Applicant testified that the defenses in his case were "failed to not let [Applicant] see the motion. Forced [Applicant] to take the plea. Stuff like that." (PCR Tr. p. 17). Applicant testified that no DNA was brought to his attention; he was unaware of what type of gun was used or what kind of motor. (PCR Tr. p. 17).

On direct examination, Plea Counsel testified that he met with Applicant on September 14, 2021, and discussed the discovery that Giese had provided him prior to his taking over the case. (PCR Tr. p. 37). Plea Counsel testified that they discussed the facts of the case and some of the problematic aspects of the case, but Applicant had not made any decisions at that time regarding a plea or trial. (PCR Tr. pp. 37–38). Plea Counsel testified that he reviewed the State Grand Jury transcripts on October 6th, took notes, and met with Applicant on October 7th to discuss his findings. (PCR Tr. p. 38). Plea Counsel testified that he informed Applicant that his co-defendants would be testifying against him at trial and what they could potentially testify to that would implicate Applicant. (PCR Tr. p. 38).

Plea Counsel testified that based on the evidence he reviewed, he believed Applicant made a wise decision because the plea offer was in his best interest. (PCR Tr. pp. 38–39). Plea Counsel testified that he was prepared to take the case to trial had Applicant wanted to and he stood by his representation of Applicant. (PCR Tr. pp. 39–40).

Findings

This Court finds Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in his case." Ard v. Catoe, *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 the combination of the record and Plea Counsel's **credible** testimony establishes that Plea Counsel adequately prepared for Applicant's case by investigating the evidence, facts, and circumstances of Applicant's case.

While the Applicant has claimed that Plea Counsel neglected to investigate DNA evidence, he has not demonstrated how such evidence would have benefited him at trial or informed his decision regarding the plea deal. Furthermore, the Applicant has not provided any credible evidence to clarify the specifics of the DNA evidence in question, nor has he identified any potential witnesses or sources that could have supported any defense. Thus, Applicant has failed in his burden of proving any deficiency on Plea Counsel's part and any prejudice from the alleged deficiency.[7]

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

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

[7] Applicant also testified to Plea Counsel failing to investigate something about a gun and this Court finds the same reasoning stands here. Applicant presented no evidence of how a further investigation into a gun would have benefited him at trial or informed his decision regarding the plea deal.

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

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

Allegation 1(d): **"The case was on the trial docket, but Applicant felt that Mr. Farley was not prepared to go to trial. Applicant felt he had no choice but to plead guilty even though Applicant wanted to go to trial."**

Applicant alleges that Plea Counsel's representation was constitutionally ineffective for not being prepared to go to trial. Specifically, Applicant alleges that he felt he had no choice but to enter a guilty plea because he felt that Plea Counsel was not adequately prepared to go forward with a trial.[8] This Court finds this allegation to be without merit.

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)).

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,

[8] This Court construes this allegation as Involuntary Guilty Plea.

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) (finding the voluntariness of a guilty plea "is not determined by an examination of the specific inquiry made by the sentencing judge alone but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.").

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

Guilty Plea Hearing

The following colloquy occurred at Applicant's guilty plea hearing:

The Court:	Okay. Is anyone forcing you to plead guilty today?
[Applicant]:	No, ma'am.
The Court:	And are you pleading guilty of your own free will?
[Applicant]:	Yes, ma'am.
The Court:	Has anyone offered you anything in exchange for your plea? I know they have this plea offer, but other than that has anyone offered you anything in exchange for your plea?
[Applicant]:	No, ma'am.

The Court: All right. And so you're pleading freely and voluntarily?
[Applicant]: Yes, ma'am.
The Court: No one's threatened you into pleading?
[Applicant]: No, ma'am.
The Court: All right. And have you understood all of my questions?
[Applicant]: Yes, ma'am.
The Court: Have you answered them truthfully?
[Applicant]: Yes, ma'am.

(Plea Tr. pp. 30–31).

PCR Evidentiary Hearing

On direct examination at the evidentiary hearing, the following colloquy occurred with Applicant:

Q. Did he go over the evidence he had?
A. No, ma'am. He just – he just trying to rush him – rush me in to take the plea.
Q. So tell the Court about that.
A. No, he told me – he told – he told me if – if I take the plea I was going to (inaudible) life sentence and my co-defendant was going to roll (inaudible) was going to testify him.
Q. Did you want a trial?
A. Yes ma'am.
Q. Did you tell him that?
A. Yes ma'am.
Q. And what did he tell you about that?
A. Man, he just – he was just (inaudible) stuff that's like he don't – he don't want me to go to trial. I might catch a life sentence, this – this and that. Saying – saying best for me to take the plea.
Q. So what made you change your mind and plead guilty?
A. Because man, he – he kept – he kept – he kept confessing to me that my co-defendant was going to roll on me, was going to testify on me, so I – I'm – I'm kind of nervous.
Q. Why were you nervous?
A. (inaudible) kept talking about life – life – life sentence.
Q. Why was that making you nervous?
A. Because it's paranoid. I just – I don't know.

(PCR Tr. pp. 8–9).

On cross-examination, the following colloquy occurred:

Q. So it's your testimony that you told Mr. Farley that you wanted to go to trial, you did not want to plead guilty?

A. I told him -- I told -- I told him that I wanted to go to trial, but he kept saying my co-Defendants was supposed to roll on me, was supposed to testify on me. So that what made me go ahead and plea out.

. . . .

Q. So it's your testimony that Mr. Farley was telling you your trial is coming up in two weeks, correct?
A. Right.
Q. So it wasn't Mr. Farley who was forcing you, is that correct?
A. Was it -- it was Mr. Farley that was forcing for it.
Q. How so?
A. Well, he told me -- kept -- kept telling that I go to trial in two weeks. My co-Defendant supposed to roll on me, supposed to testify on me. Stuff -- stuff like that. So I told him, I was like, "I'll go to -- I'll go to trial. But what -- which one of my co-Defendant is supposed to testify on me?" He kept -- kept telling me all of them -- all them. So I was just on stuff like, I just go and take the plea.
Q. So it's your testimony now that you decided to take the plea because everyone was going to roll on you and testify against you, correct?
A. Right.
Q. Okay. So it wasn't Mr. Farley who forced you, it was the fact that people were going to testify against you?
A. (Inaudible) Farley forced me too.
Q. How so?
A. To -- he kept -- kept telling me, "Take – take the plea."
Q. How was that forcing you?
A. It is forcing in my eyes because he just kept telling me to take the plea. I was just kind of nervous. I ain't -- I -- I ain't want to take the -- I only wanted to go to trial, but –

(PCR Tr. pp. 15–17).

On direct examination, Plea Counsel testified that at his initial meeting with Applicant, no decision was made regarding proceeding to trial or accepting a plea deal. (PCR Tr. pp. 37–38). Plea Counsel testified that he met with Applicant on October 11, 2021, at the Lexington County Detention Center to discuss the case going forward and to discuss the details of the global plea deal offered by the State. Plea Counsel testified that Applicant, according to the notes written in his case file, agreed with Plea Counsel on the issue of taking the plea deal at that time after going

over the circumstances of the case. Plea Counsel testified that Applicant agreed that the plea was a good idea given the fact that most of, if not all, his co-defendants would be potentially testifying against him should he go to trial. Plea Counsel stated that he encouraged Applicant to take the plea offer of fifteen (15) years because otherwise, Applicant would face the possibility of the maximum sentence[9] for his indicted crimes. (PCR Tr. pp. 38, ll. 20 – pp. 39, ll. 22).

Findings

As an initial matter, this Court finds Applicant's testimony **not credible.** This Court further finds the combination of the record and Plea Counsel's **credible** testimony 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 additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra.* The record before this Court and Plea Counsel's **credible** testimony establish that Applicant was not forced to plead guilty. Plea Counsel testified that he encouraged Applicant to take the global plea deal because it was in Applicant's best interest, considering the likelihood of his co-defendants testifying against him in conjunction with the maximum sentence that Applicant was facing, and that Applicant ultimately agreed with Plea Counsel on the matter.

Although Applicant refutes information brought in from the guilty plea, Applicant stated on the record at his plea hearing that he was satisfied with Plea Counsel's representation in his case. Applicant additionally stated on the record that he had the opportunity to meet with Plea Counsel for as long as needed prior to entering the guilty plea and that Applicant had reviewed

[9] Prior to accepting the global plea deal offered by the State, Applicant was facing a maximum sentence of life in prison plus 293 years.

everything with Plea Counsel and asked all necessary questions regarding his case. Furthermore, Applicant told the plea court that no one was forcing him to plead guilty. Applicant affirmed that he was pleading guilty of his own free will. This Court finds that Applicant has failed to show why he should be allowed to depart from his solemn judicial admission of the truth at his guilty plea.

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

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

NEW ALLEGATIONS RAISED AT THE EVIDENTIARY HEARING

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

Applicant raised the allegation during his evidentiary hearing that Plea Counsel's representation was constitutionally ineffective for failing to meet with him a sufficient number of times. This Court finds this allegation to be without merit.

Federal case law holds that there is no constitutional minimum number of meetings between attorneys and their clients to satisfy competency. Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) (no constitutional minimum number of meetings to satisfy competency); United States v. Olson, 846 F.2d 1103, 1108 (7th Cir. 1988) (reciting that there is no constitutional

minimum number of meetings between attorney and client and observing that an experienced attorney may get more out of a single meeting than a neophyte). "Brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980) (holding it is not enough to merely show that counsel only met with his client twice before trial as long as counsel devoted sufficient time to ensure an adequate defense and to become thoroughly familiar with the facts of the case and the law applicable to the case, and holding the record revealed that counsel was so prepared.).

South Carolina case law has established that even if Trial Counsel only met with his client very briefly, that alone does not establish that he was unprepared or ineffective at trial. See Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing Easter) ("First, there is no question that counsel met with [Applicant] on several occasions prior to the first trial. Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation."). An applicant must present evidence to show how additional time spent in consultation would have resulted in a different outcome; mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Smith v. State, 404 S.C. 493, 500-01, 745 S.E.2d 378, 382 (Ct. App. 2012) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998); Skeen v. State, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997)).

Guilty Plea Hearing

The following colloquy occurred with Applicant and the plea court:

The Court:	All right. And you've been represented by Mr. Farley. Are you satisfied with his representation?
[Applicant]:	Yes, ma'am.
The Court:	And have you met with him for as long as necessary for him to properly represent you?
[Applicant]:	Yes, ma'am.

The Court: And has -- and you've been able to ask him all the questions you have, and you all have gone over everything with this plea; is that correct?
[Applicant]: Yes, ma'am

(Plea Tr. p. 28).

PCR Evidentiary Hearing

On direct examination, Applicant testified that he met Plea Counsel "one or two times." (PCR p. 7).

On cross-examination, Applicant testified that he met with Plea Counsel "two or three times." (PCR Tr. p. 13).

Findings

This Court 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 **credibly** testified that he met with Applicant on multiple occasions and that he was prepared to take it trial if that is what Applicant wanted.

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

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

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

[CONCLUSION PAGE FOLLOWS]

CONCLUSION

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

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

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 20th **day of** May **, 2025.**

THE HONORABLE DAVID P. CARAKER, JR.
Presiding Judge
Eleventh Judicial Circuit

Lexington, South Carolina