

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas  
The Honorable Cordell Maddox, PCR Action Judge  
2023-CP-32-00670

**RECEIVED**

**Dec 04 2025**

**S.C. SUPREME COURT**

ROBERT HELRIGEL, #390927,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

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**NOTICE OF APPEAL**

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Robert J Helrigel appeals the denial of his post-conviction relief application. The post-conviction relief action was heard and denied by the Honorable Cordell Maddox, circuit court judge, on March 21, 2024, and was denied by written order issued filed on September 16, 2024. Applicant received notice of the judgement on September 20, 2024. Applicant submitted a motion for reconsideration filed September 30, 2025. The Court issued an order denying the motion, filed on November 21, 2025. Applicant received notice on November 24, 2025.

/s Chelsey F. Marto  
Chelsey F. Marto, Esquire  
Attorney for the Applicant  
The Law Office of Chelsey F. Marto, LLC  
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(864)-404-5583

Other Counsel of Record:  
Donald Zelenka, Esquire  
Office of the Attorney General, State of SC  
P.O. Box 11549  
Columbia, SC, 29211-1549

FILED

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

2025 FEB 21

IN THE COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT

CLERK OF COURT  
LEXINGTON

Robert Joseph Helrigel, Jr., #390927, )  
)  
Applicant, )  
v. )  
)  
State of South Carolina, )  
)  
Respondent. )  
\_\_\_\_\_ )

Case No.: 2023-CP-32-00670

**ORDER DENYING RULE 59  
MOTION**

This matter came before the Court by a *pro se* application for post-conviction relief by Robert J. Helrigel, Jr., filed on February 21, 2023. On March 21, 2024, this matter came before this Court. The Applicant was present and represented by his court appointed counsel Chelsey Marto. The Respondent was represented by Deputy Attorney General Donald J. Zelenka. On September 16, 2024, an Order of Dismissal signed by this Court on September 6, 2024 was filed on September 16, 2024.

On September 30, 2024, the Applicant, through appointed counsel Marto filed a Rule 59 motion. In the Motion, counsel Marto requested this Court to reconsider its order. In the motion, counsel attached as Attachment A, a *pro se* document consisting of 11 handwritten pages.<sup>1</sup>

<sup>1</sup> On November 12, 2024, the Applicant *pro se* filed a document with similar allegations as Attachment A. This does not appear to be adopted by appointed counsel. The document consists of a cover page by Helrigel to the Clerk, 14 hand-written pages, a July 18, 2024 letter purported to be from the Department of Motor Vehicles to Helrigel, and a July 10, 2024 letter from SLED to Helrigel. To the extent the assertions in the documents are materially different than the document attached to the Rule 59 motion as Attachment A filed by appointed counsel, this Court will not consider it. South Carolina has a recognized prohibition against hybrid representation. Dennison v. State, 639 S.E.2d 35 (S.C. 2006); State v. Cabrera Pena, 567 S.E.2d 472 (S.C. Ct. App. 2002). PCR counsel cannot merely serve as a conduit for the petitioner's *pro se* motions. Jones v. State, 558 S.E.2d 517 (S.C. 2002)(counsel must review motions submitted by his client and determine if they are valid).

In his first assertion (a), the Applicant contends in Attachment A that his counsel did not discuss strategy with him and claimed his counsel contradicted themselves at the PCR proceeding. This issue was adequately addressed in the Order of Dismissal at pages 12-13. This Court has reviewed the Order and denies a request to alter or amend, concluding the Court's earlier assessment was correct.

In his second assertion (b) in Attachment A, the Applicant contends his counsel were deficient in failing to attack the validity of the stop. He asserts that the basis for this is that prosecutor Oppenheimer stated during the guilty plea that Applicant was suspected of DUI, yet he was never charged with DUI. See Plea Tr.p. 9. The Applicant also raised this in his PCR testimony. This issue was presented in the Court's Order at p. 12-13. The Applicant's contention that since he was not charged with DUI at the incident, the stop was invalid. This is incorrect. The prosecutors statement that Helrigel was pulled over by a deputy with the Lexington County Sheriff's Department for suspected DUI and suspected for committing numerous traffic violations, your Honor, including crossing over the fog line . . ." revealed reasonable suspicion. Contrary to the Applicant's assertion, the officers were not required to arrest the Applicant for DUI after the stop. The stopping of a vehicle and the detention of its occupants constitutes a seizure and implicates the Fourth Amendment's prohibition against unreasonable searches and seizures. *Delaware v. Prouse*, 440 U.S. 648, 653-54, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979). "Therefore, an automobile stop implicates the Fourth Amendment prohibition against unreasonable searches and seizures, imposing a standard of 'reasonableness' upon the exercise of discretion by state law enforcement officials." *State v. Banda*, 371 S.C. 245, 639 S.E.2d 36. 252. 371 S.C. 245, 639 S.E.2d 36, 40 (2006).

"A police officer may stop and briefly detain and question a person for investigative

purposes, without treading upon his Fourth Amendment rights, when the officer has a reasonable suspicion supported by articulable facts, short of probable cause for arrest, that the person is involved in criminal activity.” *State v. Woodruff*, 344 S.C. 537, 546, 544 S.E.2d 290, 295 (Ct.App.2001). “The term ‘reasonable suspicion’ requires a particularized and objective basis that would lead one to suspect another of criminal activity.” *Id.* In determining whether reasonable suspicion exists, the circumstances must be considered as a whole. *Id.* If the officer's suspicions are confirmed or further aroused, the stop then may be prolonged and the scope enlarged. *Id.* Generally, the decision to stop an automobile is reasonable when the police have probable cause to believe a traffic violation has occurred. *State v. Banda*, 371 S.C. at 252, 639 S.E.2d at 40. *State v. Corley*, 383 S.C. 232, 240, 679 S.E.2d 187, 191 (Ct. App. 2009), *aff'd as modified*, 392 S.C. 125, 708 S.E.2d 217 (2011) (Police officer had reasonable suspicion of criminal activity to justify further detention following traffic stop for failure to use turn signal). The Applicant has not met his burden of showing counsel was deficient because he was not arrested for DUI. Here, there were other traffic violations presented by the prosecutor to additionally support reasonable suspicion. This Court will not alter or amend the judgment.

In his third specification (c ) in Attachment A, he claims that counsel was deficient in failing to object to the State requesting a sentence in the upper range. This issue was adequately addressed in the Order at pages 22-24. Upon review of the Order, emphasizing the credible testimony of counsel Williams on this point, the Court denies the motion to alter or amend.

In his fourth specification (d), he claims that counsel did not adequately advise him of the sentencing ranges he was facing if he went to trial on the charges and whether it was a violent crime, citing Tr.p. 7. Contrary to the claim, the Applicant was aware at the time of his plea that the crime was a violent crime and indicated he was aware before the plea began. Further he was aware

at the outset of the plea that he was facing a sentencing range of 15 to 20 years. Tr.p. 9-10. The plea judge went over the potential sentence on each charge during the plea. Counsel Williams further testified at the PCR hearing that he went over the charges with the Applicant and the potential sentences and rejected the Applicant's claim that he was facing death. These issues were adequately addressed within the Order and more particularly in the Order at pages 13-14. The Court denies the motion to alter on this assertion.

In his fifth assertion (e), Helrigel contends counsel erred in filing to request a preliminary hearing. He claims that had a hearing been held he would have obtained the dash cam video. During the PCR proceeding counsel testified that he did request a preliminary hearing. Counsel also had received videos but was unable to play them for the Applicant due to COVID. These issues were adequately addressed in the Order at pages 12-13. The request to alter must be denied.

In his sixth assertion (f), Applicant claims counsel failed to timely obtain and share discovery with the Applicant, particularly not having the dash cam videos being shared with him. This was adequately addressed in the Order at pages 16-19. The request to alter or amend is denied.

In his seventh specification (g), he asserts counsel was ineffective in failing to obtain a more favorable plea offer. He complains that the offer was made with a legal aide rather than directly with his counsel. This issue was adequately addressed specifically in the Order at pages 13-14. The request to alter or amend should be denied.

In his eighth assertion (h), he complains that his counsel were deficient in failing to adequately assist Helrigel in making an informed decision about the plea, again asserting that he was not informed it was a violent offense. This issue was adequately addressed in the Order, pages 14-16. Upon review, this Court denied the request to alter or amend.

In his ninth assertion (i), Helrigel contends his counsel failed to give him a complete copy

of his discovery, or provide him with an opportunity to review the video. As stated above, this issue was adequately addressed in the Order at pages 16-19. The Court denied the request to alter or amend.

In his tenth specification (j), the Applicant contend counsel was deficient in failing to investigate his criminal history and adjust his criminal record to reflect his prior history and that he was never charged with DUI and that possession of a machine gun was inaccurate. This issue was adequately addressed in the Order at pages 19-21. The request to alter or amend is denied.

In his eleventh assertion (k), he contends counsel was deficient in failing to object to the State improperly addressing the Applicant's prior history and pending charges at the plea hearing. This claim was adequately addressed within the Order at pages 21-22. Upon review, this Court denies the request to alter or amend.

In his *pro se* pleading, he also contended that counsel was ineffective in failing to object to the State mentioning his history in dealing drugs. The Court adequately addressed that issue in its Order at pages 22-23. Upon review, the request to alter or amend is denied. *See also, infra*. footnote 1.

In his next allegation (m), he claims counsel should have successfully argued for a fifteen year sentence, the minimum of the negotiated sentencing range. This issue was adequately addressed in the Order pages 23-24.

In the next allegation (n), he asserts that counsel was deficient in failing to successfully withdraw the plea. In this assertion, he asserts that his counsel did not appeal the decision of motion or present mitigating evidence to withdraw the plea. This issue was addressed in the Order at pages 25-26 regarding the performance of counsel in failing to be successful in withdrawing the plea. The Court notes that the plea was entered subject to a negotiated sentencing range

between 15 and 20 years and the Applicant was sentenced within the range. The Applicant's counsel, Ben Stitely made the motion set forth in the Order at page 4 though 5, which was denied by Judge McLeod on November 18, 2022. This Court concludes the conclusion in the order was adequate to cover whether counsel was deficient in failing to be successful on the motion to withdraw the plea. *Cf. Rolan v. State*, 384 S.C. 409, 414, 683 S.E.2d 471, 474 (2009) (stating that petitioner forfeited his ability to withdraw guilty plea once the plea court found the plea was freely and voluntarily entered and supported by a factual basis and formally accepted the plea).

The failure to appeal the motion to withdraw the guilty plea denial was not specifically raised in his application or his amended application. In his application, he asserted at the reason he did not appeal, "put in motion to withdraw plea was denied, believed Post Conviction Relief was next step." Application, p. 2, § 9. The issue concerning the appeal of the denial of the motion to with appears to be raised in this *pro se* Rule 59 motion for the first time. Since new matter cannot be raise for the first time in a Rule 59 motion to amend, it must be denied. A party cannot use a motion to alter or amend a judgment to present to the court an issue the party could have raised prior to judgment but did not. *See Patterson v. Reid*, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995) ("A party cannot for the first time raise an issue by way of a Rule 59(e) motion which could have been raised at trial."); *Miller Constr. Co., LLC v. PC Constr. of Greenwood, Inc.*, 418 S.C. 186, 206, 791 S.E.2d 321, 332 (Ct. App. 2016). Therefore consideration of the issue must be denied.

Alternately, assuming arguendo that the assertion in the application and testimony was sufficient to raise this claim, this ground must be denied because plea counsel should be found deficient for the failure to advise related to an appeal from the guilty plea or denial of the motion to withdraw. "[C]ounsel has a constitutionally imposed duty to consult with the defendant about

an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing.” *Roe v. Flores-Ortega*, 528 U.S. 470, 480, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000). “Even in cases when the defendant pleads guilty, the court must consider such factors as whether the defendant received the sentence bargained for as part of the plea and whether the plea expressly reserved or waived some or all appeal rights.” *Id.* Absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. *Turner v. State*, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). “One extraordinary circumstance which would require counsel to advise a defendant of the right to appeal from a guilty plea would arise when the defendant inquires about an appeal.” *Weathers v. State*, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995). However, “[t]he bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief.” *Id.* “Instead, there must be proof that extraordinary circumstances exist such that the defendant should have been advised of the right to appeal.” *Id.*; *Jones v. State*, 382 S.C. 589, 596, 677 S.E.2d 20, 23–24 (2009). Here, as stated above, the Applicant entered his plea with an understanding of the sentencing consequences when he pled and he was sentenced within the negotiated range. The request by counsel in his motion to withdraw did not create a Sixth Amendment duty in these discrete circumstances based upon the record before this Court, including the plea and PCR hearing record which did not support the existence which did not show the existence of any “extreme mental distress” or any “lack of a proper mental understanding” of what he was doing as during the plea when it occurred. This issue must be denied. The request to alter or amend the judgment is denied.

In assertion (o) in his motion, the Applicant asserts his counsel failed to meet with him

enough and to discuss strategy and important developments. The Court adequately addressed this issue in its Order at pages 24-25, as well as within the other portions of the order addressing these claims related to strategy, advice about the plea, and review and disclosure of discovery. The motion to alter related to this specification is denied.

In assertion (p) of his motion, Applicant asserts that counsel was deficient in allegedly failing to present his minimal criminal record to the plea court in mitigation and in allowing the prosecutor to make inaccurate comments concerning his prior record. He asserts that he had no history of dealing drugs and only had minor drug possession convictions and he asserted no crime of moral turpitude. This issue was addressed adequately within the order at pages 19-22 related to the claims that counsel failed to investigate his criminal record, failed to object to the state's addressing his prior history and pending charges, and failed to object to the State mentioning his history dealing drugs. The motion to alter related to this assertion must be denied.

The assertion (2), the Applicant claims his guilty plea was invalid. Applicant bases this ground upon an assertion that he was rushed into the guilty plea with "threats" of having his bond revoked and being sent to the Richland County Alvin S. Glenn Detention Center. He contends that the facility was dangerous and violent and he feared he would not receive a fair trial on his on a charge that was later dismissed. He asserts that he was still sent to Richland County on the charges from Richland for 8 months after the plea, despite the plea judge and counsel agreeing that he should not at Tr.p. 20. The voluntariness and validity of the plea was addressed in the Order at pages 26 through 32. The Court finds that the claim that he was subsequently transferred to Richland County does not undermine the validity of his negotiated plea where the Richland charges were not a part of the negotiation with the Eleventh Circuit Solicitor's Office. His hope, as well as his counsel and the plea court's statement on Tr.p. 20, did not control the disposition of

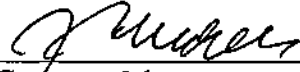
the known pending Richland County charges that were later dismissed. The Applicant has failed to show a basis to alter or amend this Court's earlier judgment.

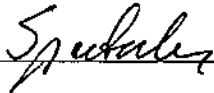
**CONCLUSION**

Having carefully reviewed the motion, I find no reason to alter or amend the judgment of the previous order, other than the additional findings and conclusions stated herein.

**IT IS THEREFORE ORDERED that the Motion to Alter or amend the judgment be denied.**

AND IT IS SO ORDERED this 19 day of November, 2025.

  
\_\_\_\_\_  
J. CORDELL MADDOX  
Presiding Judge  
Eleventh Judicial Circuit

  
\_\_\_\_\_, South Carolina



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LEXINGTON COUNTY CLERK OF COURT

ALAN WILSON  
ATTORNEY GENERAL

November 19, 2025

The Honorable Lisa M. Comer  
Lexington County Clerk of Court  
205 East Main Street  
Suite 128  
Lexington, SC 29072

**Re: Robert Joseph Helrigel, Jr. # 390927 v. State of South Carolina**  
**Case No. 2023-CP-32-00670**

Dear Ms. Comer,

Enclosed please find the original Order Denying Rule 59 Motion signed by the Honorable J. Cordell Maddox, in the above-captioned case, for filing in your office. In addition, please forward proof of service and a time stamped copy back to our office for our file.

If you have any questions regarding this matter, please let me know.

Sincerely,

D. Russell Barlow, II  
Senior Assistant Deputy Attorney General

DRB/lr  
Enclosure

FILED

STATE OF SOUTH CAROLINA  
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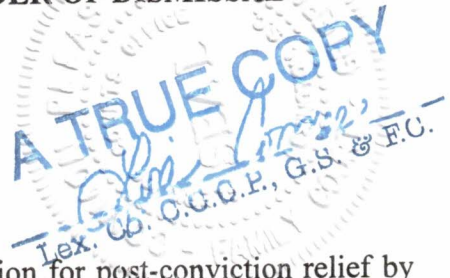
IN THE COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT

COUNTY OF LEXINGTON  
LISA M. COMER  
CLERK OF COURT  
LEXINGTON SC

Robert Joseph Helrigel, Jr., #390927, )  
)  
Applicant, )  
v. )  
)  
State of South Carolina, )  
)  
Respondent. )  
\_\_\_\_\_ )

Case No.: 2023-CP-32-00670

ORDER OF DISMISSAL



This matter came before the Court by a pro se application for post-conviction relief by Robert J. Helrigel, Jr., filed on February 21, 2023. In the application, he challenges his convictions for trafficking in methamphetamine, between 28 and 100 grams (2022-GS-32-2541), possession with intent to distribute fentanyl (2022-GS-32-2544), and possession of a weapon during the commission of a violent crime (2022-GS-32-44). On March 18, 2024, the Respondent filed a Return to the application. On March 20, 2024, the Applicant, through appointed counsel Chelsey Marto, filed amendments to the application. He alleged allegations of ineffective assistance of counsel.

On March 21, 2024, this matter came before this Court. The Applicant was present and represented by his court appointed counsel Chelsey Marto. The Respondent was represented by Deputy Attorney General Donald J. Zelenka. Testimony was received from the Applicant, his plea counsel Robert "Theo" Williams and his counsel Benjamin Stitely. At the close of the hearing, this Court too the matter under advisement. This Order of Dismissal follows:

*Procedural History*

Applicant, Robert J. Helrigel Jr. is presently confined in the South Carolina Department of Corrections, pursuant to orders of commitment from the Lexington County Clerk of Court.

Applicant was arrested on or about April 4, 2022, for trafficking in methamphetamine four hundred (400) grams or more; possession with intent to distribute marijuana, first offense; possession of other controlled substance in schedule I-V, first offense; possession with intent to distribute fentanyl, first offense; possession of a weapon during the commission of a violent crime; and unlawful carrying of a pistol. *See* Warrant Nos. 2022A3210200911-916. On or about June 6, 2022, the State sent a plea offer to defense counsel via electronic mail. In that correspondence, the State offered the defendant to plead to the lesser-included offense of trafficking methamphetamine, more than twenty-eight (28) grams but less than one hundred (100) grams, first offense; possession with intent to distribute fentanyl, first offense; and possession of a weapon during the commission of a violent crime in exchange for a dismissal of the remaining three charges. Additionally, the State offered a negotiated sentencing range of fifteen (15) to twenty (20) years. This offer was valid through August 26, 2022.

On June 9, 2022, Defendant appeared with counsel for his initial appearance. He subsequently appeared with counsel on July 8, 2022, for a follow-up appearance, at which time a tentative plea date was set for August 26, 2022.

During an August 8, 2022 term, the Lexington County Grand Jury indicted Applicant for trafficking in methamphetamine, 400 grams or more, possession with intent to distribute fentanyl, and [possession of a weapon during the commission of a violent crime. He was represented on the charges by Robert Theo Williams of the Lexington County Bar.

On August 26, 2022, both the assigned solicitor and defense counsel were in trial in another matter, and the State agreed to extend the plea offer until September 15, 2022, at which time a tentative plea was scheduled.

On September 15, 2022, Defendant failed to appear for court due to new arrests in Richland

County for possession of a schedule I or II narcotic, first offense; trafficking cocaine, more than ten (10) grams but less than twenty-eight (28) grams, first offense; unlawful carrying of a pistol; and possession of a weapon during the commission of a violent crime. *See* Warrant Nos. 2022A4021602543-2545; 02556. Based on this new arrest, the State moved to revoke Defendant's bond on or about September 16, 2022.

On September 29, 2022, the State had Defendant transported from the Alvin S. Glenn Detention Center in Richland County for either a hearing on the State's motion to revoke bond or to enter a plea.<sup>1</sup> On that date, Applicant appeared before the Honorable Walton J. McLeod, IV with counsel Williams to enter a guilty plea to the lesser of trafficking in methamphetamine 28 to 100 grams, possession with intent to distribute fentanyl and possession a weapon during the commission of a violent crime. The prosecution was represented by Assistant Solicitor Kelly Oppenheimer. The State also agreed to dismiss pending Lexington County charges of possession with intent to distribute marijuana – first offense, possession of other controlled substances, and unlawful carry of a pistol. During the plea, Judge McLeod found the plea was knowingly, voluntarily, and intelligently entered into and Defendant had the advice of counsel with whom Defendant indicated he was satisfied. The guilty plea was entered with the negotiated range of fifteen (15) to twenty (20) years of the charges.

After his father Robert Helrigel Sr., counsel and the Applicant made pleas in mitigation, Judge McLeod sentenced the Applicant to concurrent sentences of 17 years for trafficking in methamphetamine, 15 years for possession with intent to distribute fentanyl and 5 years on the

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<sup>1</sup> The State indicated to defense counsel that the plea offer which was extended on June 6, 2022, would remain open until September 29, 2022. The State further indicated to defense counsel if the plea were not accepted and entered by Defendant on September 29, 2022, the State would revoke the offer and proceed with the motion to revoke bond until such time as the case could be called for trial.

possession of a weapon during the commission of a violent crime.

On October 6, 2022, the Applicant made a motion to withdraw his guilty plea. The Applicant, through counsel Benjamin Stitely, asserted that “in speaking with the Defendant it appears he was under extreme mental distress and did not enter the plea knowingly, intelligently, and with the proper mental understanding of what was transpiring, it is counsels’ opinion that he may potentially require a mental evaluation.”

The State responded to the motion on October 8, 2022. In its response, the State urged the motion be denied with the following assertion:

Here, Defendant entered a guilty plea on September 29, 2022 before Judge McLeod. During that plea, Judge McLeod reviewed all of Defendant’s constitutional rights on the record with Defendant. Defendant indicated he understood each constitutional right, including the right to present a defense and/or witnesses at a trial, and chose to waive those constitutional rights afforded to him. Furthermore, Defendant indicated he was entering the plea knowingly and voluntarily and had enough time to discuss his options with counsel. At no point during the plea did Defendant hesitate in answering Judge McLeod’s questions as to whether or not he understood his constitutional rights and understood what he was doing by entering a plea.

Defendant now wishes to claim he was under extreme mental distress and now requires a mental evaluation. The test in South Carolina for determining a defendant's competency to stand trial is a two-part inquiry: 1) whether the defendant has the present ability to consult with his attorney with a reasonable degree of rational understanding and 2) whether the defendant has a rational as well as a factual understanding of the proceedings against him. *Sims v. State*, 313 S.C. 420, 422-23 (1993). This level of competency is the same required for pleading. *Id.*

Notably, counsel for Defendant has been practicing law for approximately forty-six (46) years and at no point during his representation of Defendant did counsel indicate he had concerns as to Defendant’s competency. Indeed, the State witnessed a conversation between Defendant and counsel at appearances where Defendant was demanding he had not received his discovery at that time.

Furthermore, upon listening to Defendant’s conversations with family members and friends while housed at the Alvin S. Glenn Detention Center between September 29, 2022 and October 5, 2022, Defendant clearly had the ability to consult with his attorney as to his defense and had a rational understanding of the proceedings against him. *See Exhibit 1.* In these conversations, Defendant repeatedly tells his family and friends he had “a million grounds” which counsel could have raised at a plea or trial. Furthermore, Defendant seems well aware of the ten-day time period in which he has to file his appeal—stating he needs to

discuss his options with counsel before the time to appeal has lapsed. Indeed, once Defendant does meet with counsel, he indicates to his family that everything was “his idea” and “every idea [as to potential options post-plea], were [Defendant’s] idea,” rather than counsel’s. Still further, Defendant understands the difference between federal and State prosecution, as well as the varying programs each system offers and how it would affect the time in which he is incarcerated. In fact, Defendant discusses the difference between non-violent and violent crimes and the time in which SCDC holds a defendant for non-violent versus violent offense (i.e. 65% v. 85%). Clearly, Defendant understood the proceedings against him and further could have, and did, assist his counsel in his defense.

Moreover, pursuant to Section 44–23–410 of the South Carolina Code, a judge must order a mental health evaluation when the judge has “reason to believe” that the defendant “lacks the capacity to understand the proceedings against him or to assist in his own defense as a result of a lack of mental capacity.” However, the decision of whether to order a mental health evaluation is within the discretion of the judge, and that decision will not be overturned absent a clear showing of abuse of discretion. *State v. White*, 364 S.C. 143, 147 (Ct. App. 2005).

During the plea, neither counsel nor Judge McLeod had any concerns as to Defendant’s capacity to understand the proceedings against him or to assist in his own defense. Given Defendant’s own words, as laid out above and included in Exhibit 1, Defendant more than understood what he was facing at a plea versus a trial and was aware of various defense he could have raised at trial. Notably, in the jail calls with family members, for the first time Defendant alleges to have a brain injury<sup>2</sup> but, in the same breath, states: “I’m not retarded but if I can chop some time off, what’s up.” The mere fact Defendant understands he would be incarcerated for less time if housed in a mental health facility indicates Defendant is fully aware of the proceedings against him. In fact, Defendant appears to merely be upset with the sentence imposed by the Court and will do anything to attempt to lessen his sentence.

*State v Helrigel, State’s Response to Defendant’s Motion to Withdraw Plea, Oct. 8, 2022, p. 3-5.*

On November 18, 2022, Judge McLeod entered his written order denying the motion to withdraw.

This Court has before it the following attachments and Court records, including the exhibit from the hearing, Applicant’s PCR Hearing Exhibit 1 concerning a corrected criminal record and SLED January 10, 2024 letter:

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<sup>2</sup> The State has never been presented with any information that would corroborate this claim.

1. Records of the Lexington County Clerk of Court related to the underlying conviction, including the sentencing sheets, arrest warrants, indictments, motion to withdraw plea, response to motion to withdraw plea and order denying motion to withdraw plea.
2. Guilty Plea Transcript of September 29, 2022.
3. SCDC records related to conviction.

### ***ALLEGATIONS***

In his original application, the Applicant contended that he was being held in custody unlawfully for the following reasons:

1. 17-25-60 change of sentence upon prior convictions not considered.
  - a. Prior record inaccurate that was used to determine sentence.
2. Lawyer did not address issue.
  - a. Inaccuracies on separate paper. No prior felony drug convictions . Warrant in motion says PWID record had none prior.

(PCR App. at 3).

### **Amended Application**

In the amended application dated March 11, 2024. The Applicant, through counsel Chelsey Marto, raised the following issues:

1. Ineffective assistance of counsel:

- a. For failure to discuss trial strategy with Applicant.
- b. for failure to obtain a more favorable plea offer.
- c. For failure to assist Applicant in making an informed decision regarding the plea.
- d. For failure to give Applicant a complete copy of the discovery or provide him with the opportunity to review video discovery in his case.
- e. For failure to investigate.
  - i. Specifically, Applicant wanted Counsel to properly investigate his criminal history and adjust his record to reflect Applicant's prior history appropriately.

- f. For failure to object to the State improperly addressing Applicant's prior history and pending charges at the plea hearing.
  - g. For failure to object to the State mentioning Applicant's history dealing drugs.
  - h. Counsel should have successfully argued for a fifteen-year sentence at the plea hearing.
  - i. For failure to successfully withdraw the plea.
  - j. For failure to meet with Applicant enough.
  - k. For failure to present Applicant's minimal criminal history to the Court in mitigation.
2. Invalid plea.
- a. Applicant was rushed into pleading last minute with threats of having bond revoked and being sent to Alvin Glenn if he did not plead.

### **Factual Basis of the Guilty Plea**

During the guilty plea, the following factual basis was presented by Assistant Solicitor Kelly Oppenheimer:

MS. OPPENHEIMER: As to the facts, Your Honor, on April 20 4th of this year, while in the 100 block of River Road, which 21 is in the Columbia area of Lexington County, the defendant was pulled over by a deputy with the Lexington County Sheriff's Department for suspected DUI and suspected for committing numerous traffic violations, Your Honor, including crossing over that fog line. This was in the middle of the night, early morning, Your Honor.

Law enforcement did pull Mr. Helrigel's vehicle over. He was driving. His pregnant girlfriend was in the passenger seat. As law enforcement approached the vehicle and Mr. Helrigel rolled his window down, there was a very strong odor of marijuana coming from the vehicle. They ran Mr. Helrigel's information and determined that his license was suspended for DUI, Your Honor.

Because of that, Mr. Helrigel was removed from the vehicle and detained, and law enforcement did a probable cause search of the vehicle. At the defendant's feet on the floorboard of the driver's side of the vehicle, there was a red Nike shoe

box and a black backpack. Inside of the shoe box was 589.13 grams of methamphetamine, 92.3 grams of 15 fentanyl, marijuana, over 36 different pills, all of which 16 came back as either amphetamine, Klonopin, oxys, just various different controlled substances, Your Honor.

There were -- there was quite a large amount of cash in the vehicle, small plastic baggies indicating that the defendant was distributing illegal narcotics, and there were two weapons found in the vehicle as well, Your Honor. In that black backpack, there was a Kal Tec Sub 2000 and a Glock .22 pistol. Your Honor, law enforcement ran both of those serial numbers through NCIC, and both did come back as stolen.

Your Honor, as the defendant was being placed into the deputy's patrol vehicle, he did make the spontaneous statement that his girlfriend had absolutely nothing to do with anything found in the vehicle, and that it was all his. . .

Tr.p. 10-12.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon its review of the records provided, the testimony from each of the witnesses and credibility determination, this Court is constrained to deny post-conviction relief in its entirety. The Court makes the following findings of fact and conclusions of law pursuant to S.C. Code Ann. §17-27-80.(2023) (a PCR court must “make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented”). *Fishburne v. State*, 427 S.C. 505, 512, 832 S.E.2d 584, 587 (2019) (“The PCR court's general denial of all claims not specifically addressed in the PCR court's order ‘does not constitute a sufficient ruling on any issues since it does not set forth specific findings of fact and conclusions of law.’ ” (quoting *Simmons v. State*, 416 S.C. 584, 592, 788 S.E.2d 220, 225 (2016))); *id.* at 517, 832 S.E.2d at 590 (remanding the matter “to the PCR court for the issuance of a supplemental order setting forth findings of fact and conclusions of law on the PCR ground that was not addressed in the original order”); *id.* at 516, 832 S.E.2d at 589 (explaining that “because the United States Constitution's Sixth Amendment guarantee to a defendant's right to effective assistance of counsel is engrained in PCR cases, we cannot continue

to permit a party's procedural shortcoming ... to prevent this Court from remanding claims of ineffective assistance of counsel when the PCR court's order does not comply with section 17-27-80"). In light of the above, the Court sets forth the following:

### **CRITICAL LEGAL STANDARDS**

#### *Strickland v. Washington Standard*

To establish that Sixth Amendment counsel was ineffective, a PCR applicant must show that counsel's representation fell below an objective standard of reasonableness, and but for counsel's error, there is a reasonable probability that the outcome of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 694 (1984); *Simpson v. Moore*, 367 S.C. 587, 595–96, 627 S.E.2d 701, 706 (2006). "A reasonable probability is a probability sufficient to undermine confidence in the outcome" of the trial. *Strickland*, at 694. Relief will not be granted on a showing of mere error—prejudice must also be shown. *Id.* Moreover, it is presumed that counsel made all decisions in exercise of reasonable judgment. *Strickland*, at 689. It is an applicant's burden to prove, by a preponderance of the evidence, an entitlement to relief. Rule 71.1 (e), SCRCP. See also *Speaks v. State*, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008) ("the burden of proof is on the applicant to prove the allegations in his application").

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). When reviewing a guilty plea, 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 competence demanded of attorneys in criminal cases.” *Hill*, 474 U.S. at 56. The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” *Id.* at 58–59. Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” *Id.* at 59.

This inquiry “focuses on a defendant’s decisionmaking” and does not turn on the outcome of a defendant’s actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. *Lee v. United States*, 582 U.S. 357, 369, 137 S. Ct. 1958, 1966 (2017). However, the 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. Courts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney’s deficiencies. *Lee v. United States*, 582 U.S. 357, 369, 137 S. Ct. 1958, 1967, 198 L. Ed. 2d 476 (2017)

Judges must “look to contemporaneous evidence to substantiate a defendant’s expressed preferences.” *Lee*, 582 U.S. at 369, 137 S. Ct. at 1967. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the guilty plea and the evidence presented at the PCR hearing. *Harres v. Leeke*, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984). 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).

In his application, as amended, he makes a number of specifications related to the acts and alleged omissions of counsel Robert Theo Williams prior to the guilty plea. At the time of the plea, the Applicant declared, under oath, related to counsel Williams that he was “very satisfied with his services,” that he had discussed his cases with counsel, that he had answered all his questions, and that he had not been threatened to enter a plea other than the fact that he was otherwise facing a potential thirty year sentence. Tr.p. 7, l. 8-25, p.9, l. 15-23,p.10.

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)), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). The applicant must further present evidence demonstrating how the discoverable matters or defenses would have resulted in a different outcome. *Id.* Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.* at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)). To establish prejudice based on failure to investigate or prepare for trial when the applicant enters a guilty plea, he must ordinarily present some evidence “that would have affected counsel’s advice to [him] to accept the plea bargain offered or that would have caused [him] to decline to accept it.” *Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009).

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel's duty to investigate. *Ard*, 372 S.C. at 331, 642 S.E.2d at 597 ("this duty is limited to a reasonable investigation"). The United States Supreme Court also instructed reviewing courts to "keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case." *Strickland*, 466 U.S. at 690. Thus, in applying the *Strickland* standard to a claim of failure to investigate, counsel's decision not to undertake a particular investigation must be evaluated with heavy deference to counsel's judgment. *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 633 (Ct. App. 2014).

### **Strategy**

His first allegation is that there was a failure to discuss trial strategy with Applicant. As stated above, at the plea, the Applicant stated that he had discussed the case with counsel and that he had no further questions and was satisfied with his services. At the PCR hearing, the Applicant testified that his counsel did not discuss strategy with him prior to the plea. The Applicant stated he wanted to discuss strategy with counsel before he pleaded guilty to something so serious, particularly related to the traffic stop. He had a concern that he did not receive all of his discovery for review. As to discovery, he stated he got his discovery after his second appearance, but that his counsel did not give him the complete discovery by not receiving the drug analysis and incomplete paper discovery. In particular, Applicant stated that he felt that there was no reason to stop his car, that there was no sobriety test, and no dash cam footage was supplied. Further, he complained that since there was no reason to pull him over, and no DUI charged that there was no proof of a traffic violation. He stated that counsel should have challenged the traffic stop, but there was no paperwork filed suggesting a challenge to the stop. He also claimed that he wanted a preliminary hearing, did not get one.

This Court rejects the claim that counsel did not discuss strategy. Counsel Williams stated credibly that he did discuss strategy with him. In particular, he stated that he discussed the stop and whether they could challenge the stop. However, they never did challenge the stop because the matter became a guilty plea. Williams noted that it was unlikely that the case would have been tried for two years due to the backlog. Counsel confirmed that they did request a preliminary hearing. However, the indictments were true billed before a preliminary hearing was held. This Court finds that counsel was not deficient in discussing a strategy with the Applicant. This case evolved from a potential trial into a guilty plea. As to this assertion, the Applicant failed to show any deficiency on counsel's part. Counsel had received the discovery, reviewed it with the Applicant was able to discuss the strategy in accepting the negotiated sentence with an understanding of the state's version. As to this specification, he has failed to show deficiencies or prejudice under *Hill v. Lockhart*.

### **Plea Offer**

The Applicant contends that counsel was ineffective in failing to obtain a more favorable plea offer. This Court finds that he has failed in his burden of proof in showing either deficiency or prejudice. The record shows that the plea offer was initially extended on June 6, 2022 and was to terminate the day of the revocation hearing on September 29, 2022. The records shows that the actual plea offer and agreement was presented at the plea. The State offered the defendant to plead to the lesser-included offense of trafficking methamphetamine, more than twenty-eight (28) grams but less than one hundred (100) grams, first offense; possession with intent to distribute fentanyl, first offense; and possession of a weapon during the commission of a violent crime in exchange for a dismissal of the remaining three charges. Additionally, the State offered a negotiated sentencing range of fifteen (15) to twenty (20) years. The State also agreed to dismiss pending

Lexington County charges of possession with intent to distribute marijuana – first offense, possession of other controlled substances, and unlawful carry of a pistol.

The Applicant complained at the plea that he had been threatened with 30 years of his life when asked whether he had been threatened to coerce his plea.<sup>3</sup> Tr.p. 9. However, on the charges in Lexington, he was facing the possibility between 7 to 25 years on trafficking in methamphetamine charge, 15 years on possession with intent to distribute fentanyl and an additional 5 years on the weapons charges.

This Court finds not credible the Applicant's testimony that he was told that he was facing the death penalty. Further, on the original charge this Court finds that he could have faced thirty years for trafficking in meth 400 grams or more. Counsel testified the original offer was 15-20 years before the Richland charges came into play. Counsel was successful in keeping the offer available. Counsel was not aware of any threat or suggestion of a life sentence in the matter from the State. Counsel Williams credibly testified that he understood the opposition and asked many times for a better deal than the range of 15 to 20 years. Counsel was firm in his credible testimony that he was not going to get a better deal. Counsel also credibly stated that the Applicant wanted out of the Richland County Detention Center.

This Court finds that the Applicant has failed to show deficiency or prejudice concerning the plea negotiations under *Hill*.

#### **Assist in an Informed Decision about the Plea**

The Applicant claims that counsel was ineffective in failing to assist him in making an informed decision about the plea. As noted above, the Applicant claimed he was threatened with life or death if he went to trial. He claimed that he made a last minute decision to plead to the

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<sup>3</sup> The original charge carried a minimum of 25 years to 30 years.

negotiated 15-20 years because the other options of 30 to life or death were his options. Counsel credibly testified that a life sentence was not on the table with respect to the Lexington charges. The offer was made in advance of the plea. Counsel credibly stated that if he had gone to trial, he would have received a lot more than 17 years. The original charges also carried more time as stated above and counsel stated would be between 25 mandatory minimum to 30 years. See Tr.p. 14, l. 1-3. Importantly the Applicant wanted out of the detention center in Richland County. Williams had a credible opinion that at the time the court was putting heat on the prosecutors and defense counsel to move cases due to the COVID backlog so the defendants were getting better plea deals. Counsel was aware of that then offer was going to be off the table if he did not accept. Although the Applicant claimed he was not driving improperly, the issue was mooted when the officer smelled marijuana which gave them probable cause. Tr.p. 11. Counsel had received and reviewed the discovery and his co-counsel Stitely met with Applicant him also. Counsel also indicated that the discovery was sent to the Applicant.

The Applicant failed to show that he was not adequately advised about his decision to plead guilty. It is apparent from the credible testimony of both counsel Williams and Stitely that the Applicant had an immediate desire to get out of Richland County. Counsel was also aware that the favorable plea offer was going to expire. Counsel was also aware that the State had agreed to lower the trafficking charge to a lesser offense and recommend a range of 15 to 20 years for the offenses. Although he mentioned at the PCR hearing that he felt pressured by the plea bargain, Applicant confirmed that when he pled guilty that he expected a recommended sentence between 15 to 20 years. The Applicant's complaint seemed to focus on the fact that he did not personally review the alleged dash cam video at the time of the stop. Counsel confirmed that he had received videos in his discovery, but that the defense was unable due to COVID restrictions to play the videos for

the Applicant. It is apparent that these were related to Applicant's assertion that the initial stop of the vehicle was improper and the fact that he was not separately charged with DUI.

Further, the proceeding that the Applicant pled guilty was initially scheduled to be a motion by the State to revoke bond due to the intervening Richland County charges. Tr.p. 19. It was driven by the pending plea offer and the Applicant's desire to get out of the Richland County detention center. Counsel further credibly acknowledged that Applicant could have been tried and convicted of the Lexington charges and then convicted of the Richland charges. Counsel Williams was firm in stating he did not recommend the Applicant to take the plea offer and that it was the Applicant's choice. Williams confirmed at the time of the arrest, the Applicant indicated all the drugs in the vehicle were his, not his girlfriend's. Tr.p. 12, l. 1-4. Further the Applicant admitted based upon his criminal history that it was not legal for him to possess the weapons found in the vehicle.

This Court finds that counsel had sufficient information about the facts of the State's case to be able to inform the Applicant about the risks concerning the plea offer. The Applicant failed to show any advice given by counsel to the Applicant was inaccurate concerning the charges, the potential punishment for the original charges or the circumstances of the plea offer. This Court must conclude that counsel was acting competently within the range of competence demanded of lawyers practicing criminal law under Strickland and Hill. Importantly, the Applicant failed to show that there is a reasonable probability that but for counsel's alleged omission, that he would not have pleaded guilty and would have insisted on going to trial. This specification must be denied and dismissed.

### **Provide a Copy of Discovery Including Videos**

In the next specification, the Applicant complains that he did not receive a complete copy of discovery from his counsel. The Applicant testified that he had a concern that he did not receive

all of his discovery for review. He claimed that he received his discovery from his lawyers after the motion for discovery made after his second appearance. However, he claimed that his counsel did not give him the complete discovery and alleged he did not receive the drug analysis and that paper discovery was incomplete. At the time of the plea, the prosecutor indicated the results of the drug analysis. Tr.p. 11, l. 10-18. It is clear that the videos were not shown to the Applicant that the defense team received from the State in discovery. Counsel Stitely credibly testified when he met with Applicant at the Alvin S. Glenn detention center there was no way to show the video due to the COVID restrictions. However, counsel Williams and Stitely stated that they received the full discovery from the State. As indicated during the PCR hearing, the Applicant was provided by counsel with paper copies.

The Applicant failed to show during the proceeding any particular item of discovery that undermines confidence in the guilty plea. There is no showing that the drug analysis was different than what was represented by the State at the plea. Further, there has been no showing that the videos reflected matters that showed the traffic stop was other than what was presented in the factual basis. However, counsel Williams stated that if the plea had not been presented he would have sought to challenge the stop at trial.

Further, it is undisputed that the defense counsel received the discovery evidence, including the videos. The Applicant's assertions that any discovery obligations were violated is without merit. See *Hines v. State*, 435 S.C. 476, 492, 868 S.E.2d 387, 395 (Ct. App. 2021), *aff'd*, 443 S.C. 32, 902 S.E.2d 377 (2024) (State's refusal to allow drug defendant to view video that allegedly depicted him involved in controlled drug purchase did not violate discovery obligation; video was not exculpatory, and defense counsel was allowed to view video). *Accord*, *Hyman v. State*, 397 S.C. 35, 42, 723 S.E.2d 375, 378 (2012) ([I]t is undisputed that the solicitor disclosed the videotape

to defense counsel. Therefore, in order to find that this action amounts to impermissible suppression under *Brady*, we must first assume that the Constitution requires disclosure of Brady evidence to a criminal defendant personally. We are unwilling to make that sweeping assumption, and find that disclosure to defense counsel was satisfactory under the present circumstances.”).

Here, the circumstances within the detention center precluded the defense counsel from providing a viewing of the contents with the Applicant due to COVID. However, the Applicant has failed to show this Court, other than his unstated speculation that there is any information on the video that counsel failed or was unable to show as “but for the deficient performance is there a reasonable probability that the defendant would not have pleaded guilty but would have insisted on going to trial,” *Hill* makes clear that this prejudice prong ordinarily requires more than simply a defendant's assertion that but for counsel's deficient performance he would not have pled but would have gone to trial. See *Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 594–95 (2009). Stated another way, at the time the Applicant pled guilty, he was aware that he had not personally viewed any video and his counsel had received videos surrounding the incident. The Applicant presented no evidence to support that there was anything in any video to undermine confidence in the guilty plea.

To the contrary, at the time of the plea, the Applicant stated under oath, that he was “very satisfied with [counsel’s] services” and he had answered all his questions. Tr.p. 7, ll. 9-19. At that time he was aware the videos had not been shown to him and still wanted to plead guilty. He has failed in his burden of proof.

In addition, it has been held that that Supreme Court “has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness’

failure to testify at trial.” *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998); see, e.g., *Pauling v. State*, 331 S.C. 606, 503 S.E.2d 468 (1998); *Glover v. State*, 318 S.C. 496, 458 S.E.2d 538 (1995); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Jackson v. State*, 329 S.C. 345, 495 S.E.2d 768 (1998). Mere speculation of what a witness' testimony may be is insufficient to satisfy the burden of showing prejudice in a petition for PCR. *Porter v. State*, 368 S.C. 378, 386–87, 629 S.E.2d 353, 358 (2006) (holding no evidence showed counsel's failure to interview a potential witness would have yielded a result different from that which defendant's counsel believed at the time of the plea; defendant pled guilty in light of the complete information that was available at that time).

Here, the failure to present evidence beyond mere speculation about the video has the same analysis. He has failed in his burden of proof.

#### **Failure to Investigate Criminal Record**

This Court must find that the Applicant has failed in his burden of proof to show that counsel acted deficiently under Strickland and Hill concerning a claimed failure to investigate. In particular, this claim is limited to Applicant wanted Counsel to properly investigate his criminal history and adjust his record to reflect Applicant's prior history appropriately.

He claims that he was only previously convicted of possession of marijuana in 2000, not possession with intent to distribute. He further claims that his record suggest that he had charges from February 17, 2017 and June 6, 2017 for manufacturing and possession of other controlled substances under Schedule I, II, III with intent to distribute, which he contends is also inaccurate. He further contends that he was convicted in New Jersey of possession of a machine gun or shotgun, which he now contends was in error because it was legal to possess on a federal highway and when his probation was transferred to S.C. it was legal in S.C.

However, the plea record reveals that no specific record of the Applicant was presented in Court to the trial judge. Assistant Solicitor Oppenheimer advised the Court only that “obviously we took into account the defendant’s minimal record when making our offer.” Tr.p. 13, l. 15-16. Furthermore, his plea was entered with a negotiated range of 15 - 20 years.<sup>4</sup>

The Applicant presented this Court with an exhibit, Applicant’s Exhibit 1 which reflected a correction in the Applicant’s criminal history made on January 10, 2024 (after the guilty plea) a correction in his record reflecting January 6, 2014 out of state charge and that 2017 charges were pled down to misdemeanors, although the original arrest charge would remain on his record. At the time of the plea, the State presented to the Court only about his pending charges in Richland County. At the PCR, he felt that there was an error in his criminal record that counsel should have investigated and had corrected.

The Applicant speculates that this would have impacted upon the negotiations and sentencing. However, this is pure speculations. First, the charges the Applicant pleaded guilty to in 2022 were not recidivist charges. Second, the prior history was not specifically presented to the Court. He has failed to show counsel was deficient in seeking to correct an out of state charge as reflected in a criminal record or correcting a series of 2017 charges in the criminal record to be corrected as misdemeanors. Nevertheless, even if deficient, he has failed to show that there is any

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<sup>4</sup> According to the Lexington Clerk of Court Public Index, the Applicant pled guilty on November 8, 2017 on Indictment 2017GS3203872 to (Warrant No. 2017A3210200925) in Magistrate Generals Sessions Court to possession of 28g or less of marijuana - first offense arising from a charge of possession with intent to distribute marijuana on a June 6, 2017 arrest date. He was sentenced to 28 days time served. Similarly, the Richland County Public Index shows on December 15, 2017, he was sentenced by Judge Valerie Stroman on Indictment 2017GS4007501 (Warrant 2017A4021600528) to possession of marijuana 28g or less on an initial charge manufacture possession of other substances in Schedule I, II, III with intent to distribute - 1<sup>st</sup> offense arising from a Feb.28, 2017 arrest. He was sentenced to 30 days or pay a fine of \$200.

impact on the decision to plead guilty. The Applicant failed to show a reasonable probability that had counsel had these changes corrected, the Applicant would not have pleaded guilty and would have insisted on a jury trial. Alternately, there has been a failure to show a reasonable probability that the sentence would have been different. The sentence of 17 years was in the low end of the agreed sentencing range of 15 to 20 years. These limited corrections in a criminal record that was not stated on the record at the plea as his criminal history where the only reference made by the State was that the Applicant had a “minimal prior record” that they took into account in the offer is insufficient to undermine the sentence. His criminal record remained “minimal.” This allegation must be dismissed for failing to show either deficient performance or prejudice.

**Failure to object to the State improperly addressing Applicant’s prior history and pending charges at the plea hearing.**

This Court also find that the Applicant failed to prove deficient performance or prejudice in failing to object to the State addressing the Applicant’s criminal history and pending charges at the plea hearing. As stated above, the State made reference to the Applicant’s history as a “minimal prior record” and references were made to the Applicant being in jail presently on Richland County charges for similar offenses. Tr.p. 14. The Applicant’s complaint is that his prior conviction record was only for possession of marijuana, not a manufacturing charge.

At sentencing, a judge has an obligation to consider information material to punishment. *State v. Sullivan*, 267 S.C. 610, 230 S.E.2d 621 (1976). A sentencing judge “may appropriately conduct an inquiry broad in scope, largely unlimited as to either the kind of information he may consider, or the source from which it may come.” *United States v. Tucker*, 404 U.S. 443, 92 S.Ct. 589, 30 L.Ed.2d 592 (1972); *Hayden v. State*, 283 S.C. 121, 123, 322 S.E.2d 14, 15 (1984) (same). see also *State v. Cantrell*, 250 S.C. 376, 379, 158 S.E.2d 189, 191 (1967) (stating that the circuit court exercises “a wide discretion in the sources and types of evidence” it considers in sentencing).

This Court finds that the brief references to minimal record and the pending charges in Richland County were not objectionable based upon the broad review sentencing courts are granted. This was not a situation where the judge was punishing an individual concerning the application of a constitutional right such as a right to a jury trial. Instead it is a brief reference to an existence of a criminal record which was presented in a reasonable and summary fashion. Counsel was not deficient in failing to object to the comments on either. Prejudice has not been shown because the Applicant has failed to show that there is a reasonable probability that had an objection been made the result would have been a lesser sentence of 15 years as the Applicant implicitly suggests.

**Failure to object to the State mentioning Applicant's history dealing drugs.**

Similar to the above allegation, the Applicant contends that counsel should have objected to a comment about the Applicant's history of drug dealing. In the factual basis of the plea, the State commented on the fact that in the vehicle there was a large amount of cash, small plastic baggies indicated that the defendant was distributing illegal narcotics, as well as two weapons in the vehicle. This was in addition to the significant amount of drugs seized in the vehicle, including "589.13 grams of methamphetamine, 92.3 grams of 15 fentanyl, marijuana, over 36 different pills, all of which 16 came back as either amphetamine, Klonopin, oxys, and just various 17 different controlled substances." Tr.p. 11, As the prosecutor stated, fentanyl had become a big problem in Lexington County since 2020 and 1.3 nanograms can be considered a lethal dose. Tr.p. 13. Investigator McMillan with the Lexington County Sheriff's Department indicated that they gave the Applicant a chance to cooperate and that he failed to do so and when he made bond, he continued his line of behavior and was currently in jail in Richland and requested a high year amount. Tr.p. 14. No objections were made to any of these comments.

Counsel Williams indicated that he did not see how objecting at the plea hearing to these types of comments would have helped the Applicant. Counsel felt that the Applicant was sentenced at the lower end of the range with the 17 year sentence. Independent of the comments of the investigator, the court had before it related to this case significant evidence that reflected an individual involved in the distribution of drugs because of the circumstances and his charge of trafficking. Although counsel could have objected to the comments related to not cooperating with law enforcement after he was charged and in committing further crimes that he had not yet been convicted, this Court finds that the sentence of 17 years and rejection of the investors request to sentence at the high end reflects that they have failed in their burden of proof to show that there is a reasonable probability that the sentence would have been different. His allegation must be dismissed. Cf., *State v. Rich*, 269 S.C. 701, 239 S.E.2d 731 (1977)(where the trial judge improperly considered charges on the defendant's "rap sheet" not yet disposed of when sentencing the defendant during a guilty plea, the appellate court remanded the case for sentencing).

**Counsel Should Have Argued for a 15 Year Sentence.**

In this allegation, the Applicant contends that counsel was deficient in failing to specifically argue for a 15 year sentence, the lowest end of the range. The record of the plea in mitigation by the dense reveals that counsel Williams argued about the Applicant's assuming full responsibility for the drugs at the arrest and not his passenger, that he suffered from PTSD due to a terrible accident. Tr.p. 15-17. He also presented the Applicant's father in mitigation who described the family difficulties that the Applicant had in growing up, his non-violent behavior and sought mercy for his son. Then Applicant claimed he was non-violent and wanted to spend time with his son. He further indicated that the Richland County charges were not based upon anything he did but was related to criminal activity by his son's mother and boyfriend. Tr.p. 18-

19. However, the solicitor responded that there understanding was that the Richland case was based upon an incident with drugs and the Applicant being identified putting the drugs and a gun in a trash can. Tr.p. 19. At the conclusion, the Court determined that he did not have much of a drug history after hearing the request. Tr.p. 20. The sentencing court recognized that there had been tremendous exposure before the offer. The 17 year sentence followed.

This Court finds that counsel was not deficient in failing to specifically ask for the 15 year minimum sentence under the range. This Court finds that it was implicit in the negotiations that counsel was asking for the minimum of the range for the sentence and using the mitigation to justify it. The allegation must be dismissed and denied.

#### **Failure To Meet A Sufficient Number Of Times.**

Applicant alleges Plea Counsel was constitutionally ineffective for failing to meet with him a sufficient number of times to properly review the evidence and discuss the case. This Court finds this allegation is without merit. Counsel Williams testified that he met with him initially after the arrest, Ben Stitely, his co-counsel met with him at the first appearance and Williams was also with him on the second appearance, as well as at the guilty plea. Counsel Stitely also met with the Applicant at the Richland County detention center twice. There were also discussions over the telephone.

Federal case law holds that there is no constitutional minimum number of meetings between attorneys and their clients to satisfy competency. *Campbell v. Polk*, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) (no constitutional minimum number of meetings to satisfy competency); *United States v. Olson*, 846 F.2d 1103, 1108 (7th Cir. 1988) (reciting that there is no constitutional minimum number of meetings between attorney and client and observing that an experienced attorney may get more out of a single meeting than a neophyte). "Brevity of time spent in

consultation, without more, does not establish that counsel was ineffective." *Easter v. Estelle*, 609 F.2d 756, 759 (5th Cir. 1980) (holding it is not enough to merely show that counsel only met with his client twice before trial as long as counsel devoted sufficient time to insure an adequate defense and to become thoroughly familiar with the facts of the case and the law applicable to the case, and holding the record revealed that counsel was so prepared.).

South Carolina case law has established that even if Trial Counsel only met with his client very briefly, that alone does not establish that he was unprepared or ineffective at trial. See *Harris v. State*, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing *Easter*) ("First, there is no question that counsel met with [Applicant] on several occasions prior to the first trial. Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation.") Mere speculation and conjecture is insufficient to substantiate allegation that counsel's deficient performance was prejudicial. See *Harris v. State*, 377 S.C. 66, 659 S.E.2d 140 (2008), *abrogated by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018).

As noted in addressing the earlier allegations, the Applicant has failed to show any deficiency of counsel related to the failure to meet. For the reasons set forth above in the allegation, he has failed to meet his burden of proof. The allegation must be denied.

#### **Failure to Successfully Withdraw the Plea.**

This allegation must be dismissed. The record shows that that the Applicant, through counsel Stitely sought to move to withdraw the guilty plea by motion made on October 4, 2022. The State responded to the request in opposition. Judge McLeod, reviewing the motion and response, denied the request to withdraw the plea on in his November 18, 2022 Order.

Further, the record shows that the guilty plea was entered freely and voluntarily. The sentence that Applicant received was within the range consistent with the plea offer. The Applicant

has failed to show how counsel was deficient during the plea or subsequent concerning any action to withdraw the guilty plea.

**Counsel's Failure to Present the Applicant's Minimal Record in Mitigation.**

This Court must find that the Applicant has failed in his burden of proof. During the state's presentation, it indicated as noted above that the Applicant had a minimal prior record as noted previously. Tr.p. 13. At the sentencing, the Applicant declared that he had an issue with marijuana and was seeking a drug program for assistance when he was sentenced. At the PCR proceeding, he suggested that he wanted his record being presented as only related to possession of marijuana. However, this issue was generally presented to the plea court. This Court must find that the Applicant failed to prove deficient performance and Sixth Amendment prejudice has not been shown.

**B. Invalid Plea**

This Court must deny that this is an invalid plea. In his remaining allegation, the Applicant contends that was rushed into pleading last minute with threats of having bond revoked and being sent to Alvin Glenn if he did not plead. This information was presented to the plea court at the time of the plea. The record is undisputed that the proceeding was initially going to be a bond revocation proceeding on the Lexington charges based upon his intervening arrest on the Richland County charges. It was not supposed to be a guilty plea proceeding. Tr.p. 19, l. 6-9. However, the Applicant indicated to his counsel that he wanted to get out of the Richland County detention center and was willing to plead to get to prison. Counsel Williams indicated to the Applicant that it was up to him and did not make a recommendation on whether to plead or not because it was up to Helrigel. Counsel Williams noted that the driving force behind the plea was the Applicant's desire to get out of the Alvin S. Glenn Detention Center in Richland County and he could not get

out otherwise. Willimas declared credibly that Helrigel was the one that wanted to plead guilty. The parties were aware that the June 2022 plea offer was going to terminate on September 29, 2022, the day of the scheduled revocation proceeding. The record of the plea reflects support that the plea was freely and voluntarily entered.

“[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced.” *Reed v. Becka*, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). Because a criminal defendant waives several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Pittman v. State*, 337 S.C. 597, 524 S.E.2d 623 (1999). To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. *Brady v. United States*, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant’s choice. *Id.* at 755; *see also United States v. Smith*, 440 F.2d 521, 528–529 (7th Cir. 1971) (Stevens, J., dissenting) (explaining that voluntariness relates to the trustworthiness of the admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one’s accusers, and the privilege against self-incrimination. *Boykin*, 395 U.S. at 243. Additionally, the defendant “must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” *Pittman*, 337 S.C. at 599, 524 S.E.2d at 624. The defendant’s knowing and voluntary waiver of statutory or

constitutional rights must be established by a complete record, and “may be accomplished by colloquy between court and defendant, between court and defendant’s counsel, or both.” *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993); see generally *Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997) (guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge). To ensure the defendant understands the consequences of his guilty plea, the plea judge “usually questions the defendant about the facts surrounding the crime and punishment that could be imposed.” *Dover v. State*, 304 S.C. 433, 434–35, 405 S.E.2d 391, 392 (1991). However, the plea judge “does not have to direct the defendant’s attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea.” *Carter v. State*, 329 S.C. 355, 362, 495 S.E.2d 773, 776 (1998).

The test for determining the validity of a guilty plea is “whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). It is “well established that a guilty plea is not rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment.” *United States v. Cox*, 464 F.2d 937, 942 (6th Cir. 1972) (citing *Brady*, 397 U.S. 742). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, *Brady*, 397 U.S. at 750–53, or by increasing the risks of punishment on those who do not. *Alford*, 400 U.S. at 37.

An applicant who enters a plea on the advice of counsel may “only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but

for counsel's errors, the [applicant] would not have pled guilty, but would have insisted on going to trial." *Roscoe*, 345 S.C. at 20, 546 S.E.2d at 419. In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. *Wolfe*, 326 S.C. at 165, 458 S.E.2d at 370; *cf. Rayford v. State*, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that, where the transcript of the guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant's claim his lawyer misadvised him). The voluntariness of a guilty plea "is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." *Harres*, 282 S.C. at 133, 318 S.E.2d at 361.

Nonetheless, because "[a] guilty plea is a solemn, judicial admission of the truth of the charges against an individual . . . , a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977)); *see McMann v. Richardson*, 397 U.S. 759, 774 (1970) (noting the compelling interests in maintaining the finality of guilty-plea convictions validly obtained). Indeed, admissions made during a guilty plea carry a presumption of verity and should be considered conclusive unless an applicant presents cogent and valid reasons why he should be allowed to depart from the truth of his statements. *Dalton*, 376 S.C. at 137-38, 654 S.E.2d at 874 (internal citations and quotation marks omitted); *cf. Blackledge*, 431 U.S. 63. at 73-74 (1977) (pointing out that representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a "formidable barrier in any subsequent collateral proceedings"); *United States*

*v. Broce*, 488 U.S. 563, 569 (1989) (“A plea of guilty and the ensuing conviction comprehend all of the factual and legal elements necessary to sustain a binding, final judgment of guilty and a lawful sentence. Accordingly, when the judgment of conviction upon a guilty plea has become final and the offender seeks to reopen the proceeding, the inquiry is ordinarily confined to whether the underlying plea was both counseled and voluntary. If the answer is in the affirmative then the conviction and the plea, as a general rule, foreclose the collateral attack.”).

Guilty pleas “must be treated as final in the vast majority of cases. Indeed, ‘[w]hat is at stake in this phase of the case is not the integrity of the state convictions obtained on guilty pleas, but whether, years later, defendants must be permitted to withdraw their pleas, which were perfectly valid when made, and be given another choice between admitting their guilt and putting the State to its proof.’ ” *Jamison v. State*, 410 S.C. 456, 469, 765 S.E.2d 123, 129 (2014) (quoting *McMann*, 397 U.S. at 773. “Furthermore, there must be some consequence attached to the decision to plead guilty.” *People v. Schneider*, 25 P.3d 755, 761 (Colo. 2001) (*cited with approval in Jamison*, 410 S.C. at 469, 765 S.E.2d at 129).

Here, Applicant now claims his plea was involuntary because he felt there were threats to have his bond revoked and being returned to Alvin S. Glenn, when there was an option that he could plead guilty and be sentenced to the Department of Corrections. Stated another way, rather than being revoked and returned to the Richland County detention to await trial, the Applicant was aware that there was an option that he could get sentenced on a crime that he admitted he was guilty and sent to the Department of Corrections to begin service of a sentence rather than being in Richland County for an unknown period of time awaiting trial on those charges, that he was claiming he was not guilty. The plea transcript reflects Applicant understood the proceedings, the nature of the charges against him, the terms of the plea agreement, and the consequences of

pleading guilty in accordance with the requirements of *Boykin* and *Pittman*. 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). Tr.p. 4-10. Thus, the Court must conclude Applicant's claim that his plea was not voluntarily entered and is invalid is without merit.

### 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 and vacate his free and voluntary guilty plea. 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), 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 if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant's attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

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

AND IT IS SO ORDERED this 6 day of September, 2024.

  
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J. CORDELL MADDOX  
Presiding Judge  
Eleventh Judicial Circuit

Anderson \_\_\_\_\_, South Carolina