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S.C. SUPREME COURT

NOTICE OF APPEAL FROM COMMON PLEAS REGARDING A POST CONVICTION RELIEF

THE STATE OF SOUTH CAROLINA

In the Supreme Court

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APPEAL FROM LEXINGTON COUNTY

Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

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Case No. 2020-CP-32-04058

The State,.....Respondent,

Sean L. Stroman,.....Appellant,

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Notice of Appeal

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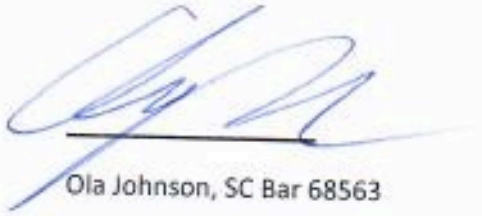
Sean L. Stroman appeals the order of the Honorable Jocelyn Newman, dated August 22nd, 2025, which denied his application for Post-Conviction Relief with prejudice. Appellant received written notice of the order on September 17, 2025.



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| STATE OF SOUTH CAROLINA<br>COUNTY OF LEXINGTON | IN THE COURT OF COMMON PLEAS<br>FOR THE ELEVENTH JUDICIAL CIRCUIT |
| Sean L. Stroman, #367691,<br><br>Applicant,<br><br>v.<br><br>State of South Carolina,<br><br>Respondent. | CASE NO. 2020–CP–32–04058<br><br>**ORDER OF DISMISSAL WITH PREJUDICE** |

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| Presiding Judge: | Hon. Jocelyn Newman |
| Applicant's Attorney: | Ola A. Johnson, Esq. |
| Respondent's Attorney: | Taylor Z. Smith, Esq. |
| Plea Counsel: | Derrick E. Mobley, Esq. |
| Date of Hearing: | June 7, 2022 |
| Court Reporter: | Erin Reilly |

This matter comes before this Court by way of Sean L. Stroman's (Applicant) application for post-conviction relief (PCR) commenced on December 8, 2020. Respondent, the State of South Carolina, made its Return, Partial Motion to Dismiss, and Motion for a More Definite Statement on June 14, 2021. Applicant, through Ola A. Johnson, Esquire (PCR Counsel), amended his application on May 26, 2022.

On June 7, 2022, an evidentiary hearing convened before the Honorable Jocelyn Newman. Applicant was present at the hearing and represented by PCR Counsel, Ola Johnson. Assistant Attorney General Taylor Z. Smith appeared on behalf of Respondent. In support of his claims, Applicant testified on his behalf and called his mother, Vickie James at the evidentiary hearing. Respondent presented the testimony of Derrick E. Mobley, Esquire (Plea Counsel).

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

Applicant is presently confined in the South Carolina Department of Corrections pursuant to order of commitment of the Lexington County Clerk of Court. Applicant was indicted at the December 2015 term of court for Armed Robbery (2015-GS-32-2805), Armed Robbery (2015-GS-32-2815), Kidnapping (2015-GS-32-2807), Kidnapping (2015-GS-42-2812), and Kidnapping (2008-GS-32-2813). Applicant was represented on the charges by Derrick E. Mobley, Esquire. Assistant Solicitor Angela Garrick-Martin prosecuted the case.

On April 5, 2016, Applicant pleaded guilty to each of the above indictments before the Honorable Knox McMahon, Circuit Court Judge. Judge McMahon initially sentenced Applicant to an aggregate sentence of fifty (50) years. Applicant was sentenced to thirty (30) years confinement for the kidnapping charges (Indictment 2015-GS-32-02812, Indictment 2015-GS-32-02813, and Indictment 2015-GS-32-02807), to be served concurrent to all other sentences. Applicant was also sentenced to twenty (20) years for one count of armed robbery (Indictment 2015-GS-32-02805), and thirty (30) years for the second count of armed robbery (Indictment 2015-GS-32-02815), to be served consecutively. (Sentencing Sheets, Plea Tr. pp. 28:23-29:14).

On April 13, 2016, Mobley filed a Motion for Reconsideration of Sentence on behalf of Applicant. That Motion for Reconsideration was heard on May 31, 2016, before Judge McMahon. Judge McMahon granted the motion, reducing Applicant's sentence for Indictment 2015-GS-32-2815 to twenty (20) years from thirty (30) years and running all sentences concurrently. This

resulted in an aggregate sentence of thirty (30) years rather than fifty (50) years. (Motion for Reconsideration Tr. 12:9-14). ROA 42. Order Reconsidering Sentence filed June 20, 2017.

Applicant filed a timely appeal. In the appeal, Applicant was represented by Appellate Counsel Victor R. Seeger, who filed an Anders brief raising the following issue:

> Did the court abuse its discretion when it failed to take into account, for sentencing purposes, the mitigation evidence that Appellant and his family were homeless, and that he stole to feed his family?

On March 4, 2020, the South Carolina Court of Appeals filed an opinion dismissing Applicant's appeal and granting counsel's motion to be relieved. State v. Stroman, Appellate Case No. 2017-001430, Unpublished Opinion No. 2020-UP-057, (S.C. Court Appeals, March 4, 2020).

## FACTUAL BASIS FOR THE CONVICTION

The underlying facts of the crime for which Applicant is incarcerated were articulated by the State during the plea proceedings as follows:

> [This case], involves an armed robbery that happened on July 27th of 2015, at the Bush River Road location of the Kangaroo Express. Your Honor, it was about ten o'clock at night. The defendant, while armed with a silver and black pistol came in, demanded money from Mr. Dicks. He was the employee there at the business. He said don't make any sudden moves and I won't shoot you. He did rob the business of about $150, took some cigarettes; took the phone from the store and Mr. Dick's personal cell phone. Your Honor, just so you're aware, Mr. Oscar Calderon is the manager of the Kangaroo Express. He's sitting on the victim row here in court. He wanted to be here just to represent the store. Mr. Dicks did not want to be here today.
>
> Your Honor, we're going to talk later about how Mr. Stroman was arrested. But on this case after he was arrested, he did provide a written confession about this robbery and also when Mr. Dicks, the employee was shown a photo lineup, Mr. Stroman was identified as an armed robber that had taken the money on that day from the

Kangaroo Express. The next case, Your Honor, involves Domino's Pizza near Lexington, on August 10th of 2015. It was actually at the Irmo, Woodrow Street Dominos. Once again, Mr. Stroman comes into the business, he is armed with a black and silver handgun. He addresses -- there were two employees that day, Ms. Olivia Johnson and Mr. Vasquez. He tells them he's not going to hurt them, he just needs money. Your Honor, he had actually gone --on this case, Mr. Vasquez was in the back room at the Domino's Pizza washing dishes. He brings Mr. Vasquez around and at that time money is taken from the till. And that's when we believe Stroman first learned about Domino's Pizza and their safe system. There's a safe that's there. The manager has to enter a code, then there's a time delay. There's ten minutes they have to wait before it will beep. That was and then the manager has to enter the code again, done in this case and the defendant was given cash money from Dominos.

Your Honor, the next incident is from August 19th of 2015, and this is a case that actually was on the trial list for next week. It involves a robbery from the St. Andrews locations of Dominos. On this date, Your Honor, it was about 10:30 at night. He comes into the business. He has a gun. The victim, the manager, or assistant manager is Ron Turner. The defendant tells Mr. Turner, you know what this is; and he walks around the counter, corrals up Mr. Turner. He gets Lee Taylor, who's there as well. He asks if anyone else was there. Mr. Turner Humphrey is in the back washing dishes. He goes around the back, calls for that man to come around. So Mr. Stroman has the three of them at gunpoint. He has Mr. Lee Taylor go to the register, pull the money out. He instructs Ron Turner to enter the code into the machine and he holds them there. He puts Taylor and Turner on the floor at gunpoint and they wait there for that ten-minute-time period.

Your Honor, in trial prep, Mr. Turner indicated that -- that he certainly believed that Mr. Stroman would have shot them if they had tried to fight or anything such. The defendant did allow Lee to go turn off the open sign because the business was still open, it wasn't closed; but he allowed them to turn off the open sign so hopefully they wouldn't have any more customers coming in. When the code clicked, Ron Turner put all the money -- it was a little over

a $1,000, into the black book bag that Mr. Stroman had brought with him in the business. Mr. Stroman leaves on foot. Law enforcement is called. They come out, the case is ultimately assigned, I guess, the next morning, to two detectives, Vandalaro, who stands behind me from the sheriff's department. They are thinking at the beginning that they'll never solve this case because the defendant never touched anything. There's video equipment, obviously in all three stores. There are cameras that are working and then some that are not. But we have still shots of the it looks like him, but from an evidentiary standpoint, we didn't know if we would ever be able to solve it. The victims in two of the armed robberies had indicated that the defendant or the armed robber had a tattoo on one side of his neck and it had a name. It had a name of Vicky.

So Detective Vandalaro did what he's very good at and he started tracking down any men in the right age group of the right ethnic group that had such a tattoo on their neck. And he was able to find a photo of the defendant from there in-house system and he put that picture in, I don't know, I think six different lineups for every different clerk to look at. He followed procedure, he interviewed these clerks from the three different instances. Separately he involved Detective Rawl on the other Lexington County case and Detective Trent Williams from the Irmo case; and all the clerks were able to identify the defendant as the armed robber. And actually in the photo lineup, you can't even see the tattoo on his neck, so I felt even more comfortable with the photo ID'S. So then the question comes, how do we find this fellow. Actually it was turned over -- warrants were sought and it was turned over to the fugitive task force. Shannon Dykes is in the back of the courtroom along with some of his partners.

They see an in-house report of a domestic case between the defendant and his girlfriend, Ms. Felder, and it was never assigned. And it happened in August of 2015. It was never assigned to a detective, so they decide they're going to follow up on this domestic incident. In fact, it was a case that they believed the defendant would have been the victim. So they go into Richland County with a SLED agent. They're looking for Sean Stroman's family, for Ms. Felder's family. They put the word out they need Mr. Stroman and Ms. Felder

to resolve that case and if they don't want to pursue charges, they need to sign drop charges or do not pursue charges. And lo and behold after a little bit of time, they get contacted by the defendant.

They set up a meeting here in Lexington County at the Wal-Mart parking lot. They decide that they want to take him into custody in a parking lot as safely as possible. They have a bunch of officers staged around. They find out what kind of vehicle they'll be coming in and they get there before the defendant and his girlfriend. And the defendant and his girlfriend and I think two or three children do drive up. They asked Mr. Stroman to come forward. And, of course, at that time he had no idea there were warrants for him for these cases. They were able to easily and safely take him into custody, separate him from Ms. Felder and they arrested him for all of these charges. They did, also, on the side note, have Mr. Stroman and Ms. Felder decline to prosecute the unresolved domestic incident. When he was taken into custody here in Lexington on that date, they got a consent to search the car. The defendant had over $2,000, mostly in tens in his pocket. In his car, one of the children had a Spiderman bookbag and in that bookbag was a loaded Taurus silver and black pistol. And actually, the defendant had told the SLED agent there's a gun in that bookbag. The mama didn't know and he wanted to make sure that the gun was going to be taken out of the car for fear of the children getting it.

So he was taken into custody, he was taken back to the headquarters. Major crimes investigators were all tied up, so Detective Dykes and Barry Sowers, Sergeant Sowers, were able to give him his Miranda and he did provide a five-page-written confession indicating the robberies that he did. And he indicates that he's going to apologize for what he did. He was under the influence of drugs and alcohol. And he says, I don't even remember what I was wearing until I saw the video pictures. I apologize. I did it to provide shelter for my family. It's hard when I take care of everything alone. It's a game of survival. So that's what he says, that he's providing for his family, but he's also, he's in the money to get high on molly and drugs. Judge, that's all as far as the case…

(Plea Tr. pp. 14-20). ROA 14-20.

## CURRENT ACTION BEFORE THE COURT

In Applicant's original application, filed on December 8, 2020, Applicant alleged he was being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel.
    a. Applicant's counsel, Derrick E. Mobley, was ineffective because he should have moved for trial.
    b. Applicant's counsel, Derrick E. Mobley, was ineffective because he did not challenge the validity of Applicant's indictments.
        i. Indictment 2015-GS-32-02813 was void of true bill.

On May 26, 2022, Applicant, through PCR Counsel Ola Johnson, filed an Amendment to Application for PCR. In the Amendment, Applicant argued:

1. Ineffective Assistance of Counsel
    a. Applicant's counsel, Derrick E. Mobley, failed to meet with applicant a sufficient number of times to properly review the evidence and discuss this case with Applicant.
    b. Applicant's counsel, Derrick E. Mobley, failed to properly investigate the facts of this case and did not have a private investigator work on this case.
    c. Applicant's counsel, Derrick E. Mobley, failed to provide a copy of the evidence to Applicant.
    d. Applicant was coerced into entering a guilty plea after counsel Derrick E. Mobley told Applicant his mother said he should enter a guilty plea.
    e. Applicant was told by counsel Derrick E. Mobley he would receive no more than 15 years incarceration as his sentence if he entered a guilty plea and would be out of jail in 12 years.
    f. Applicant thought he had a range of 10-30 years and counsel Derrick E. Mobley failed to advise him it could go beyond this.

Applicant proceeded on the original and amended allegations at the PCR evidentiary hearing.

## STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act[1] (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based upon the following types of allegations:

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

S.C. Code Ann. § 17-27-20(A).

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

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

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

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

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

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

but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59.

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

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility. See, e.g., State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) ("In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment.") The Court has before it the record on appeal, including the guilty plea and the transcript from Applicant's PCR hearing.

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 Derrick Mobley's representation of Applicant, Mobley 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. Applicant affirmed he understood the charges and sentences he faced at his plea hearing (Plea Tr. pp. 5-9); 2. Applicant affirmed that Mobley explained to him what it meant to plead guilty and the ramifications of that decision (Plea Tr. p. 5); 3. Mobley affirmed he explained to Applicant his constitutional rights to a trial and what it meant to plead guilty to Applicant's charges (Plea Tr. pp. 3-4); 4. Applicant was apprised of his constitutional rights to a trial by the plea court and that he waived those rights by

pleading guilty (Plea Tr. pp. 8-9); 5. Applicant affirmed that he understood the details of the plea agreement (Plea Tr. p. 9); 6. Applicant affirmed he was satisfied with Mobley (Plea Tr. p. 12); 7. Applicant affirmed no promises were made to him, and his decision to plead guilty was voluntary (Plea Tr. pp. 11-12); 8. Applicant affirmed he was not under the influence of any substance that would affect his ability to understand the plea proceedings (Plea Tr. p. 5); 9. Applicant's plea was qualified as freely, knowingly, and voluntarily entered into (Plea Tr. p. 12).

***INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS ON MERITS***

**Allegation: Applicant's plea counsel, Derrick E. Mobley, should have moved for trial.**

In his original *pro se* application, Applicant alleged Mobley was constitutionally ineffective for failing to move for trial. During the PCR hearing, counsel Johnson addressed the Applicant concerning this ground on whether his counsel had moved to withdraw or move for a trial or make a motion for a speedy trial in addressing the Applicant's *pro se* allegation. PCR Tr. 8, l. 2-17. The Applicant responded that he felt that they were not prepared for trial so he took the plea offer to avoid a more serious charge. He asserted that he wished counsel would have moved to withdraw the plea. And requested a trial PCR Tr.p. 8, l. 11-18. This Court finds these allegations are without merit because the Applicant failed to prove either deficient performance or prejudice under Strickland.

Counsel may be ineffective for failure to move for withdrawal of a guilty plea where defendant indicates before or during the hearing that they do not wish to plead guilty. See Rolen v. State, 384 S.C. 409, 683 S.E.2d 471 (2009) (holding that defendant's trial counsel was ineffective for failing to move to withdraw his guilty plea when defendant told the plea judge, "This has went too far, I ain't doing this. . . [s]hould never have pled guilty, I didn't do this," and repeatedly asserted his innocence throughout the hearing.).

**PCR Evidentiary Hearing**

On direct examination, Applicant testified that he felt Plea Counsel Derrick Mobley should have made a motion to withdraw the plea and a motion for a trial. (PCR Tr. 8:15-19). Applicant testified that he did not feel prepared for trial and took the plea to avoid trial and the possibility of a more serious sentence. (PCR Tr. 8:8-14).

On cross examination, Applicant testified that he pled guilty in order to obtain the benefit of avoiding a life sentence. (PCR Tr. 15:10-12).

On recross examination, Applicant testified that when he took the plea, he was roughly a week away from going to trial. (PCR Tr. 19:20-21). Applicant testified that he told counsel Mobley that he did not want to take a plea agreement, but Mobley continued to ask the solicitor for plea deals. (PCR Tr. 20:6-11). Applicant testified that he did not remember writing to the solicitor asking for a plea deal. (PCR Tr. 20:22-21:6). Applicant also testified that if he hadn't been told about the possibility of being sentenced to life without parole he probably would have gone to trial. (PCR Tr. 19:4-5).

On direct examination, Derrick Mobley testified that Applicant was initially resistant to pleading guilty. (PCR Tr. 35:6). Mobley testified that at the time Applicant accepted the plea agreement, a date a little over a week away had been set for his first trial of three trial on some of the charges. (PCR Tr. 35:10-36:19). Mobley testified that they were actively preparing for the trials when Applicant decided to plead guilty after learning that if he was convicted at trial the solicitor intended to file a notice to pursue a sentence of life without parole based upon an email he had received from the solicitor. (PCR Tr. 37:12-20, 44:1-10). Counsel had learned that if Mobley also testified that Applicant wrote a letter to the solicitor asking for a deal in return for information on another case. (PCR Tr. 46:2-11).

On cross examination, Mobley testified that directly before the plea hearing he had a conversation with Applicant advising Applicant that he could still reject the plea and go to trial if Applicant so desired. (PCR Tr. 54:4-10). Mobley testified that he advised Applicant that trial was not in his best interest due to the evidence, but if Applicant wished to go to trial he would put on a defense and oppose a sentence of life without parole. (PCR Tr. 54:11-16).

On redirect, Mobley testified that Applicant's greatest concern was avoiding facing a sentence of life without parole. (PCR Tr. 55:12-25).

**Findings**

As an initial matter, this Court finds Mobley's testimony **credible** and Applicant's testimony generally **not credible** on this matter. 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 Mobley's representation was deficient and that any prejudice resulted from that alleged deficiency. See Butler, *supra*.

Applicant testified that Mobley should have moved for a trial or requested a withdrawal of the guilty plea. However, Mobley **credibly** testified that Applicant was presented with opportunities to communicate that he wished to withdraw the plea and motion for trial, and instead chose to take the plea agreement. Mobley also **credibly** testified that while Applicant was hesitant to plead guilty, Applicant made it clear that he wanted to avoid facing a potential sentence of life without parole. Mobley's account is supported by Applicant's own numerous statements that he pled guilty to avoid receiving life without parole.

This Court finds Applicant has failed to show Mobley was ineffective for not moving to

withdraw from the plea offer and not moving for a trial. Applicant has produced no evidence that Mobley initiated the plea agreement or conducted the plea hearing without his consent or against his wishes. Moreover, to whatever extent Applicant wanted Mobley to withdraw the plea and move for or renew a request for a trial, he was presented with 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 Mobley failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Mobley committed either errors or omissions to prove the second prong of Strickland as laid out in Hill—that but for Mobley'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 Mobley or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

**Allegation: Applicant's plea counsel, Derrick E. Mobley, should have challenged the validity of Applicant's indictments.**

Applicant alleged Mobley was constitutionally ineffective for failing to challenge the validity of Applicant's indictments. In his *pro se* application, he claims that Indictment 2015-GS-32-02813 was void of a true bill (Kidnapping)(2015A3210201421). This Court finds as a fact that the clerk announced at the outset of the guilty plea that all the indictments before the court were true billed. This Court further finds that all of the copies of indictments were signed by the grand jury foreman. This Court also finds that all of the copies the indictments that it reviewed show a faint stamp indicating True Bill." This Court also finds that a copy of Indictment 2015-GS-32-02807 is signed by the grand jury foreman, but unlike the other copies of the indictments it does

not clearly indicate any stamp. The Court further finds credible counsel's testimony that he reviewed the indictments prior to the plea and if he had seen any indictment did not indicate a "true bill" he would have waived grand jury presentiment and gone forward with the guilty pleas. This Court finds these allegations are without merit as a ground for relief.

"The indictment is a notice document." State v. Gentry, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005). "Subject matter jurisdiction of the circuit court and the sufficiency of the indictment are two distinct concepts and the blending of these concepts serves only to confuse the issue. Circuit courts obviously have subject matter jurisdiction to try criminal matters." Id. at 101, 610 S.E.2d at 499. "The regularity of the proceedings of a court of general jurisdiction will be assumed in the absence of evidence to the contrary." Tate v. State, 345 S.C. 577, 581, 549 S.E.2d 601, 603 (2001). "[T]he caption of an indictment is no part of the finding of the grand jury." Id. at 581, 549 S.E.2d at 603. "[I]t is the body of the indictment rather than its caption that is important. If the body specifically states the essential elements of the crime and is otherwise free from defect, defect in the caption will not cause it to be invalid." Id. (internal quotation marks omitted).

**PCR Evidentiary Hearing**

On direct examination, Applicant testified that his indictments were defective because the ones he saw had a true bill stamp but were not signed and he felt they were just rubber stamped. (PCR Tr. 8:20-9:5). Applicant testified he felt Mobley should have challenged the indictments. (PCR Tr. 9:4-6). Applicant testified that he could not recall if he spoke with Mobley about any issue with the indictments before Applicant pled guilty. (PCR Tr. 9:17-18). He claimed that he first asked counsel to raise this issue after he got to prison subsequent to his sentencing.

On cross examination, Applicant testified that he did not remember if the clerk of court at his plea hearing said on the record that the indictments had been true billed. (PCR Tr. 10:25-11:3).[2] Applicant testified Judge McMahon explained the indictments and their content at his plea hearing, and Applicant understood them. (PCR Tr. 11:4-8).

On direct examination, Mobley testified that he did not have any reason to challenge the indictments at the plea hearing, as indictments were generally challenged before trial. He stated that he did not see anything apparent at that time when they were proceeding to the actual plea. (PCR Tr. 31:10-14). However, Mobley testified that had Applicant gone to trial, he would have tried to quash the indictment or challenge the sufficiency on its face. (PCR Tr. 31:10-24).

On cross examination, counsel Mobley testified that he reviewed the indictments prior to the plea. (PCR Tr. 52:4-53:3). He stated that if he saw that they had not been stamped true bill he would have raised it at the time and proceeded with a waiver of grand jury presentment and continued with the guilty plea. PCR Tr.p. 52. The counsel was shown a copy of the indictments – 2015 and -2807 and indicated that he did not see "True Bill" on them, but saw the date and name of the foreperson.[3] Mobley testified that if they had gone to trial, he would have tried to quash the indictment and would have investigated why the indictment was not stamped. (PCR Tr. 53:10-15).

**Findings**

As an initial matter, this Court finds Mobley's testimony **credible** and Applicant's testimony generally **not credible** on this matter. This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised

[2] The record of the guilty plea proceeding reflects that the Clerk of Court indicated in announcing the indictments that "all indictments are true billed." Guilty Plea Tr. p. 3:14-15. ROA 3.
[3] This Court states as a fact that the court reviewed a similar copy of indictment 2015-GS-32-02015 and can see a faint stamp notation stating "True Bill."

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 Mobley's representation was deficient and that any prejudice resulted from that alleged deficiency. See Butler, *supra*.

First, this Court finds that he record of the guilty plea proceeding reflects that the Clerk of Court indicated in announcing the indictments that "all indictments are true billed." Guilty Plea Tr. p. 3:14-15. ROA 3. This statement carries a presumption of regularity. This assertion undermines the allegations made in this section.

Second, the Applicant and counsel signed all the sentencing sheets, including the sheet on indictment 2015-GS-32-2807. Assuming arguendo that indictment 2807 was not presented to the grand jury, the signing of the sentencing sheet acts as a waiver of presentment. See State v. Smalls, 364 S.C. 343, 348, 613 S.E.2d 754, 756–57 (2005) ("defendant may waive presentment by signing a sentencing sheet that indicates the crime charged. Moreover, it is not necessary to prepare another indictment for the charge to which Defendant plead guilty. A signed document gives rise to a presumed regularity in the proceedings that the defendant was informed of the charges against him").

Third, Applicant testified during the PCR action that his indictments were invalid as they were not signed. However, this Court finds the indictments for kidnapping and armed robbery while armed with a deadly weapon (2015-GS-320-2805, -2807, -2812, -2813, -2815) were all signed and dated by the foreperson. The Applicant's claim otherwise must be denied.

Fourth, this Court has also reviewed certified copies of each of the copies of the indictments (2015-GS-320- 2805, -2812, -2813, -2815) which show, albeit it lightly, that each was stamped as "True Bill." The only indictment copy that did not clearly reveal the stamp was (2015-

GS-320-2807 (20115A3220400905) (kidnapping)., not 2015-GS-320-2813 as alleged. Nonetheless, this Court finds Mobley was not ineffective for not objective or moving to quash the indictments on the basis they were not clearly stamped "True Bill." Applicant has not overcome the presumption of the regularity in Grand Jury proceedings. See Tate v. State, 345 S.C. at 581, 549 S.E.2d at 603 (2001).

Further, counsel testified that if he had noticed any of the indictments were not stamped true bill, he would have waived presentment. Under Smalls, this is effectively what occurred by the signing of the sentencing sheets . The Applicant had not of the charges. Counsel's and the Applicant's intent was to avoid a potential life without parole sentence.

Further, indictments are simply notice documents that do not implicate subject matter jurisdiction. Gentry, 363 S.C. at 101-02, 610 S.E.2d at 499-500. Finally, the body of the indictments - based upon this Court's review - were sufficient to put Applicant on notice of his charges. Because Applicant pled guilty, there was nothing for Mobley to gain by moving to quash the indictments when they were adequate to put Applicant on notice of his charges and had no effect on the court's subject matter jurisdiction. At the plea, as to indictment 2015-GS-32-2807, the indictment was read to the Applicant involving the kidnapping of employees at Domino's Pizza on August 10, 2015. Guilty Plea Tr.p. 8, l. 1-12. The Applicant declared that he understood., which the Applicant confirmed that he understood. Id.

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 Mobley failed to render reasonably effective assistance under prevailing professional norms. As stated all the indictments were declared by the Clerk of Court to have been true billed. All the indictments were signed by the grand jury foreperson. No indictment indicated "No Bill." This Court concludes the defect was the

failure of the foreman of the grand jury to more firmly press the stamp "True Bill" on the indictments, particularly 2015-GS-32-2807, which is solely a clerical error if any related to the indictment. This defect does not create deficient performance on the part of counsel.

Further, as noted above, the Applicant signed each of the sentencing sheets on each indictment. Under State v Smalls, supra, Sixth Amendment prejudice cannot be shown. As Justice Pleicones stated in his concurring opinion in Smalls,

> "[W]hile there is nothing in the record that indicates when the sentencing sheet was signed, in the absence of evidence to the contrary, proceedings in the court of general sessions are presumed to have been regular. E.g., Pringle v. State, 287 S.C. 409, 339 S.E.2d 127 (1986). Applying this presumption, I conclude respondent failed to meet his burden of showing there was no valid waiver of presentment."

State v. Smalls, 364 S.C. 343, 348, 613 S.E.2d 754, 757 (2005) ( Pleicones, J, concurring).

Furthermore, Applicant has failed to present specific and compelling evidence that Mobley committed either errors or omissions to prove the second prong of Strickland as laid out in Hill — that but for Mobley's deficient performance, Applicant would have gone to trial and not pled guilty. Assuming the regularity of the proceedings and the clerk's statement in open court, as well as the signature of the foreperson, it would appear that all indictments were actually true billed. Alternately, as to every indictment, including 2807, the Applicant signed the sentencing sheets which was sufficient under Smalls.

Accordingly, this Court finds that Applicant did not overcome the presumption that counsel was effective and, as there was nothing to gain from an objection, Applicant did not demonstrate any prejudice flowing from Mobley's alleged deficiency. Applicant did not prove deficiency or

prejudice, and thus this allegation must be **DENIED** and **DISMISSED**.[4]

**Allegation: Applicant's plea counsel, Derrick E. Mobley, failed to meet with applicant a sufficient number of times to properly review the evidence and discuss this case with Applicant.**

In the first allegation in the amended application, the Applicant alleged plea counsel Mobley was constitutionally ineffective for failing to communicate and meet a sufficient number of times, and for failing to review discovery with Applicant. This Court finds these allegations are without merit because the Applicant failed in his burden of proof.

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).

South Carolina case law has established that even if counsel only met with his client very briefly, that alone does not establish that he was unprepared or ineffective at trial. See Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing Easter) (finding "Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation."), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

Additionally, "brevity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation." Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Applicant must show evidence indicating "how additional preparation or communication would

[4] This Court finds that even if it would have concluded that indictment 2015-GS-32-02807 had not been indicted the impact on the aggregate sentence would have been on no consequence because the sentences all ran concurrent.

have resulted in a different outcome." Id.; see Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (where application failed to show ineffective assistance of counsel based on lack of preparation by neglecting to show evidence of what counsel failed to discover or what defenses counsel could have pursued had he more fully prepared for the case); Skeen v. State, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (where applicant failed to show ineffective assistance of counsel when he did not present evidence showing how additional preparation would have impacted the trial).

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 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. 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 he only remembered meeting with Mobley once or twice while in jail. (PCR Tr. 6:23-25). Applicant testified that he did not feel prepared for trial. (PCR Tr. 8:11-12).

On cross-examination, Applicant denied having met with Mobley at least fourteen (14) times. (PCR Tr. 9:5-9). However, Applicant testified that Mobley gave him a copy of the evidence and reviewed discovery materials with him. (PCR Tr. 10:10-20).

On direct examination, counsel Mobley testified that he met with Applicant at least thirteen (13) times and provided the dates of the meetings. (PCR Tr. 28:7-22). Mobley recounted going over the discovery pack with Applicant, discussing key pieces of evidence, and discussing strategy for both a trial and a potential plea agreement. (PCR Tr. 29:14-32:19). Specifically, Mobley testified that he discussed with Applicant the statements of the state's witnesses who identified the distinctive tattoo on Applicant's neck, Applicant's written confession, and the positive identifications of Applicant from a SLED photo line-up. (29:16-30:13).

**Findings**

As an initial matter, this Court finds Mobley's testimony **credible** and Applicant's testimony **not credible** on this matter. 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 Mobley's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*.

Mobley **credibly** testified that he met with Applicant at least thirteen (13) times, listed the particular dates and reviewed discovery materials with Applicant. Applicant also testified that Mobley reviewed discovery with him. Mobley **credibly** testified that he discussed with Applicant specific discovery materials like witnesses' positive identification of Applicant and the distinctive tattoo on his neck. Notably, Applicant has provided nothing that could have been discovered or what other defenses could have been pursued had Mobley spent more time reviewing discovery

with Applicant.

Furthermore, Applicant has failed to show what could have been discussed or brought out that would have impacted his decision to plead guilty, and, notably, speculation cannot satisfy Applicant's burden of proving prejudice. See Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (concluding pure conjecture fails to establish prejudice).

Moreover, to whatever extent Applicant was not entirely satisfied with the communications or the number of times he met with Mobley, or with Mobley's preparations and review of discovery, Applicant 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. See Plea Tr. 12-13 ROA 12-13.

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 Mobley failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Mobley committed either errors or omissions to prove the second prong of Strickland as laid out in Hill—that but for Mobley'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 Mobley or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

**Allegation: Applicant's plea counsel, Derrick E. Mobley failed to properly investigate the facts of this case and did not have a private investigator work on this case.**

Applicant alleged Mobley was constitutionally ineffective for failing to properly investigate the facts of the case. This Court finds these allegations are without merit.

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

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). 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 direct examination, Applicant testified that Mobley did not involve a private investigator or conduct any independent investigation. (PCR Tr. 7:3-11). Applicant testified that he did not feel like he [Applicant] was prepared for a trial. (PCR Tr. 8:11-14).

On recross examination, Applicant further testified that Mobley never discussed with him any investigations done to prepare for trial, and instead presented him with plea agreements Applicant did not want. (PCR Tr. 19:23-20:4).

On direct examination, counsel Mobley testified that he did not have a private investigator work on Applicant's case. (PCR Tr. 33:5-7). Mobley further testified that he did not think one was needed for Applicant's case, because all the witnesses involved in the incidents were identified and gave statements in discovery materials, and he intended to cross examine them at trial. (PCR 33:8-24). Mobley testified that the evidence in the discovery materials, including specific eyewitness statements and pictures, was sufficient to allow him to mount a defense. (PCR Tr. 33:16-24). Mobley also testified that Applicant provided no leads that would require investigatory services to follow up on. (PCR Tr. 33:25-34:2).

On cross-examination, Mobley testified that he did not feel that a private investigator would be able to reveal any information that was not already in the discovery materials. (PCR Tr. 50:3-10).

**Findings**

As an initial matter, this Court finds Mobley's testimony **credible** and Applicant's testimony generally **not credible** on this matter. 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 Mobley's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra.*

Applicant testified that Mobley did not hire a private investigator or conduct any independent investigation of the facts. However, Mobley **credibly** testified that the nature of the case did not necessitate independent investigation, as all the relevant facts were collected within the discovery materials. Mobley **credibly** testified that the discovery materials provided him with the evidence he needed to mount a defense at trial.

This Court finds Applicant has failed to show Mobley was ineffective for not conducting further investigation on the facts of his case. Importantly, Applicant has produced no evidence of what counsel would have discovered through further investigation. See Jackson, 329 S.C. at 353–54, 495 S.E.2d at 772 (1998) (reversing PCR court's grant of relief when applicant failed to "present any evidence of what counsel could have discovered or what other defenses he would have requested had counsel more fully prepared for the trial").

Moreover, to whatever extent Applicant was not entirely satisfied with Mobley's preparation and investigation, 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. See Plea Tr. 12-13 ROA 12-13. The Applicant's statements during the guilty plea carry a presumption of verity. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). His statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir.1976). Dalton v. State, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (Ct. App. 2007)

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 Mobley failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to

present specific and compelling evidence that Mobley committed either errors or omissions to prove the second prong of Strickland as laid out in Hill—that but for Mobley'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 Mobley or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

**Allegation: Applicant's counsel, Derrick E. Mobley, failed to provide a copy of the evidence to Applicant.**

In his third amended allegation, Applicant alleged Mobley was constitutionally ineffective for failing to provide Applicant with a copy of the evidence. This Court finds this allegation to be without merit and specifically finds that counsel Mobley went over the discovery and evidence with the Applicant..

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 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 Mobley gave him a physical copy of the discovery packet. (PCR Tr. 7:6-8). On cross examination, Applicant testified that Mobley gave him a copy of discovery and reviewed that discovery packet with him. (PCR Tr. 10:11-20). Applicant testified that he did not see or receive any video evidence. (PCR Tr. 10:13-17).

On direct examination, Mobley testified that he hand-delivered paper copies of discovery to Applicant. (PCR Tr. 32:6-9). Counsel testified about his discussions with the Applicant about the discovery:

> Some of the points of -- some of the highlighted points were that the individuals that were identified as witnesses and/or detainees as victims in these cases they identified some distinct tattoos on the neck. One actually writes in a report what it allegedly says. There was some identification through photos through I think a SLED six pack to identify prospective suspects. There was a five-page confession that was given later by the defendant. There was -- what I recall is the distinctly the mention of the tattoos by multiple individuals that were alleged victims. The identification by those victims in a six pack from SLED owe him money and guns that were found -- and a gun, excuse me, that was found when they captured the Defendant at the time.

PCR 29: - 30:3.14 On cross examination, Mobley testified that he provided a copy of discovery to Applicant. (PCR Tr. 50:11-13).

**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 Mobley's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Applicant testified that Mobley provided physical copies of discovery, which he reviewed with Applicant. Mobley testified that he delivered a copy of discovery, which he reviewed with Applicant.

This Court finds that based upon counsel's credible testimony as cited above, not only was the discovery given to the Applicant, but it was also thoroughly discussed with him. The Applicant even admitted in this proceeding that it was provided to him. Moreover, to whatever extent Applicant was not entirely satisfied with Mobley's preparation and review of discovery, he was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to avail himself of the benefit of his guilty plea. See Plea Tr. 12-13 ROA 12-13. Blackledge v. Allison, supra.

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 Mobley failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Mobley committed either errors or omissions to prove the second prong of Strickland as laid out in Hill—that but for Mobley'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 Mobley or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED.**

***INVOLUNTARY GUILTY PLEA***

**To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a complete understanding of the consequences of the plea and the charges against him or her. Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991); see also Boykin v. Alabama, 395 U.S. 238, 244 (1969) (Courts must make sure defendants have "a full understanding of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought and forestalls the spin-off of collateral proceedings that seek to probe murky memories.").**

**In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984) (finding the voluntariness of a guilty plea "is not determined by an examination of the specific inquiry made by the sentencing judge alone but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.").**

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

**Allegation: Applicant was coerced into entering a guilty plea after plea counsel, Derrick Mobley, told Applicant his mother said he should enter a guilty plea.**

In his fourth amended allegation, Applicant alleged his plea was involuntary because of Mobley's ineffective assistance. Specifically, Applicant contends that his guilty plea was coerced by certain statements allegedly made by Mobley to him regarding Applicant's mother. As stated below, this Court rejects the allegation based upon the credible testimony of counsel Mobley that he did not discuss with the Applicant his mother's position. This Court disagrees with the Applicant's underlying assertion and concludes the combined record from the plea hearing and the PCR hearing establishes Applicant freely, knowingly, and voluntarily pleaded guilty.

**Plea Hearing Testimony**

At applicant's plea hearing, the following exchange between the Plea Court and Applicant occurred as follows:

> Q. I believe you have one set of charges, which is armed robbery, kidnapping, and kidnapping? . . . Is that your understanding Mr. Stroman?
>
> A. Yes, sir.
>
> Q. Has anyone promised you anything or held out any hope of reward to get you to plead guilty?
>
> A. No, sir.
>
> Q. Has anyone threatened you or used force to get you to plead guilty?
>
> A. No, sir.
>
> Q. Has anyone used any pressure or intimidation to cause you to plead guilty?
>
> A. No, sir.
>
> Q. Have you had enough time to make up your mind about whether or not you want to plead guilty?
>
> A. Yes, sir.
>
> Q. Are you pleading guilty of your own free will and accord?
>
> A. Yes, sir.
>
> Q. Are you satisfied with the manner in which your lawyer has advised and represented you?
>
> A. Yes, sir.
>
> Q. Have you talked with your lawyer as often and for as long as you feel necessary for him to properly represent you?
>
> A. Yes, sir.

Q. Do you need any more time to talk with your lawyer?

A. No sir, I don't.

Q. Have you understood your talks with your lawyer?

A. Yes, I have.

Q. Has your lawyer done everything for you that you feel like he could have done or should have done?

A. Yes, sir.

Q. Has your lawyer done anything in your case that you feel like he should not have done?

A. No, sir.

Q. Are you totally and completely satisfied with your lawyer's services?

A. Yes, sir.

Q. Do you have any complaints you want to make about your lawyer, the solicitor, or any officers involved in any of your cases?

A. No, sir.

(Plea Tr. pp. 11-13).

**PCR Evidentiary Hearing**

On direct examination, Applicant testified Mobley coerced him into taking the plea. (PCR Tr. 7:14-20). Applicant testified that he felt that if he did not take the plea, he would be facing a life sentence. (PCR Tr. 7:14-17). Applicant also testified that Mobley told Applicant his mother was in the courtroom and wanted him to take the plea. (PCR Tr. 7:21-25).

On cross examination, Applicant testified that Mobley told him his mother was in the courtroom and had expressed to Mobley that she believed Applicant should take the plea. (PCR Tr. 18:1-4). Applicant testified that his mother was never in the courtroom. (PCR Tr. 18:6).

The Applicant's mother, Vickie James, testified at the PCR hearing. PCR Tr. p. 21 – 25. On direct examination, Mobley testified that he did not remember if he had any conversations with Applicant's mother on the day of the plea hearing. (PCR Tr. 42:5-13). She testified that she was present in court on one of the two occasions Applicant was in court. She recalled that she had conversations with his attorney. She denied that she told counsel to tell the Applicant to take the plea offer. PCR Tr. p. 22.

On cross-examination, the mother recalled it was the day the court said 50 years. She stated that after the 50 year sentence she confronted counsel outside the courtroom and stated that she thought they were talking about less years was advised that they had no control over what the judge did. PCR Tr. p. 24. She stated that she thought the plea was for possibly 10 to 15 years. Id. She said that she had talked with counsel by phone and outside the courtroom. She said she spoke with counsel maybe twice and her son had turned down the first offer. She stated when counsel called back, she complained that the Applicant should have taken the first offer. She said they offered another one then and Sean took it. PCR Tr.p. 25. She admitted that she was not present when counsel spoke with her son after that. Id.

On direct examination, counsel Mobley stated that he could not recall if he had any conversations with the mother. He acknowledged that she was at court at one point of the three times they were in court, but he could not recall what he stated to her. However, he stated that he did not recall telling Mr. Stroman that his mother wanted him to plead guilty. PCR Tr. p. 42: 16-23. He stated also that there was never an offer of a 10 to 15 year plea offer. PCR Tr.p. 42-43. Counsel indicated that since there was never a plea offer of 10-15 years, he would not have told Stroman that his mother wanted him to take that 10-15 year offer.

On cross examination, Mobley testified that he could not recall whether Applicant's mother had approved of a plea or not. (PCR Tr. 51:3-4).

**Findings**

This Court finds as a fact that counsel did not advise the Applicant that his mother wanted him to take the plea. Counsel credibly denied it . Further, his mother rejected that she told counsel to tell her son. This Court rejects the Applicant's factual assertion that counsel told him his mother wanted him to take the plea.

This Court finds the record refutes Applicant's allegations and reflects that Applicant's guilty plea was knowingly and voluntarily entered with a complete understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985)).

Applicant alleged Mobley was constitutionally ineffective and coerced him into involuntarily pleading guilty due to Mobley's statements that Applicant's mother wanted him to take the plea. This Court disagrees, and finds that the combined records from the plea hearing and PCR hearing established Applicant freely, knowingly, and voluntarily pleaded guilty. Additionally, this Court finds Applicant has failed to show that Mobley's representation fell below an objective standard of reasonableness, and that but for Mobley's alleged errors, Applicant would not have

pled guilty and proceeded to trial. See Roscoe v. State, 345 S.C.16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362 426 S.E.2d 795, 797 (1993).

Furthermore, this Court finds the combination of the record and Mobley's **credible** testimony at the evidentiary hearing provides Applicant knew the nature of the charges against him and the consequences of pleading guilty. The plea transcript reflects that Applicant entered his plea knowingly and voluntarily, engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the plea court's questions. Applicant has presented no valid reason why he should be able to depart from the statements made during his guilty plea. See Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975), overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir. 1985) (finding that the accuracy and truth of an accused's statements at a guilty plea proceeding are "conclusively" established unless he makes some reasonable allegation why this should not be so).

Accordingly, this Court finds Applicant freely, voluntarily, and intelligently entered his guilty plea and Applicant has failed to establish any deficiency by Mobley or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

**Allegation: Applicant was told by plea counsel, Derrick E. Mobley, he would receive no more than 15 years' incarceration as his sentence if he entered a guilty plea and would be out of jail in 12 years.**

In his fifth allegation in the amended application, Applicant alleged that his plea was involuntary because of Mobley's ineffective assistance. Specifically, Applicant contends that his guilty plea was coerced by Mobley's alleged statements that if Applicant pleaded guilty, he would be sentenced to no more than fifteen (15) years and would be out of jail in twelve (12) years. This Court disagrees and finds that the combined records from the plea hearing and PCR hearing established Applicant freely, knowingly, and voluntarily pleaded guilty.

To be knowing and voluntary, a plea must be entered with awareness of consequences of the plea, i.e. proper advice by judge on mandatory sentencing. Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). A plea may be knowing and voluntary even though there was confusion at plea proceeding over sentencing range and whether fine was mandatory since applicant was correctly informed of maximum exposure. Carter v. State, 329 S.C. 355, 495 S.E.2d 773 (1998). A defendant who pleads guilty on advice of counsel may collaterally attack plea only by showing that (1) counsel was ineffective and (2) there is reasonable probability that but for counsel's errors, defendant would not have pled guilty. Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). A guilty plea entered because of a belief that a judge will impose a certain sentence is not involuntary. Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997) (fact that defendant "hoped" and "expected" to get reduced sentence does not render plea invalid); Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984) (fact that defendant "thought" judge would give lighter sentence not ground for relief).

**Plea Hearing Testimony**

At applicant's plea hearing, the following exchange between the Plea Court and Applicant occurred as follows:

> Q. Before I can accept a plea of guilty, it's necessary for me to determine if your pleas are being given freely and voluntarily; therefore, I need to ask you some questions. If you do not understand my questions, please let me know and I will try to explain them to you. If at any time you wish to talk with your attorney, let me know and I will allow you to do so. Do you understand?
>
> A. Yes, sir.
>
> ---
>
> Q. I've been handed up five indictments, and I'll go over each of them with you. The first indictment I was handed up is 2015-GS-32-02815. . .. For that you can receive a sentence of not less than ten nor more than thirty years; do you understand?

A. Yes, sir.

Q. The next indictment, 2015-GS-32-02805. . .. That is a charge of, again, armed robbery, for which you could receive a sentence of not less than ten nor more than thirty years. Do you understand?

A. Yes, sir.
Q. The next indictment I come to, 2015-GS-32-02812. . .. That's a charge of kidnapping for which you could receive a sentence of up to thirty years. Do you understand?

A. Yes, sir.

Q. The next indictment, 2015-GS-32-02813. . .. That is an indictment for kidnapping, of which you could receive a sentence of up to thirty years. Do you understand?

A. Yes, sir.

Q. And finally 2015-GS-32-02807. . .. That is a charge of kidnapping, for which you could receive thirty years. Do you understand?

A. Yes, sir.

(Plea Tr. pp. 4-8).

At applicant's plea hearing, the following exchange between the Plea Court and Applicant occurred as follows:

Q. Understanding the nature of the charges, armed robbery, two counts, and kidnapping, three counts, of which **if I were to sentence you consecutively, you would receive a sentence of up to one hundred-fifty years, how do you plead. . .** ? Guilty or not guilty?

A. Sir, I plead guilty, sir.

Q. Do you need more time to talk with your lawyer, Mr. Stroman?

A. No, sir.

(Plea Tr. pp. 9:12-19).

More probative are counsel comments in the plea proceeding about his discussions with his client and the development of the of the guilty plea:

First and foremost before I begin to go into my little spiel and provide the Court with a little edification and contextual information in regards to my client; **although the solicitor's office hasn't negotiated any type of sentence range or anything of that nature, we have discussed and she is okay with the fact that they are not requesting a consecutive sentence; and additionally, they're not opposing a concurrent, they're just taking no position at this time.**

I've explained that very thoroughly with my client in regards to the maximum sentence on each of these indictments, meaning that on the armed robberies, the mandatory minimum is ten years up to thirty years. On the kidnaps, it's zero up to thirty years, each count. He understands that they are violent, which for classification purposes in SCDC, where he'll be housed, he understands this well. **Due to them being a most serious offense, he understands about the two strike system here in the State of South Carolina, where if we had gone to trial on three separate trials, the first trial if he had been found guilty, the State could have actually served him with a notice for LWOP, which is life without parole**, in pursuit of that particular conviction.

**We've discussed each of those very thoroughly**, Your Honor. Furthermore, we discussed each of the actual elements of each crime, what it would take to get a conviction beyond a reasonable doubt with a jury here in Lexington County itself. We've discussed pretrial motions that we could have actually taken up in order to attempt to attack the confession that was provided to law enforcement, the written confession, any statements that was provided; Jackson v Denno hearings; Neal v Biggers hearings; in-court identifications that may occur with any victims that may have actually come to participate in any of those trials.

He had a very thorough understanding. I provide a very thorough information about that as well. He was able to do independent research as well. So we've had the opportunity to do what we need to do in this particular case, Your Honor.

Plea Tr.p. 22:14 - 24:1. ROA 22-24.

**PCR Evidentiary Hearing**

On direct examination, Applicant testified that Mobley promised he would receive no more than fifteen (15) years in prison and would be out in twelve (12) years. (PCR Tr. 8:1-3).

On cross examination, Applicant testified that he felt he had no choice but to take the plea, because Mobley had advised him that if he went to trial it was possible he would get life without parole. (PCR Tr. 14:6-13). Applicant testified that his belief that he would receive no more than

fifteen (15) years was the "only reason" he took the plea. (PCR Tr. 12:14-19). However, Applicant further testified that he pled guilty in order to obtain the benefit of avoiding a life sentence, and that if he hadn't been told about the possibility of being sentenced to life without parole he probably would have gone to trial. (PCR Tr. 15:10-12, 19:4-5). Applicant testified that during his plea colloquy with Judge McMahon he understood the possible sentences he was facing, but only agreed because he thought he would not receive the maximum. (PCR Tr. 11:4-11). Applicant testified that before his plea hearing Mobley had told him not to be alarmed by the Judge reading the maximums, because "he may drop it down to a lesser amount of time." (PCR Tr. 11:20-24). Applicant testified that he understood that the solicitor would not be making any recommendations for the plea agreement. (PCR Tr. 13:12-15).

On direct examination, Mobley testified that he did not promise Applicant that he would get no more than fifteen (15) years and serve only twelve (12). (PCR Tr. 38:25-39:2). Mobley testified that he had attempted to negotiate a fifteen (15) year cap with the Solicitor, but was unsuccessful. (PCR Tr. 43:10-14). Mobley testified that he informed Applicant that the Solicitor had rejected the ten (10) to fifteen (15) year cap Mobley proposed. (PCR Tr. 54:22-23). Mobley testified that he advised his client that he would try to get the sentence as low as possible, but that ultimately it was the judge's decision, and it was possible the judge could give Applicant the maximum sentence. (PCR Tr. 51:9-23).

**Findings**

This Court finds as a fact that there was no cap of a sentence in any agreed plea negotiations at the time of the plea. This Court finds that the state was taking no position as to whether the sentence should be consecutive or concurrent. This Court finds that the Applicant was aware from his discussions with his counsel at the time of the guilty plea that he faced the possibility at the

plea of receiving consecutive sentences up to an aggregate of 150 years. This Court further finds that the Applicant was aware due to the nature of the charges running from three separate incidents, that if he went to trial on each set of charges and was convicted he would be subject to a sentence of life without parole on the second trial if convicted. This Court further finds that there was a legal possibility that if the Applicant went to trial and was convicted on the first set of charges, he could face a sentence of life without parole. This Court finds that the Applicant was not under the impression that he would receive a sentence of no more than 15 years and be out of custody in 12 years or the that range of the sentence in an aggregate was limited to 10 to 30 years. See Rayford v. State, 314 S.C. 46, 48-49, 443 S.E.2d 805, 806 (1994) (where transcript of guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, grant of PCR was inappropriate notwithstanding applicant's claim lawyer misadvised him).This Court further finds that the actual legal possibility of a sentence of life without parole if he faced the trials is not, as a matter of law legal coercive related to the voluntariness of a guilty plea. See Sanders v. Leeke, 254 S.C. 444, 175 S.E.2d 796 (1970) (Defendant's fear of receiving death penalty if he risked jury trial by plea of not guilty to murder charge was not inherently coercive factor which necessarily deprived him of freedom of choice in making his plea of guilty to lesser included offense of manslaughter and did not impose impermissible burden upon his exercise of his Fifth and Sixth Amendment rights); Brady v. United States, 397 U.S. 742, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970) (Brady affirmed the denial of habeas relief for a federal prisoner who claimed his guilty plea wasn't voluntary because he feared he could receive the death penalty if he went to trial)

This Court finds that the record refutes Applicant's allegations and reflects that Applicant's guilty plea was knowingly and voluntarily entered with a complete understanding of the charges and consequences of the plea. Additionally, this Court finds Mobley's statements at the plea and

testimony **credible** and Applicant's testimony **not credible** on this matter. Furthermore, this Court finds Applicant has failed to show that Mobley's representation fell below an objective standard of reasonableness, and that but for Mobley's alleged errors, Applicant would not have pled guilty and proceeded to trial. See Roscoe v. State, 345 S.C.16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362 426 S.E.2d 795, 797 (1993).

Furthermore, this Court finds the combination of the record and Mobley's **credible** testimony at the evidentiary hearing demonstrates Applicant knew the nature of the charges against him and the consequences of pleading guilty. Applicant was aware that the solicitor did not intend to recommend or oppose any particular sentence, nor did they. Applicant's plea was not induced by a promise from the solicitor or judge, Applicant was informed of sentence his charges could carry during his plea hearing, and Mobley **credibly testified** that Applicant was made aware that a maximum sentence was possible.

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

Accordingly, this Court finds Applicant freely, voluntarily, and intelligently entered his guilty plea and Applicant has failed to establish any deficiency by Mobley or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED.**

**Allegation: Applicant thought he had a range of 10-30 years and plea counsel, Derrick E. Mobley, failed to advise him it could go beyond this.**

In his sixth amended allegation, Applicant alleged that his plea was involuntary because of Mobley's ineffective assistance. Specifically, Applicant contends that his guilty plea was coerced by Mobley's failure to advise Applicant that his sentence could go beyond the range of ten (10) to thirty (30) years. As noted in the above claim, the Applicant failed to prove deficient performance on a related ground. This Court incorporates its findings in amended ground five. In particular, this Court finds that there was no promise that the range was limited to a 10 to 30 year sentence without the possibility of a consecutive sentence. The Applicant affirmed at the plea that he was aware that he could receive 150 years, the Applicant was advised the State would not agree to a concurrent sentence but was taking no position on whether the sentences would be concurrent or consecutive. The statement at the plea carry a presumption of verity that the Applicant has failed to overcome. Blackledge v Allison, supra. As noted above, the threat of life without parole, an available sentence based upon the Applicant's actions and charges, does not undermine the voluntariness of the plea. Brady v. U.S., supra. This Court disagrees and finds that the combined records from the plea hearing and PCR hearing established Applicant freely, knowingly, and voluntarily pleaded guilty.

**Plea Colloquy**

At applicant's plea hearing, the following exchange between the Plea Court and Applicant occurred as follows:

> Q. Understanding the nature of the charges, armed robbery, two counts, and kidnapping, three counts, of which if I were to sentence

you consecutively, you would receive a sentence of up to one hundred-fifty years, how do you plead. . . ? Guilty or not guilty?

A. Sir, I plead guilty, sir.

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Q. Do you need more time to talk with your lawyer, Mr. Stroman?

A. No, sir.

(Plea Tr. pp. 9:12-19).

**PCR Evidentiary Hearing**

On direct examination, Applicant testified that Mobley told him that he would receive no more than thirty (30) years in prison if he took the plea agreement. (PCR Tr. 8:4-7).

On cross examination, Applicant testified that he had not understood what Judge McMahon meant when he informed Applicant that the sentences could be run consecutively or could be stacked together. (PCR Tr. 12:22-25). Applicant further testified that even though he did not understand what that meant, he agreed because he felt he had no choice but to take the plea. (PCR Tr. 13:1-3). Applicant testified that he felt he had no choice but to take the plea to avoid facing a life without parole sentence if he went to trial. (PCR Tr. 14:6-18, 15:1-7).

On redirect examination, Applicant testified that "it wasn't voluntary only because I saw, I was coerced into taking the plea, because they threatened me with the LWOP [life without parole]." (PCR Tr. 18:25-19:2).

On direct examination, Mobley testified that he informed Applicant that he could potentially be sentenced to up to one-hundred and fifty (150) years in prison if his sentences were run consecutively. (PCR Tr. 48:2-5). Mobley testified that he explained to Applicant what a consecutive sentence meant, and that Applicant was aware that he could receive consecutive sentences as Mobley discussed it with him when they reviewed the minimum and maximum sentences associated with Applicant's indictments. (PCR Tr. 39:3-40:5). Mobley further testified

that he informed Applicant that the solicitor had not recommended a consecutive sentence, but that ultimately it would be up to the judge. (PCR Tr. 39:8-11). Mobley testified that after sentencing, he was able to successfully motion for Applicant's sentence to be reconsidered, after which it was reduced from fifty (50) years aggregate down to thirty (30) years aggregate. (PCR Tr. 48:6-10).

On cross examination, Mobley testified that he did not believe his statements to Applicant about the ten (10) to thirty (30) year sentencing ranges associated with Applicant's charges could have given Applicant the impression that there was a thirty (30) year cap on sentencing, because Mobley had also discussed the possibility of the judge running the sentences consecutively with Applicant. (PCR Tr. 51:17-23).

**Findings**

AS stated above, the Court has found that he was correctly advised about the penalty he was facing with his guilty and the legitimate possibility of life without parole he faced if he chose to go to trial on all the charges which would require three separate trials. This Court finds that the record refutes Applicant's allegations and reflects that Applicant's guilty plea was knowingly and voluntarily entered with a complete understanding of the charges and consequences of the plea. Additionally, this Court finds Mobley's testimony **credible** and Applicant's testimony **not credible** on this matter. Furthermore, this Court finds Applicant has failed to show that Mobley's representation fell below an objective standard of reasonableness, and that but for Mobley's alleged errors, Applicant would not have pled guilty and proceeded to trial. See Roscoe v. State, 345 S.C.16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362 426 S.E.2d 795, 797 (1993). To the contrary, this Court finds that counsel actions and advice concerning the potential punishments were correct and potential range of 150 at the plea and potential of LWOP

if he chose to go to trial were required information to be given by a lawyer for the plea to be knowing and voluntary.

This Court finds the combination of the record and Mobley's **credible** testimony at the evidentiary hearing demonstrates Applicant knew the nature of the charges against him and the consequences of pleading guilty. Moreover, the plea colloquy cured any alleged deficiency regarding Mobley's advice. The plea transcript reflects that Applicant was specifically informed by the court that he could be sentenced to up to one-hundred and fifty (150) years. Applicant entered his plea knowingly and voluntarily, engaged in an intelligent colloquy with the plea court and gave appropriate responses to the plea court's questions, and was given ample opportunity to ask questions of the court or Mobley on any points he did not understand. Applicant has presented no valid reason why he should be able to depart form the statements made during his guilty plea. See Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975), overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir. 1985) (finding that the accuracy and truth of an accused's statements at a guilty plea proceeding are "conclusively" established unless he makes some reasonable allegation why this should not be so).

Accordingly, this Court finds Applicant freely, voluntarily, and intelligently entered his guilty plea and Applicant has failed to establish any deficiency by Mobley or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

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

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

**AND IT IS SO ORDERED this** 22nd **day of** August**, 2025.**

THE HONORABLE JOCELYN NEWMAN.
Presiding Judge
Eleventh Judicial Circuit

Columbia, South Carolina