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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to the Court of Common Pleas
Appeal from Richland County
Daniel Coble, Plea Judge
William A. McKinnon, Post-Conviction Relief Judge

Appellate Case No. 2025-000298

MICHAEL J. DENNIS, SCDC # 371678,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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PETITIONER'S STATEMENT OF ISSUE ON CERTIORARI

Whether the court erred in denying post-conviction relief where counsel failed to investigate the prosecution's witnesses prior to advising Petitioner to plead guilty to the March 2020 incident, where the complainant (who was the only eyewitness) died prior to Petitioner's plea hearing, since counsel's deficient performance resulted in Petitioner's entry of pleas that were not knowingly, intelligent, and voluntarily entered?

RESPONDENT'S COUNTERSTATEMENT OF ISSUE ON CERTIORARI

Did the post-conviction relief court properly find that Petitioner failed to meet his burden of establishing that he would not have pled guilty but for counsel's failure to discover that a victim from Petitioner's first violent crime spree had passed away prior to his plea where Petitioner testified he knew of the victim's death prior to his plea proceeding and Petitioner accepted an extremely advantageous global plea offer to resolve all of his pending charges stemming from two violent incidents, including shooting multiple firearms directly at a law enforcement officer in a marked patrol vehicle?

STATEMENT OF THE CASE

Petitioner Michael J. Dennis, an experienced felon with a prior record including convictions for attempted armed robbery and kidnapping[1], is currently incarcerated within the South Carolina Department of Corrections serving an aggregate sentence of twenty-five years of imprisonment following his guilty pleas to a variety of offenses stemming from two distinct incidents that occurred over a nine-month period from March to November of 2020.[2] (App. 10, 129-148).

As to the first incident, on March 17, 2020, Petitioner and co-defendant Kurtino

[1] Petitioner's prior record includes convictions for reckless driving, driving without a license, participating in a riot, multiple convictions for attempted armed robbery and kidnapping, giving false information to police, and third-degree assault and battery. (App. 10).

[2] For the first time on appeal, Petitioner asserts he only wishes to challenge his guilty pleas and sentences for the offenses related to the March 2020 incident. However, the extremely advantageous plea offer that the State extended to Petitioner and that Petitioner accepted contemplated and required a global resolution of all his pending charges (encompassing both the March and November incidents). This is evidenced by the State's refusal to consent to Petitioner withdrawing a portion of his plea prior to sentencing. (App. 80). Accordingly, it would be improper to allow Petitioner to break the terms of his plea agreement by allowing him to only challenge a portion of his pleas when the State's offer was contemplated and extended based on global resolution of all of Petitioner's charges. See State v. Thrift, 312 S.C. 282, 295, 440 S.E.2d 341, 348 (1994) (holding "all plea agreements must be on the record and must recite the scope, offenses, and individuals involved in the agreement. We also hold that prospectively for all plea agreements entered after the filing of this opinion, we will limit our review of a plea agreement only to those terms which are fully set forth in the record"); see also Pepper v. United States, 562 U.S. 476, 507 (2011) ("A criminal sentence is a package of sanctions that the [sentencing] court utilizes to effectuate its sentencing intent." (citation and internal quotations omitted)); Rollison v. State, 346 S.C. 506, 511–12, 552 S.E.2d 290, 293 (2001) ("Respondent received the benefit of the agreement for which he bargained and cannot now complain."); State v. Bisson, 130 P.3d 820, 829 (Wash. 2006) (holding that where a plea was involuntary, if the defendant elects the remedy of withdrawal, he may not withdraw only a portion of his plea, but must withdraw his plea in its entirety). Beyond the clear preservation concerns with raising this issue for the first time on appeal, basic contract principles prevent Petitioner from attempting to only undo a portion of his global plea offer.

Weathersbee[3] armed themselves with handguns and forcibly entered a home in Richland County occupied by two minors—a fifteen-year-old who knew co-defendant Weathersbee from school and his three-year-old brother. Petitioner and Weathersbee demanded to know where firearms were located in the home, and when they did not receive an answer they deemed sufficient, Petitioner placed the fifteen-year-old minor in a headlock and fired his gun into the floor. Petitioner and Weathersbee then separated the two child victims into separate rooms and ransacked the home before absconding with multiple electronics and the fifteen-year-old victim's cellular phone. Once they left, the fifteen-year-old victim immediately ran next door and called 911, giving a very detailed description of the intruders and what they were wearing. The canine tracking unit located Petitioner and co-defendant Weathersbee within minutes of one another, and both were identified as the armed assailants by the fifteen-year-old victim. As a result of this incident, a Richland County Grand Jury indicted Petitioner for first-degree burglary, armed robbery, kidnapping, and first-degree assault and battery. Petitioner was subsequently released from pre-trial detention on bond awaiting trial. (App. 7-8; 14, 75-76).

Then, approximately nine months later while he was out on bond for the violent March incident, Petitioner once again went on an armed crime spree. This time, on November 4, 2020, at approximately 1:30 p.m. in the afternoon, Petitioner arrived outside the Richland County home of his ex-girlfriend and began firing a weapon in her yard. Petitioner's ex-girlfriend called 911 to

[3] The guilty plea proceeding transcript contains a scrivner's error listing Petitioner's co-defendant as "Catino Weathersbee." However, from a search of the South Carolina Department of Records Inmate Search and Richland County Public Index, it is clear that Kurtino Weathersbee, SCDC #390929, is Petitioner's co-defendant. Notably, he pled guilty the same day as Petitioner's sentencing proceeding, May 9, 2023. See Records for Kurtino Weathersbee, Richland County Fifth Judicial Circuit Public Index, https://publicindex.sccourts.org/Richland/PublicIndex/PISearch.aspx and South Carolina Department of Corrections Incarcerated Inmate Search, https://public.doc.state.sc.us/scdc-public/.

report the incident and provided a description of Petitioner, what he was wearing, and his name. Shortly thereafter, Investigator McComb with the Richland County Sheriff's Department arrived on scene in a marked patrol vehicle and located Petitioner brandishing an assault-type rifle. Petitioner instantly turned his attention to Investigator McComb and started firing the assault-type rifle at Investigator McComb. Eventually, Petitioner's assault-type rifle jammed but rather than stopping his assault on a law enforcement officer, he instead pulled out another weapon and resumed firing at the officer. Petitioner then proceeded to grab a bystander and place her in a choke hold to shield himself from the returned fire from Investigator McComb. The bystander's husband then began hitting Petitioner to get him to release his wife, which Petitioner eventually did. Petitioner was ultimately struck in the arm by a bullet when Investigator McComb returned fire. Petitioner was taken to the hospital and treated for this wound. As a result of this incident, the Richland County Grand Jury indicted Petitioner for attempted murder, kidnapping, and first-degree assault and battery. (App. 8-10; 13).

Assistant Public Defender Megan Eigenbrot of the Richland County Public Defender's Office was appointed to represent Petitioner on the litany of charges. The Fifth Circuit Solicitor's Office prosecuted the cases. Petitioner was evaluated twice and found competent to stand trial both times. The State noticed Petitioner that it intended to try him for the November 2020 crimes on April 24, 2023.[4] However, after on-going plea negotiations with the State, Petitioner elected to forgo his right to jury trials on these various offenses and instead enter a global plea to resolve all pending charges (along with the dismissal of the two first-degree assault and battery indictments) in exchange for a determinate, concurrent sentence of twenty-five years of imprisonment in

[4] During his guilty plea proceeding, the State indicated that if Petitioner was convicted of a most serious offense stemming from the November 2020 incident, it intended to seek life without parole for the remaining charges. (App. 3).

exchange for a guilty plea to the November 2020 charges and an Alford[5] plea to the March 2020 charges without a recommended sentence. (App. 1-18).

On April 5, 2023, Petitioner, alongside counsel, appeared before the Honorable Daniel Coble, circuit court judge, for a plea hearing. During a thorough plea colloquy with Judge Coble, Petitioner agreed the facts as set forth by the State would be presented against him at trial and that he was indeed guilty or wished to plead guilty pursuant to Alford. Petitioner also affirmed that he was satisfied with the services of his attorney, had not been threatened, coerced, or promised anything to enter his pleas, and was entering his pleas freely and voluntarily. Judge Coble accepted Petitioner's guilty pleas to all offenses. Following presentations by the State (including an impact statement from Richland County Sheriff Leon Lott) and the defense, sentencing was deferred at Petitioner's request so he could spend time speaking with him mother whom had recently been released from incarceration. (App. 1-17; 49).

On May 9, 2023, Petitioner again appeared before Judge Coble for a sentencing proceeding.[6] In accordance with the plea agreement, Judge Coble sentenced Petitioner to twenty-five years of imprisonment for each offense to be served concurrently. Petitioner did not seek direct appellate review of his plea or sentences. (App. 139-148).

On April 17, 2024, Petitioner then initiated this underlying post-conviction relief action with the filing of his *pro se* application, listing all of his indictments as offenses he was challenging and making the following claims:

> I am not guilty of all my charges. I was manipulated into taken a plea deal Megan Eigenbrot told me I could get life if I was found guilty. She took advantage of my mental illness. I was scared to go to trial because I know my public defender.

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

[6] The State was notified that the court reporter at the time of the sentencing proceeding suffered a medical incident, and no transcript of this proceeding could be produced. (App. 49).

> March 10, 2023 I went to[] a[n] appointment for mental health issues. My lawyer knew I couldn't go to trial fully prepared because I'm scared and not in my right state of mind. Megan held valuable information from that could've help me in my case.
>
> Megan Eigenbrot represented me in all my proceedings and court heading and plea offerings. She once came to[] see me and told me I had a plea for 20 years, that the Solic[i]t[o]r offered me a few weeks later she came back an[d] told me that the offer was t[a]ken back because Sherrif Leon Lott recommended that I do 25 years. Megan Eigenbrot did not represent me with good intentions [to] get me the best deal available. She also knew I was being taken advantage of at Alvin S. Glenn Detention Center. I was traumatize[d] from being shot by a cop and constantly being attacked by officers. I feared for my life at the time of my sentencing. Megan also knew that I wanted to[] go to trial. I also asked her for a change of venue numerous time[s]. So I could have a fair trial. She also held back information from me.

As his requested relief, Petitioner stated he was seeking a sentence reduction to fifteen years of imprisonment to be served eighty-five percent. (App. 19-25).

Chelsey Marto, Esquire, was thereafter appointed to represent Petitioner pursuant to Re: Appointment of Counsel in Post-Conviction Relief Cases before the Circuit Court (S.C. Sup. Ct. Order filed Oct. 6, 2008) and Rule 71.1(d), SCRCP (providing for appointment of counsel only where there is a question of law or fact which necessitates a hearing). In response to the application, Respondent filed a return and partial motion to dismiss, noting the unavailability of Petitioner's requested relief of a reduced sentence. Thereafter, on August 13, 2024, Petitioner, through appointed counsel Marto, filed an amended application in which the requested relief was a vacation of Petitioner's pleas and a remand to general sessions for a new trial.[7] (App. 27-43).

An evidentiary hearing on this action was convened September 25,2024, before the Honorable William A. McKinnon, circuit court judge. Petitioner appeared along with counsel Marto. The post-conviction relief court heard testimony from Petitioner and his plea counsel.

[7] It is worth noting again that Petitioner never asserted he was only challenging the March 2020 convictions as he now attempts to argue on appeal.

Petitioner testified numerous times he pled guilty over a fear he would face additional federal charges if he did not resolve the State charges. (App. 52, 54). Regarding the claim before this Court that counsel was ineffective for failing to investigate and discover that the fifteen-year-old minor victim from the March 2020 charges had passed away, Petitioner testified as follows:

> Q. What do you think she should have investigated. What facts did you not know before the plea?
>
> A. I was saying, in my first case, like, a victim passed away and I didn't find that out until I talked to my auntie and my little cousin. His lawyer has told him that one of my victim's passed away and I never knew that or whatever.
>
> Q. When did you find that out?
>
> A. I found it out on the phone with my auntie. I can't tell you the date, I just found out. And I told her when she came to visit me.
>
> Q. Were you in Alvin Glenn?
>
> A. Ma'am?
>
> Q. Were you in Alvin Glenn or were you in SCDC?
>
> A. I was at Alvin S. Glenn at the time.
>
> **Q. So was this before your plea?**
>
> **A. Yes, ma'am.**

(App. 55) (emphasis added). On cross-examination, Petitioner stated he was not guilty of the March 2020 crimes and that he felt the State would not have been able to convict him if he had proceeded to trial based on the death of the fifteen-year-old minor victim. (App. 67).

Counsel similarly testified that Petitioner's decision to plead guilty appeared to be motivated by his desire not to face any additional federal charges, noting that Petitioner changed his tune and decided he wanted to plead guilty after she spoke with the Assistant United States Attorney who would handle the case if the federal government decided to pursue charges. (App. 74). Counsel admitted that once Petitioner was indicted on the November 2020 charges, her focus

shifted to those charges as the State intended to call that case to trial first. (App. 75). Regarding the claim that she failed to investigate the death of the fifteen-year-old minor victim from the March 2020 incident, plea counsel testified as follows:

> Q. Did you ever learn or find out that one of the victims in the first case had passed away?
>
> A. Yes. I learned that after he did his plea. The reason that is important is because that victim is the only eyewitness to the incident. And I don't think the State could have proved the case without that victim. I was notified by his aunt, but it was only after the plea that I found out about that. And again, I think that is in part because I, kind of, put those charges on the back burner. Had I known, I would have advised him not to plead to those charges. And I would have told the solicitor those can't be a part of any plea deal, as they can't prove it.

(App. 79-80). Counsel then elaborated on cross-examination that she does not believe the State withheld this information from her and that it was discussed prior to Petitioner's sentencing proceeding. (App. 80). Specifically, plea counsel testified she asked the prosecuting assistant solicitor if she would agree to allow Petitioner to withdraw his plea only as to the March 2020 charges and that the assistant solicitor not only declined to consent but said she would argue against such action. (App. 80). Plea counsel testified that the issue was ultimately addressed with Judge Coble briefly prior to the sentencing proceeding and Judge Coble indicated he desired to move forward with the sentencing proceeding. (App. 80). Upon questioning from the post-conviction relief court, plea counsel testified that she learned the fifteen-year-old victim had passed away from Petitioner's aunt right after the plea but prior to sentencing. (App. 82)

At the conclusion of the hearing, the post-conviction relief court took the matter under advisement. The court later denied the application and subsequently issued a written order filed on February 7, 2025, finding Petitioner failed to establish any constitutional violations or deprivations entitling him to relief and denying the application with prejudice pursuant to S.C. Code Ann. § 17-27-80. In this order, the court specifically found that although plea counsel's failure to investigate

and discovery the death of the fifteen-year-old minor victim from the March 2020 incident was not reasonable, Petitioner could not establish prejudice because Petitioner personally knew about the death prior to his plea and elected not to timely notify counsel but rather, accept the advantageous plea offer from the State. (App. 113-114). Petitioner then initiated this instant appeal.

STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. Smalls v. State, 422 S.C. 174, 180-81, 810 S.E.2d 836, 839-840 (2018). When reviewing factual findings, the appellate courts defer to the post-conviction relief court's factual findings and will uphold them if there is probative evidence in the record to support 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 (citing Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). However, pure questions of law will be reviewed *de novo* without deference to the lower court. Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40. 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

The post-conviction relief court properly found that Petitioner failed to meet his burden of establishing that he would not have pled guilty but for counsel's failure to discover that a victim from Petitioner's first violent crime spree had passed away prior to his plea because Petitioner testified he knew of the victim's death prior to his plea proceeding and Petitioner accepted an extremely advantageous global plea offer to resolve all of his pending charges stemming from two violent incidents, including shooting multiple firearms directly at a law enforcement officer in a marked patrol vehicle.

On appeal, Petitioner argues the post-conviction relief court wrongly denied relief based on counsel's failure to properly investigate his case, thereby rendering his guilty pleas involuntary.[8] Specifically, Petitioner asserts that counsel failed to sufficiently investigate his case and discover that the fifteen-year-old minor victim from the March 2020 incident had passed away prior to entry of his guilty plea and that if had counsel known this information prior to the plea hearing, she would have advised Petitioner not to plead guilty to these charges. However, this claim fails as Petitioner's own testimony unequivocally establishes that he knew of this information **prior** to his plea hearing and still elected to proceed forward with the very favorable global plea offer to resolve all pending indictments. Moreover, the record also establishes that Petitioner's decision to enter into a global plea agreement was induced by his own desire to avoid a harsher sentence or federal charges. Accordingly, the post-conviction relief court properly found that Petitioner failed to establish he would not have pled guilty but for counsel's failure to discover this information prior to his guilty plea and accordingly could not establish the requisite prejudice necessary for a grant of post-conviction relief. This Court should deny certiorari.

[8]As discussed i*nfra* in footnote 2, Petitioner's attempts to limit relief to a portion of the global plea agreement (arguably, the less serious charges by comparison), should be rejected by this Court. The State clearly contemplated resolution of all charges when extending the global plea offer and Petitioner should not be able to attack only a portion of that plea agreement now.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Petitioner, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Petitioner has the burden of proving the allegations in his PCR action, and when alleging counsel was constitutionally ineffective, he must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result." Strickland, 466 U.S. at 686. In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Petitioner must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Petitioner must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Petitioner such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the

ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel." Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). When reviewing a guilty plea, the analysis of counsel's performance under the first prong of Strickland remains unchanged—the applicant must show counsel's representation fell below the objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59. 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, 366 (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.

Surmounting Strickland's high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." Lee, 582 U.S. at 367, (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 58 ("[R]equiring a 'prejudice' showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty

pleas.'"). Reviewing "[c]ourts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney's deficiencies." Lee, 582 U.S. at 367. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences." Id. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the plea and the evidence presented at the PCR hearing. Harres, 282 S.C. at 134, 318 S.E.2d at 361.

An applicant who enters a plea on the advice of counsel may "only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the [Applicant] would not have pled guilty, but would have insisted on going to trial." Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). As with all post-conviction relief actions, it is the applicant who bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of involuntariness of a plea or ineffectiveness of counsel 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). Here, Petitioner did not and could not meet his burden of proof and, accordingly, the post-conviction relief court properly rejected this claim and denied relief.

Initially, Petitioner's claim fails because the record firmly establishes that Petitioner was personally aware of the death of the fifteen-year-old minor victim prior to his plea. Petitioner clearly and unequivocally testified he knew of the death **prior** to his plea proceeding. See App. 55, lines 24-25 (Petitioner plainly states he knew that the minor victim died before his plea). Because Petitioner knew of this very information prior to his plea, his claim that he would not have pled but for counsel's failure to discover and inform him of it logically must fail. The post-

conviction relief judge, who heard this testimony firsthand, agreed and denied relief, finding Petitioner "testified that he knew that the victim passed away *before* he pled, but that he did not provide that information to Plea Counsel." (App. 113) (emphasis in original). Despite the unambiguous nature of Petitioner's testimony, Petitioner now attempts to sow confusion by asserting that "[Petitioner] clearly meant this was before his sentencing" rather than the plea. PWC p. 5. This Court should reject this post-hoc attempt to re-write the record after the post-conviction relief court properly found his claim lacked logical or evidentiary support.

Moreover, Petitioner failed to establish that he would not have pled guilty but for counsel's failure to investigate and discover the death of the fifteen-year-old minor victim, as no credible evidence supports that Petitioner would have rather proceeded to trial on his charges rather than accept the State's extremely advantageous plea offer to globally resolve all this pending charges from two violent incidents where he discharged firearms (including shooting two weapons at a law enforcement officer while out on bond from an earlier incident where he shot towards children). The global plea offer extended by the State and accepted by Petitioner significantly reduced his sentencing exposure to a determinant sentence of twenty-five years of incarceration for the more egregious charges, and a high likelihood he would receive concurrent sentences for the remaining charges from the first incident. The generous plea offer also dismissed two first-degree assault and battery indictments and effectively ended the federal government's pursuit of additional federal charges. Had Petitioner rejected this global plea offer, he was facing a possible aggregate sentence of life without the possibility of parole plus an additional one-hundred-and-forty years. It is not credible that Petitioner would have forgone this very generous plea offer from the State and would have proceed to trial, including the impending trial on the November 2020 charges for shooting at a law enforcement officer that were set to be tried within weeks of his plea.

Petitioner repeatedly testified his pleas were induced by his desire to avoid a lengthier sentence or additional federal charges. (App. 52, 54). Plea counsel similarly testified that Petitioner's decision to plead guilty came after she briefed him on her discussions with the federal government and the strong possibility of new federal charges should his pending state charges not be resolved with a sentence reflecting the seriousness of the offenses (including shooting at law enforcement and children). (App. 74). The plea court properly noted that Petitioner elected to "avail himself of the benefit of his guilty plea" and this finding is supported by ample evidence in the record.

Despite this, Petitioner asserts that his plea was not voluntary because there was a "fair probability" that he would have succeeded at trial on the March 2020 charges.[9] However, this is not the proper standard by which such a claim is evaluated, as the inquiry is whether Petitioner would have proceeded to trial rather than accept the plea. See Frierson v. State, 423 S.C. 257, 262, 815 S.E.2d 433, 436 (2018) ("In order to establish prejudice when challenging a guilty plea, a defendant must prove there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have gone to trial. The crux of the inquiry is whether counsel's ineffective performance affected the outcome of the plea process, not whether the defendant would have been successful had he gone to trial.") (internal citations and quotations omitted). The post-conviction relief court properly denied relief and this Court should deny certiorari.

[9] Petitioner's assessment of his success at trial on the March 2020 leaves out a critical fact: there was still an eyewitness to the incident who could have testified against him—his co-defendant Kurtino Weathersbee. Petitioner's repeated assertion that there were no surviving witnesses to his crime and the State would not have been able to secure a conviction for the March 2020 indictments is inaccurate, as Weathersbee was obviously a witness to the crimes, pled the same day as Petitioner's sentencing, and presumably could have been willing to testify against Petitioner if needed based on the fact that he pled guilty after Petitioner's plea.

CONCLUSION

Because the post-conviction relief court properly determined Petitioner failed to establish any constitutional depravations, this Court should deny certiorari. Should this Court grant certiorari, Respondent requests the opportunity to fully brief the issues raised.

Respectfully submitted,

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