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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to Court of Appeals
Appeal from Greenville County
The Honorable Eugene C. Griffith, Jr., Post-Conviction Relief Judge

Op. No. 2025-UP-323 (Ct. App. filed September 24, 2025)

Angelo H. Taylor,

Respondent,

v.

State of South Carolina,

Petitioner.

APPENDIX

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STANDARD OF REVIEW

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

ARGUMENT

The PCR court erred in finding that Taylor proved that plea counsel was constitutionally ineffective for giving inaccurate advice about Taylor's parole eligibility because the court found that Taylor satisfied his burden merely because his testimony was not contradicted, which constituted a legal error and improperly shifted the burden to the State.

The PCR court found that Taylor met his requisite burden of proof to establish that plea counsel was constitutionally ineffective for incorrectly advising Taylor that he would “max[] out” his sentence after serving only 65% of it in the South Carolina Department of Corrections (“SCDC”) and that he would not have pleaded guilty but for the incorrect advice. App. 430-33. The PCR erred in finding that plea counsel gave incorrect advice to Taylor because the PCR court's ruling was premised on the error of law that it must accept Taylor's testimony as true and dispositive simply because, in the PCR court's view, it was “not contradict[ed]” by plea counsel's. This amounts to an error of law and warrants this Court's review and ultimate reversal.

All defendants have a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. *Strickland*. A post-conviction relief applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that his lawyer was constitutionally ineffective, he must prove that the conduct of his lawyer “so undermined the proper functioning of the adversarial process that [that conduct] cannot be relied upon as having produced a just result.” *Strickland*, 466 U.S. at 686. In evaluating allegations of ineffective assistance of counsel, the post-conviction relief court applies the two-pronged test outlined in *Strickland*. First, the applicant must prove that the performance of his lawyer was deficient. *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (quoting *Strickland*). Under this prong, the court measures an attorney's performance by its “reasonableness under

prevailing professional norms.” *Cherry*, at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). For a post-conviction relief applicant to successfully prove that his defense attorney’s performance was deficient, he must prove “that counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed by the Sixth Amendment.” *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quotation omitted). “The proper measure of counsel’s performance remains whether he has provided representation within the range of competence required of attorneys in criminal cases.” *Id.* (citations omitted). The “preeminent authority for all” courts when they are considering an applicant’s claim of constitutional ineffectiveness requires that the courts be highly deferential to a defense lawyer’s performance because:

[I]t is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.

Id. at 444-45, 334 S.E.2d at 815-16 (quoting *Strickland*). An applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. “The burden of rebutting this presumption rests squarely on the defendant, and it should go without saying that the absence of evidence cannot overcome it. In fact, even if there is reason to think that counsel’s conduct was far from exemplary, a court still may not grant relief if the record does not reveal that counsel took an approach that no competent lawyer would have chosen.” *Dunn v. Reeves*, 141 S. Ct. 2405, 2410 (2021) (quotation omitted).

The PCR court’s finding that Taylor’s testimony was “convincing” simply because plea

counsel did not contradict it was erroneous as a matter of law.⁴ The burden was on Taylor to prove that plea counsel's advice to him "[cannot] be relied upon as having produced a just result." *Strickland*, 466 U.S. at 686. The burden was on Taylor to prove that plea counsel made such an error that he "was not functioning as the 'counsel' guaranteed by the Sixth Amendment." *Butler*. The burden of overcoming the presumption that plea counsel's performance was reasonable under prevailing professional norms was "squarely" on Taylor such that the burden could not be overcome merely by "the absence of evidence." *Dunn*, 141 S. Ct. at 2410. The PCR court relieved Taylor of the burden of proving that plea counsel incorrectly advised him of his parole eligibility, which is a burden imposed on Taylor by *Strickland*, by finding simply that Taylor satisfied the first prong of *Strickland* because plea counsel's testimony did not contradict Taylor's. The State does not have to *disprove* a PCR applicant's testimony, and a defense lawyer's inability to remember certain things about his representation of an applicant does not relieve the applicant of his burden under *Strickland*. See *United States v. Shamsid-Deen*, No. 20-11877 (11th Cir. 2023) (reversing the district court's order suppressing Shamsid-Deen's motion to suppress evidence of a prior conviction because Shamsid-Deen had the burden of persuasion and the evidence was unclear or evenly balanced, or the inferences that could be drawn from the evidence were ambiguous) (citations omitted); *Romine v. Head*, 235 F.3d 1349 (11th Cir. 2001) (stating that when a defense lawyer could not remember his reason for not doing something at

⁴ As argued in the motion to alter or amend the judgment, the PCR court's finding that plea counsel's testimony did not contradict Taylor's testimony about plea counsel's advice was an inaccurate assessment of the testimony from the PCR hearing. Plea counsel's testimony did, contrary to the PCR court's findings, contradict Taylor's testimony because, rather than agreeing that he had incorrectly advised Taylor on parole eligibility, plea counsel testified that he did not think that he had ever discussed the topic with Taylor; furthermore, plea counsel was able to explain his testimony on that point by the fact that Taylor had been insistent upon going to trial and their discussions focused on trial preparation.

trial due to the passage of time, the reviewing court considering the habeas corpus claims should presume that the lawyer did what he should have done and that he exercised reasonable professional judgment) (citing *Williams v. Head*, 185 F.3d 1223 (11th Cir. 1999)). The PCR court was not required to accept Taylor's testimony as true, even if his testimony was not contradicted by plea counsel's.⁵ See *Black v. Hodge*, 306 S.C. 196, 198, 410 S.E.2d 595, 596 (Ct. App. 1991) (“[M]ust a trier of fact always believe uncontradicted testimony? The answer to the question is, plainly, no. The fact that testimony is no contradicted directly does not render it undisputed. There remains the question of the inherent probability of the testimony and the credibility of the witness or the interests of the witness in the result of the litigation.”) (citing *Terwilliger v. Marion*, 222 S.C. 185, 72 S.E.2d 165 (1952)). By finding that Taylor had met his burden in proving that plea counsel gave him incorrect advice about parole eligibility merely

⁵ Similarly, the PCR court was not required to accept as credible Taylor's testimony regarding the role of plea counsel's advice in his decision to plead guilty. See *Frierson v. State*, 417 S.C. 287, 298-99, 789 S.E.2d 762, 768 (Ct. App. 2016) (affirming the PCR court's finding that the applicant had failed to prove prejudice when the PCR court based the finding upon another finding that the applicant's testimony that he would have proceeded to trial but for his lawyer's deficiency was “wholly incredible”), *aff'd as modified*, *Frierson v. State*, 423 S.C. 257, 263, 815 S.E.2d 433, 436 (2018) (vacating the portion of the Court of Appeals' opinion concerning the overwhelming evidence of the applicant's guilt but affirming as to, among other things, the Court of Appeals' finding on the PCR court's prejudice findings); *Goins v. State*, 397 S.C. 568, 575, 726 S.E.2d 1, 4 (2012) (upholding the PCR court's finding that the applicant failed to prove prejudice because, although the applicant's lawyer did not properly advise him on the law, the PCR court found that the applicant's testimony that he would have gone to trial but for the deficiency was not credible); *Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592 (stating that United States Supreme Court precedent “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 plead but would have gone to trial.”). And there was ample reason for the PCR court to reject as ridiculous Taylor's testimony that he would not have pleaded guilty but for plea counsel's advice.

because Taylor's testimony was not contradicted by plea counsel's, the PCR court turned the Strickland standard on its head, which is a legal error. This Court should grant this petition and reverse the PCR court's deficiency finding.

CONCLUSION

For the foregoing reasons, this Court should grant a writ of certiorari and reverse the PCR court's erroneous finding that Taylor satisfied the first prong of *Strickland*, thereby reversing the grant of PCR.

Respectfully submitted,

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March 22, 2023

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Apr 20 2023

S.C. SUPREME COURT

Certiorari to Greenville County

Honorable Eugene C. Griffith, Circuit Court Judge

ANGELO H. TAYLOR,

RESPONDENT,

V.

THE STATE.

PETITIONER.

APPELLATE CASE NO. 2022-001571

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QUESTION PRESENTED

Did the PCR judge correctly find that the guilty plea was rendered involuntary by plea counsel's erroneous advice as to "parole eligibility"?

PETITIONER'S QUESTION PRESENTED

Did the PCR court err in finding that Taylor proved that plea counsel was constitutionally ineffective for giving inaccurate advice about Taylor's parole eligibility when the court found that Taylor satisfied his burden merely because his testimony was not contradicted, which constituted a legal error and improperly shifted the burden of proof?

STATEMENT OF THE CASE

According to the indictments,¹ on February 13, 2018, the Greenville County Grand Jury indicted Respondent, Angelo Horace Taylor, for murder and attempted armed robbery, indictments #2016-GS-23-2378, 2379. (App. pp. 392-393; 396-397). On September 18, 2018, Respondent proceeded to jury trial before the Honorable Edward W. Miller. Carlyle Steele represented Respondent at trial. Elizabeth Major prosecuted the case. Jury deliberations began at 12:06 PM on September 19, 2018. (App. p. 354, line 1). At 2:29 PM the jury sent out a note that said, “The jury is unable to reach a consensus.” (App. p. 354, lines 3-4). The judge asked the jury to continue to deliberate. (App. p. 354, lines 20-21). At 3:52 PM the jury sent a second note indicating deadlock. (App. p. 355, lines 5-6). The judge announced that he was going to give an Allen charge. (App. p. 355, lines 16-18). Counsel for Respondent objected to the Allen charge but failed to move for a mistrial pursuant to S.C. Code §14-7-1330.² The judge gave the Allen charge. (App. pp. 356-358). While the jury was deliberating, Respondent entered Alford³ pleas to involuntary manslaughter and attempted armed robbery. Judge Miller sentenced Respondent to twenty (20) years for attempted armed robbery and five (5) years consecutive to involuntary manslaughter. Respondent did not appeal his sentence or conviction. (App.p. 390, 395).

On August 9, 2019, Respondent filed a *pro se* application for post-conviction relief [PCR]. (App. pp. 404-412). On January 7, 2020, the State filed a return and motion for more definite statement. (App. pp. 413-426). On March 10, 2020, PCR counsel filed an amended

¹ The date listed below the witness name is December 5, 2015. The indictments are stamped as filed in the clerk’s office on March 28, 2016. The 2016 term listed on one side of the indictment is scratched out and replaced with 2018. The indictment numbers start with 2016.

² This issue was not raised in post-conviction relief.

³ North Carolina v. Alford, 400 U.S.25 (1970).

application. (App. pp. 427-428). On March 21, 2022, an evidentiary hearing was held, via WebEx, before the Honorable Eugene C. Griffith, Jr. Susannah Conyers Ross represented Respondent at the PCR hearing. Taylor Zane Smith represented the State. In a written order signed August 17, 2022, Judge Griffith granted relief and remanded for a new trial. (App. pp. 429-434). The order granting relief was filed on September 14, 2022. The State served a motion to alter or amend on September 21, 2022. Judge Griffith denied the motion on October 11, 2022. The notice of intent to appeal was served on November 7, 2022. The State filed a petition for writ of certiorari on March 22, 2023. This return follows.

ARGUMENT

The PCR judge correctly found that the guilty plea was rendered involuntary by plea counsel's erroneous advice as to "parole eligibility."

Respondent's trial for murder, possession of a weapon during the commission of a violent crime and attempted armed robbery started on September 18, 2018. Deliberations started the next day at 12:06 PM. (App. p. 354, line 1). At 2:29 PM the jury sent out a note that said, "The jury is unable to reach a consensus." (App. p. 354, lines 3-4). The judge asked the jury to continue to deliberate. (App. p. 354, lines 20-21). At 3:52 PM the jury sent a second note indicating deadlock. (App. p. 355, lines 5-6). The judge announced that he was going to give an Allen charge. (App. p. 355, lines 16-18). Counsel for Respondent objected to the Allen charge but failed to move for a mistrial pursuant to S.C. Code §14-7-1330. Counsel's failure to move for a mistrial after the jury deadlocked twice was not raised during the PCR hearing. The judge gave the Allen charge. (App. pp. 356-358). While the jury was deliberating, Respondent entered Alford⁴ pleas to involuntary manslaughter and attempted armed robbery. (App. pp. 358-363). Prior to accepting the plea, the judge did not question Respondent about his understanding of the maximum and minimum penalties and the nature of the charges to which he was entering Alford pleas. The judge sentenced Respondent to twenty (20) years for attempted armed robbery and five (5) years consecutive to involuntary manslaughter.

In the amended PCR application Respondent alleged, "ineffective assistance of counsel for advising the applicant the attempted armed robbery was charge that maxed out at 65% when it is an 85% charge . . ." (App. p. 427). During the PCR hearing when PCR counsel asked Respondent if plea counsel discussed the fact that the sentence for attempted armed robbery required service of eighty-five percent of the sentence, Respondent testified, "Well, he – at first

⁴ North Carolina v. Alford, 400 U.S.25 (1970).

originally he told me that I could get probation or I could, you know, get a different – a lesser sentence than 20 years, that it would be carried at 65 percent.” (App. p. 371, lines 11-16). Respondent testified that he thought that he would have to serve sixty-five percent of the sentence imposed and he did not think he would receive consecutive time, as he did. (App. p. 371, lines 8-10). Respondent testified that he would not have pled if he had known that attempted robbery was classified as a violent offense and required service of eighty-five percent of the sentence. (App. p. 371, line 20 – p. 372, lines 1-13). On cross-examination Respondent testified, “He [counsel] told me that the charge that I was pleading to, that my time would carry 65 percent, so I would do a lesser amount of time incarcerated.” (App. p. 373, lines 15-17).

Plea counsel testified at the PCR hearing that, **prior to trial**, he did not believe he discussed with Respondent the percentage of time he would have to serve if convicted of attempted armed robbery because the State had not yet made any plea offers and Respondent wanted a trial. (App. p. 376, lines 8-19). When asked if he ever told Respondent he would only have to serve sixty-five percent of the sentence imposed, counsel testified, “It’s been three and a half years. It’s been a while. I can’t say we never had that discussion, but I can say I don’t remember that discussion, and I don’t believe we had that discussion.” (App. p. 376, line 20 – p. 377, line 1). When asked if he believed that attempted robbery was categorized as a “no parole” offense, counsel testified, “Apparently it is.” (App. p. 377, lines 8-10). On cross-examination counsel agreed that when Respondent heard the murder charge was being reduced to involuntary manslaughter, he may have thought he was looking at close to time served as he had been in jail for over 1,000 days awaiting trial. (App. p. 383, line 24 – p. 384, lines 1-3).

In the order granting relief the PCR judge wrote, “It is the finding of this Court that the Applicant demonstrated a deficiency of Counsel in this matter which was not cured by the plea

colloquy that gives rise to a reasonable probability that but for counsel's errors, the defendant would not have pled guilty. Therefore, he is entitled to post-conviction relief." (App. p. 433). As to deficiency, the PCR judge wrote, "As counsel's testimony did not contradict the Applicant, I find the Applicant's testimony that his guilty plea was based on inaccurate sentencing advice from counsel to be convincing." (App. p. 432). As to prejudice, the PCR judge wrote, "As to the 'prejudice' requirement of the *Strickland* test, the Applicant's uncontroverted testimony was that had he known the attempted armed robbery was an 85% charge, he would not have plead guilty and instead waited on the verdict of the jury that was actively deliberating at the time of his plea." (App. p. 433). The judge correctly granted relief.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687–88, 104 S.Ct. 2052. "Under this prong, '[t]he measure of attorney performance remains simply reasonableness under prevailing professional norms.'" Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id.

The Strickland test operates similarly when an applicant claims counsel was ineffective in the context of a guilty plea. Hill v. Lockhart, 474 U.S. 52, 58, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). A guilty plea may not be accepted unless it is voluntarily and understandingly made. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). “To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him.” Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000). “A defendant's knowing and voluntary waiver of the constitutional rights which accompany a guilty plea ‘may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel, or both.’ ” Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 625 (1999) (quoting State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). “The longstanding 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.’ ” Hill, 474 U.S. at 56, 106 S.Ct. 366 (quoting North Carolina v. Alford, 400 U.S. 25, 31, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970)).

In Frierson v. State, 423 S.C. 257, 262, 815 S.E.2d 433, 436 (2018), the South Carolina Supreme Court wrote:

In order to establish prejudice when challenging a guilty plea, a defendant must prove “there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have gone to trial.” Harden v. State, 360 S.C. 405, 408, 602 S.E.2d 48, 49 (2004). The crux of the inquiry is whether counsel's ineffective performance affected the outcome of the plea process, not whether the defendant would have been successful had he gone to trial. Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991). As the United States Supreme Court stated in Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985), “[I]n order to satisfy the ‘prejudice’ requirement, the defendant must show there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial.”

The PCR judge correctly found that the plea was based on inaccurate sentencing advice from counsel. The Respondent met his burden of proof as to both deficiency and prejudice. The

PCR judge did not shift the burden of proof to the State. Instead, the PCR judge made a factual finding that Respondent's testimony that his plea was based on inaccurate sentencing advice from counsel was convincing writing, "As counsel's testimony did not contradict the Applicant, I find the Applicant's testimony that his guilty plea was based on inaccurate sentencing advise from counsel to be convincing." (App. p. 432). Respondent unequivocally testified that counsel advised him that he would only have to serve sixty-five percent of his sentence. (App. p. 371, 373). Counsel's testimony about his advice to Respondent, on the other hand, was less certain. Counsel testified, "I can't say we never had that discussion, but I can say I don't remember that discussion, and I don't believe we had that discussion." (App. p. 376, line 20 – p. 377, line 1). Counsel also testified that attempted armed robbery was "apparently" a no parole offense. (App. p. 377, lines 8-10). The PCR judge's factual finding as to deficiency is supported by the record.

In Smalls v. State, 422 S.C. 174, 180–81, 810 S.E.2d 836, 839–40 (2018) (n. 2 omitted), the South Carolina Supreme Court wrote:

Our standard of review in PCR cases depends on the specific issue before us. We defer to a PCR court's findings of fact and will uphold them if there is evidence in the record to support them. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016) (citing Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). We review questions of law de novo, with no deference to trial courts. Sellner, 416 S.C. at 610, 787 S.E.2d at 527 (citing Jamison v. State, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014)).

The PCR judge made a finding of fact that Respondent's testimony as to deficiency was convincing. Petitioner argues that by stating that counsel's testimony did not contradict the Applicant's testimony as to deficiency, the PCR judge committed an error of law by shifting the burden of proof to the State. The PCR judge, however, did not require the State to disprove Respondent's testimony, as argued by Petitioner. (Petition for Writ of Certiorari p. 16). Respondent met the burden of proof required. The deficiency finding by the PCR judge was not

a burden shifting error of law. Instead, the PCR judge made a finding of fact that the plea was based on the erroneous advice from counsel that attempted armed robbery⁵ only requires the service of sixty-five percent of the sentence.

Petitioner correctly notes that the PCR court was not required to accept Respondent's testimony that he received erroneous sentencing advice from counsel. (Petition for Writ of Certiorari p. 17). In this case, however, the judge accepted Respondent's testimony, finding the testimony to be "convincing." There is evidence in the record to support the PCR judge's finding of fact as to deficiency. This Court should uphold the deficiency finding of the PCR court.

The PCR judge then addressed prejudice writing, "As to the 'prejudice' requirement of the *Strickland* test, the Applicant's uncontroverted testimony was that had he known the attempted armed robbery was an 85% charge, he would not have plead guilty and instead waited on the verdict of the jury that was actively deliberating at the time of his plea. This is the only evidence in the record on this point, and I find that it demonstrates prejudice to the Applicant. See *Alexander v. State*, 303 S.C. 539, 402 S.E.2d 484 (S.C. 1991)." (App. p. 433). In *Jackson v. State*, 342 S.C. 95, 97-98, 535 S.E.2d 926, 927 (2000), the South Carolina Supreme Court wrote:

Petitioner testified he would not have pled had he known the charge was a felony. The PCR judge found petitioner's testimony was not credible. However, there was no evidence contradicting or conflicting with petitioner's testimony that would support the PCR judge's finding that petitioner would not have pled. In *Alexander v. State*, 303 S.C. 539, 402 S.E.2d 484 (1991), the PCR judge denied a petitioner relief when trial counsel erroneously advised the petitioner about his potential

⁵S C. Code §24-13-100 provides that a "no parole" offense means a class A, B, or C felony. Attempted armed robbery, S.C. Code §16-11-330(B), is a class C felony, S.C. Code §16-1-90(C), classified as a violent, most serious, no parole offense. S C. Code §24-13-150 provides that an inmate convicted of a no parole offense is required to serve at least eighty-five percent of the sentence.


sentence prior to his guilty plea. We reversed and held the petitioner had satisfied the prejudice prong when “the only evidence in the record on this point [was] petitioner's own testimony that had trial counsel not misinformed him that he would face a potential life sentence if he proceeded to trial, he would not have pled guilty.” (citing Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989) (new trial granted where incorrect parole eligibility advice induced plea)).² Here, the only evidence was that petitioner would not have pled had he known the charge was a felony. Thus, petitioner was entitled to PCR.

There was no adverse credibility finding to overcome in the present case as there was in Jackson. Like Jackson, the only evidence in the present case is that Respondent would not have pled had he known that any sentence for attempted armed robbery required service of eighty-five percent of that sentence. This is especially true given the fact that Respondent only chose to enter pleas at the conclusion of the trial and while the jury was still deliberating. In footnote two the Court in Jackson wrote, “To the extent that Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996), can be read to hold that a petitioner's statement is insufficient evidence to satisfy the prejudice prong, it is hereby overruled.” 342 S.C. at 98, 535 S.E.2d at 927. There is evidence in the record to support the PCR judge’s finding as to prejudice. This Court should uphold the prejudice finding of the PCR court.

The PCR judge correctly found that Respondent “. . . demonstrated a deficiency of Counsel in this matter which was not cured by the plea colloquy that gives rise to a reasonable probability that but for counsel’s errors, the defendant would not have pled guilty. Therefore, he is entitled to post-conviction relief.” (App. p. 433). The guilty plea was rendered involuntary by plea counsel’s erroneous advice as to “parole eligibility.” Respondent is entitled to relief.

CONCLUSION

Based on the above argument, this Court should deny the petition for writ of certiorari.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR RESPONDENT

This 20th day of April, 2023.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to Greenville County

The Honorable Edward W. Miller, Plea Judge
The Honorable Eugene C. Griffith, Post-Conviction Relief Judge

Appellate Case No: 2022-001571

ANGELO HORACE TAYLOR,

Respondent,

v.

STATE OF SOUTH CAROLINA,

Petitioner.

BRIEF OF PETITIONER

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PETITIONER'S STATEMENT OF THE ISSUE

Did the PCR court err in finding that Taylor proved that plea counsel was constitutionally ineffective for giving inaccurate advice about Taylor's parole eligibility when the court found that Taylor satisfied his burden merely because his testimony was not contradicted, which constituted a legal error and improperly shifted the burden to the State?

STATEMENT OF THE CASE

Respondent Angelo Horace Taylor is presently imprisoned in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. During its February of 2018 term, the Greenville County Grand Jury indicted him for murder (2016-GS-23-002378), possession of a weapon during the commission of a violent crime (2016-GS-23-002378) and attempted armed robbery (2016-GS-23-002379).

On September 18-19, 2018, Taylor proceeded to a jury trial. The Honorable Edward W. Miller (“the plea court”) presided. C. Carlyle Steele (“plea counsel”) represented Taylor at trial. Elizabeth Coble Major (“the solicitor”) of the Thirteenth Circuit Solicitor’s Office, prosecuted the case. While the jury was deliberating,¹ Taylor entered guilty pleas pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), to involuntary manslaughter, and attempted armed robbery. In accordance with the plea agreement, the solicitor dismissed the weapon charge. The solicitor asked the court to impose a sentence of twenty-five years imprisonment. Plea counsel requested that the court sentence Taylor to time served and probation, indicating that Taylor had already been in custody for “a long time” (1019 days) by the time of trial. (*See App. 361-362 and 359*). Judge

¹ The jury deliberated approximately 2 hours, from 12:06 pm to 2:29 pm, before reporting to the court by note, “The jury is unable to reach a consensus.” (*App. 354*). Rather than give an *Allen* charge at that time, the judge merely requested the jury, by note, to “[p]lease continue to deliberate.” (*App. 354*). The jury continued deliberations for over another hour (2:33 pm to 3:52 pm) and sent out another note that they were deadlocked, though they had some agreement:

THE COURT: Okay, We’ve got a note from the jury that says that the jury is deadlocked - - I’m not going to tell you the number - - on two of the charges. So they made a decision on one and they are deadlocked on the other two.

(*App. 355*). The judge then gave an *Allen* charge over the defense’s objection that the charge would place undue pressure on the jury to agree and therefore the charge would be prejudicial to Taylor. (*App. 355-358*). The jury began deliberations again at approximately 4:04 pm. (*App. 358*). The plea occurred after the jury began deliberations again at this point. (*App. 358*). Sentencing concluded at 4:35. (*App. 363*).

Miller sentenced Taylor to imprisonment for twenty years for attempted armed robbery and five for involuntary manslaughter, both sentences running consecutively, and credit for time served. (App. 363). Taylor did not appeal his convictions or sentences.

Taylor filed his *pro se* application for post-conviction relief on August 9, 2019, raising multiple claims: (1) 6th Amendment; (2) 14th Amendment; and (3) Ineffective assistance of counsel.² (App. 404-410). On January 7, 2020, the State made its return to the application, moved for a more definite statement, and requested a hearing on the ineffective assistance of counsel allegation. (App. 413-425). Taylor's appointed lawyer, Susannah Ross Esq., subsequently filed an amendment to the application on March 13, 2020, and raised the following claims: (1) ineffective assistance of trial counsel for advising the applicant the attempted robbery was [a] charge that maxed out at 65% when it is an 85% charge; and (2) Due Process violations because the plea was not knowingly and voluntarily made due the applicant's not understanding the maximum sentence he faced when he plead guilty. (App. 427).

An evidentiary hearing convened, via Webex before the Honorable Eugene C. Griffith, Jr. ("the PCR court") on March 21, 2022. Taylor was present at the hearing and represented by Susannah Ross Esq. Assistant Attorney General Taylor Zane Smith of the South Carolina Office of the Attorney General represented the State. (App. 365). At the start of the hearing, counsel for Taylor clarified that it was Taylor's position:

... that he did not realize he was, you know, facing an 85 percent charge with that attempted armed robbery and thought that it was being treated as a 65 percent charge. He didn't realize it was a no-parole offense, which it was.

Also, just looking through the plea colloquy, I would argue there were due process violations under Pittman v. State and Rule

² In response to question eleven, which asks an applicant to state concisely the facts which support each allegation, Taylor indicated a memorandum of law was attached to his PCR application. (See App. 406). However, the State has no record or copy of such memorandum.

11 showing that the applicant didn't have a full understanding of the maximum sentence he could face when he pled guilty.

(App. 368, lines 16-25) (*See also* App. 385, "... our claims are limited to ... whether there were due process violations in the plea itself because it didn't comply with Rule 11 going through all the details that normally are in the plea colloquy and then the misadvising on the parole eligibility.").

Applicant testified on his own behalf at the hearing and the State called plea counsel, Mr. Steel. (*See* App. 366). At the end of the hearing, the PCR court took the matter under advisement. (App. 388). Judge Griffith subsequently issued an order on August 17, 2022, that granted relief and ordered the "sentence and convictions" be vacated, and the charges remanded to the court of general sessions. (App. 429-433). That order was filed with the Greenville County Clerk of Court on September 14, 2022, and hand-delivered to the parties by the Clerk on that same day.

On September 21, 2022, the State served a motion to alter or amend the judgment, pursuant to Rule 59(e), SCRCR, requesting that the PCR Court alter or amend its findings as to the deficiency and prejudice prongs of *Strickland v. Washington*, 466 U.S. 668 (1984), and reverse its grant of relief to Taylor. (App. 436-441). The PCR court denied the motion in an order issued on October 1, 2022. (App. 485).

The State filed the Notice of Appeal on November 7, 2022, and subsequently filed its petition for certiorari and appendix on March 22, 2023. Taylor, through appointed counsel, filed the return on April 20, 2023. On May 9, 2023, our Supreme Court transferred the case to the Court of Appeals. This Court granted the State's petition on May 21, 2024, and ordered the parties to file the appendix and briefs as provided by Rule 243(j) SCACR. This additional briefing follows.

PETITIONER'S STATEMENT OF FACTS

Michael Rosemond was working as the security guard supervisor at a registration desk at a hospital in Greenville County on December 5, 2015. A light-skinned black man in his early twenties, who Rosemond believed to weigh about 140 pounds, had run inside and yelled for help to bring his friend, Jermaine Cureton (“the victim”), inside. The man said that the victim had been shot. (App. 21-22). Rosemond helped the victim from the front passenger seat of a red Dodge sedan and into the emergency room. (App. 10, 20-21, 23-26, 142). The victim had been shot twice in his left side and had a shallow abrasion to the right side of his head. (App. 171, 188). The victim had also been accompanied by a dark-skinned black man in his early to mid-twenties who Rosemond believed to weigh about 215 pounds. (App. 22). Rosemond stayed outside with the two men to get more information from them while others took the victim inside the hospital. (App. 22). The light-skinned man appeared to be concerned about the victim’s welfare, but the dark-skinned man appeared nonchalant and instructed his light-skinned companion to “[s]hut the [fuck] up.” (App. 23). Rosemond called dispatch to report the matter and then saw medical professionals stop performing chest compressions on the victim and call his time of death. (App. 24). The victim’s cause of death was ultimately ruled a homicide by gunshots. (App. 199). The two men left the hospital to get the victim’s family and then later returned with some of the victim’s family members. (App. 25). Rosemond thought that the events took place before midnight and remembered that it had been dark outside at the time. (App. 25).

Jermaine McCombs, who was in prison at the time of trial for a probation violation, testified that he had known the victim since 2008 and that they had been friends. (App. 28-30). McCombs went by the nickname “Little Mane” and the victim went by “Big Mane.” (App. 29). On the night of December 4 or the early morning of December 5, the victim picked up McCombs

from his home in Greenville planning to buy liquor and also for the victim to sell marijuana to Devashio Brown, who went by the nickname “Doodoo.” (App. 31, 39). The victim was driving his red Dodge sedan. (App. 32). When they arrived at the West View apartment complex where Brown lived, it was late and dark outside. (App. 31). Brown got in the car and bought marijuana, and then left to get more cash because he was short. (App. 32). Two men, one of whom was Taylor, walked up to the car, and Taylor pointed a firearm at the victim. (App. 32-35). McCombs was able to recognize Taylor because his face was not covered and because he knew him prior to this interaction. (App. 35-37). He gave Taylor’s nickname as “A-Lo.” (App. 60). Taylor instructed the victim to “give it up.” (App. 36-37). McCombs did not know if the second robber was pointing a firearm, but he saw the victim and Taylor wrestle over Taylor’s weapon. (App. 36). When McCombs was trying to flee from the car, he heard at least two gunshots. (App. 38).

McCombs testified that he pushed the victim from the driver’s seat into the passenger’s seat so that they could go to the hospital. (App. 38). Brown came out to help and rode in the backseat of the car while McCombs drove. (App. 38).³ McCombs and Brown dropped the victim off at the hospital and then left to alert the victim’s family members. (App. 38-40). He removed the marijuana and a firearm from the victim’s center console while at the victim’s family members’ home, although he testified that the victim had not had the weapon with him during the robbery and shooting. (App. 40-41, 55). He testified that he identified Taylor as the shooter while speaking with a law enforcement officer that night but backtracked on cross-examination to say that he told the officer that he was unable to make an identification because the shooter’s face was covered. McCombs admitted that his testimony on direct that he had told the officer that Taylor was the shooter had been false. (App. 42-45). He explained that he only told the officer that on the night

³ McCombs also testified that Brown was the person driving them to the hospital. (App. 38).

of the shooting because the victim's family members had told him not to tell officers what happened because they wanted to make out extra-judicial justice on Taylor. (App. 44, 52, 55, 60). He testified that the officers had to "drag" the information out of him because they do not "tell on people" where he is from. (App. 49). He also denied that he had killed the victim. (App. 49). On re-direct, McCombs testified that he identified Taylor as the shooter when viewing photographs at the law enforcement center that night. (App. 60). He reiterated that "bad" things happen to people who give information to officers and said that he had been assaulted in the county jail just before coming to testify but said that Taylor had not been the one who had assaulted him. (App. 62-64).

Ashley Bohannon, who had had a child with the victim, testified that she had been with the victim on the night of his death. (App. 65). The victim, whose nickname she said was "Mane," dropped her off at her home and left in his red Dodge Avenger after he received a phone call. (App. 67). McCombs and Brown showed up later that night and told her that the victim had been shot. (App. 67). Brown did all the talking because McCombs was quiet and looked as if he had been crying. (App. 67).

Taylor's mother Angelina Williams testified at trial that Taylor had been living with her at the time of the shooting, but that he had not been home on the early morning hours of December 5. (App. 71-72). Taylor only arrived home at about 6:00 a.m. that day and then left again in a blue Mercedes with a man and a woman at about 11:00 a.m. (App. 72-73).⁴

Daishonique Lewis, who was in jail at the time of trial for unrelated and still-pending charges, testified that she used to date Eric Hill, who was Taylor's friend, and that she knew Taylor and knew that his nickname was "A-Lo." (App. 79-82). Lewis received a Facebook message from

⁴ Williams testified outside of the jury's presence that the victim's mother had told her that she knew that Taylor did not kill her son. The plea court ruled that that testimony from Williams was inadmissible as hearsay. (App. 75-77).

Taylor at about 6:00 or 7:00 a.m. on December 5, in which he asked her to come pick him up. (App. 82). Taylor's cousin Alexis Smith was with her at the time. (App. 83). Lewis testified that she dropped Taylor off at her home, picked up her boyfriend from work, and then returned to her home. (App. 83-84). Taylor spent the whole day at her home and told her boyfriend that he had killed someone and needed to hide a gun. (App. 84). She testified that Taylor took a grocery bag from her kitchen and then went outside, after which he said that he had hidden his firearm in the woods and that he had washed his hands with a scrubbing kitchen pad to get rid of any trace of gunpowder. (App. 85-86). Lewis testified that she heard the water running when Taylor was in her kitchen. (App. 86).

On cross-examination, plea counsel elicited testimony from Lewis that she had written letters to an employee at the Solicitor's Office, in which she wrote that she would say anything to get out of jail; that she wanted a plea deal; that she would "flip" Taylor's case "around;" that she would instead help Taylor if the Department of Social Services took her baby from her; that she said that she would do whatever it took and begged for a deal; that she said that she would give the best testimony ever; and that she was happy that Taylor was in jail. (App. 89-98). On re-direct, Lewis testified that she had not yet been charged with anything when Taylor was arrested and that she gave a statement to officers on the night of Taylor's arrest saying that she had heard Taylor confess and that Taylor had hidden the firearm. (App. 104-05). She testified that she wrote the letters because she was upset and did not want to give birth while in jail. (App. 106-07).

Justus Robinson testified that Taylor's nickname was "A-Lo," and that he knew him from the streets. (App. 113-114). Robinson lived in the West View apartment complex and saw the victim in the parking lot in his red Dodge Avenger, with "Little Mane" in the car, too. (App. 114-117, 119). He testified that he knew that the victim dealt in marijuana and that he heard "give it

up” while he had turned his back on the victim to get cash to buy marijuana from the victim.⁵ (App. 117). He testified that he ran away without looking back and thought that the victim was trying to rob him when he heard gunshots. (App. 117). He testified that he had not seen Taylor but recognized the voice as Taylor’s. (App. 117, 131, 133). When asked about a previous statement that he had given, he testified that he had seen Taylor walking around the victim’s car—with his face uncovered—just as he had been turning his back on the victim. (App. 118-19, 131). He saw Taylor walk up the driver’s side of the car and stand beside him while he talked with the victim. (App. 135-36). He did not see Taylor shoot anyone and estimated that there had been two to three minutes between his seeing Taylor and hearing the shots. (App. 131, 135). Robinson testified that he ran inside and then watched the victim’s car drive away; he did not tell anyone at the time about what he had witnessed because he feared getting into trouble himself. (App. 120). When officers later arrested him for the victim’s murder, he told them what had really happened and then pleaded guilty to misprision of a felony and is now on probation. (App. 122-126). He admitted under cross-examination that he had originally given false information to officers. (App. 127, 136).

David Paul Garrison, a detective at the Greenville Police Department, responded to the hospital on the night of the shooting. (App. 140). Det. Garrison testified that McCombs told officers initially that the robbers’ faces had been covered, but then identified Taylor as the shooter; the victim’s mother also named Taylor as the shooter. (App. 144-145, 172, 176, 181). McCombs had accurately described Taylor’s physical appearance before Det. Garrison showed Taylor’s photograph to him. (App. 151-52). McCombs identified Taylor as the shooter after Det. Garrison showed Taylor’s photograph to McCombs and had already done so before seeing the photograph. (App. 152, 165). Officers could not locate Taylor at his mother’s home that day, but she gave them

⁵ Robinson drank alcohol and smoked marijuana the night in question. (App. 115, 121).

information about his use of social media that they were able to use to locate him and arrest him at Lewis's home. (App. 155-56, 167, 182-84, 232-34). Officers arrested Robinson based on information given to them by McCombs and Robinson denied that he had been at the scene at the time of the shooting, but Robinson later admitted that he had been there and said that he had seen Taylor shoot the victim. (App. 158-59, 164-65). They charged Brown with misprision to a felony because he had not come forward with information about the crime. (App. 160). Officers were able to locate a firearm behind Lewis's home wrapped up in a grocery bag but were unable to get DNA or prints from it, but they did match the projectiles from the victim's body to the weapon. (App. 161, 166-67, 171, 237, 263). McCombs' fingerprints were found on the exterior of the driver's side of the victim's car, but Taylor's were not. (App. 172, 213-14).

Taylor testified in his own defense at trial. He admitted that he had been present at the apartment complex when the victim was shot. (App. 274). He testified that he saw the victim and McCombs in the car and that McCombs pulled him aside and asked for him to return a firearm that McCombs had previously lent to him. (App. 274-75). He testified that McCombs tried to enlist his help in robbing the victim because McCombs felt that the victim was not looking out for him financially; Taylor testified that he declined McCombs' offer. (App. 275-76). He testified that McCombs put the gun to the victim's head and told him to "give it up," which the victim did not take seriously. (App. 276-77). He testified that he saw the victim and McCombs struggle over the gun and that Robinson shot into the car with his .357 magnum, and that McCombs shot twice, too. (App. 277). He testified that he followed Robinson into Robinson's apartment and that he saw Robinson with the .32 caliber and the .357 magnum weapons. (App. 278). Because Robinson, who he alleged was involved with gangs, threatened him and his mother and told him to get rid of the gun, he went to a friend's home and got a bag for the gun, went to his own home, then went to

Lewis's home, where he ditched the gun outside. (App. 279, 294, 299). He alleged that McCombs and Robinson had ambushed the victim because they thought that the robbery would be easy to carry out. (App. 289-90). He testified that McCombs took the victim to the hospital after the shooting because he had been friends with the victim. (App. 293). He denied that he had told Lewis that he had committed the crimes and explained that he had told her that others were saying that he had killed someone; he also denied that he washed his hands at Lewis's home. (App. 298-99). As noted above, Taylor pled guilty under *Alford* before the jury returned with its verdict.

Taylor's statement at sentencing reflected:

That night, nobody intended for none of that to happen. I want to apologize to the family of the victim cause I didn't – I didn't kill nobody, but I understand how the law works.

(App. 363).

STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. *Smalls v. State*, 422 S.C. 174, 180, 810 S.E.2d 836, 839 (2018). A reviewing court generally will “defer to a PCR court’s findings of fact and will uphold them if there is evidence in the record to support them.” *Id.* However, the court will “review questions of law de novo, with no deference to trial courts.” *Id.* at 180-81, 810 S.E.2d at 839.

ARGUMENT

The PCR court erred in finding that Taylor proved that plea counsel was constitutionally ineffective for giving inaccurate advice about Taylor’s parole eligibility because the court found that Taylor satisfied his burden merely because his testimony was not contradicted, which constituted a legal error and improperly shifted the burden to the State.

The PCR court found that Taylor met his burden of proof to establish that plea counsel was constitutionally ineffective. The court’s opinion rested on these findings and conclusions:

- Taylor testified counsel told him he would only have serve 65% of whatever sentence he received for attempted armed robbery, and, had he known that, he would not have pled guilty
- Plea counsel “could not recall” if he advised Taylor that Taylor would have to serve 65% of whatever sentence he received for attempted armed robbery, but “admit[ed] he may have given this erroneous sentencing advice on the potential maximum sentence”
- Because “counsel’s testimony did not contradict” Taylor’s testimony, Taylor’s “testimony that his guilty plea was based on inaccurate sentencing” from his attorney was “convincing”
- Taylor’s uncontroverted testimony was that had he known the attempted armed robbery was an 85% charge, he would not have” pled
- Taylor’s testimony was sufficient to find prejudice under *Alexander v. State*, 303 S.C. 539, 402 S.E.2d 484 (1991)

(App. 432-433).

The PCR court's order shows several reversible errors. First, the PCR court erred in finding that plea counsel gave incorrect advice to Taylor because the ruling was premised incorrectly on a legal conclusion the court must accept Taylor's testimony as true if "not contradict[ed]" by plea counsel. Second, and factually, plea counsel's testimony did contradict the testimony, and the PCR court failed to address counsel's testimony on that point. Third, the prejudice analysis was truncated to the narrow testimony regarding Taylor's understanding of time he would serve, when the testimony, along with the record as a whole, shows that Taylor cannot meet his burden of showing actual *Strickland* prejudice. These multiple errors in application of the *Strickland* standard warrant reversal.

Strickland Standard

A post-conviction relief applicant has the burden of proving that the conduct of his lawyer "so undermined the proper functioning of the adversarial process that [that conduct] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984). The test is familiar. First, the applicant must prove that the performance of his lawyer was deficient. *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (quoting *Strickland*). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). For a post-conviction relief applicant to successfully prove that his defense attorney's performance was deficient, he must prove "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed by the Sixth Amendment." *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quotation omitted). "The proper measure of counsel's performance remains whether he has provided representation within the range of competence required of attorneys in criminal cases." *Id.* (citations omitted). The "preeminent authority for all"

courts when they are considering an applicant's claim of constitutional ineffectiveness is *Strickland*, which requires that courts be highly deferential to a defense lawyer's performance:

It is all too tempting for a defendant to secondguess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.... A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance....

Butler, 286 S.C. at 444–45, 334 S.E.2d at 815–16 (quoting *Strickland*). An applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Second, if he can meet this showing, the conviction defendant must still “show that the deficient performance prejudiced the defense.” *Strickland*, 466 U.S. at 687. The test is slightly modified for guilty pleas.

The Supreme Court has explained that even in the case of guilty pleas, the first prong still involves review of basic “standard of attorney competence” as found in established precedent. *Hill v. Lockhart*, 474 U.S. 52, 58 (1985). However,

The “prejudice,” requirement, on the other hand, focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process. In other words, in order to satisfy the “prejudice” requirement, the defendant must show that there is a ***reasonable probability*** that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.

Id. at 59 (emphasis added). “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” rather, “[j]udges should instead look to contemporaneous evidence to substantiate a defendant's expressed

preferences.” *Lee v. United States*, 582 U.S. 357, 369 (2017). The focus is still on the applicant’s “decision-making” but within context of the facts of the case. *Taylor v. State*, 422 S.C. 222, 233, 810 S.E.2d 862, 867 (2018). “Although appellate courts frequently ‘short-hand’ the prejudice prong in a guilty plea ineffective assistance claim 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.” *Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 594–95 (2009).

Discussion

The PCR court’s finding that Taylor’s testimony was “convincing” simply because plea counsel did not contradict it was erroneous as a matter of law.⁶ The burden was on Taylor to prove that plea counsel’s advice to him “[cannot] be relied upon as having produced a just result.” *Strickland*, 466 U.S. at 686. The burden was on Taylor to prove that plea counsel made such an error that he “was not functioning as the ‘counsel’ guaranteed by the Sixth Amendment.” *Butler*. The burden of overcoming the presumption that plea counsel’s performance was reasonable under prevailing professional norms was “squarely” on Taylor such that the burden could not be overcome merely by “the absence of evidence.” *Dunn v. Reeves*, 594 U.S. 731, 739 (2021) (quoting *Burt v. Titlow*, 571 U.S. 12, 22-23 (2013)). The PCR court relieved Taylor of the burden of proving that plea counsel incorrectly advised him of his parole eligibility, which is a burden imposed on

⁶ As argued in the motion to alter or amend the judgment, and discussed more fully below, the PCR court’s finding that plea counsel’s testimony did not contradict Taylor’s testimony about plea counsel’s advice was an inaccurate assessment of the testimony from the PCR hearing. Plea counsel’s testimony did, contrary to the PCR court’s findings, contradict Taylor’s testimony because, rather than agreeing that he had incorrectly advised Taylor on parole eligibility, plea counsel testified that he did not think that he had ever discussed the topic with Taylor; furthermore, plea counsel was able to explain his testimony on that point by the fact that Taylor had been insistent upon going to trial and their discussions focused on trial preparation.

Taylor by *Strickland*, by finding simply that Taylor satisfied the first prong of *Strickland* because plea counsel's testimony did not contradict Taylor's.

The State does not have to disprove a PCR applicant's testimony, and a defense lawyer's inability to remember certain things about his representation of an applicant does not relieve the applicant of his burden under *Strickland* or the "strong presumption" under *Strickland*. See *Stalk, supra*; *Burt v. Titlow*, 571 U.S. at 23 ("It should go without saying that the absence of evidence cannot overcome the 'strong presumption that counsel's conduct [fell] within the wide range of reasonable professional assistance.'") (quoting *Strickland*, at 689)); *Romine v. Head*, 253 F.3d 1349 (11th Cir. 2001) (stating that when a defense lawyer could not remember his reason for not doing something due to the passage of time, the reviewing federal habeas court should presume that the lawyer did what he should have done and that he exercised reasonable professional judgment). Moreover, the PCR court was not required to accept Taylor's testimony as true, even if his testimony was not contradicted by plea counsel's. See *Black v. Hodge*, 306 S.C. 196, 198, 410 S.E.2d 595, 596 (Ct. App. 1991) ("[M]ust a trier of fact always believe uncontradicted testimony? The answer to the question is, plainly, no. The fact that testimony is not contradicted directly does not render it undisputed. There remains the question of the inherent probability of the testimony and the credibility of the witness or the interests of the witness in the result of the litigation.") (citing *Terwilliger v. Marion*, 222 S.C. 185, 72 S.E.2d 165 (1952)). By finding that Taylor had met his burden in proving that plea counsel gave him incorrect advice about parole eligibility merely because Taylor's testimony was not contradicted by plea counsel's, the PCR court turned the *Strickland* standard on its head, which is a legal error. But even more, the PCR court erred in his summation of the testimony and shows an absence of factual support, as well.

The State asked plea counsel (who had prepared for and represented Taylor throughout the trial proceedings leading to the deliberations) if “at any point” he advised Taylor “that he’d only have to serve 65 percent of the sentence if he were to be convicted of” attempted armed robbery, counsel testified:

It’s been three and a half years. It’s been a while. I can’t say we never had that discussion, but I can say I don’t remember that discussion, and I don’t believe we had that discussion.

(App. 376, line 23 – 377, line 1). He agreed with PCR counsel on cross-examination that he had no specific recollection about the offense carrying an 85% calculation. (App. 384)

Noticeably absent from counsel’s testimony is factual support for the PCR court’s finding that since counsel “could not recall, that in turn, was counsel “admitting he may have given this erroneous sentencing advice....” (See App. 432). That turns the presumption of reasonable representation on its head, and factually does not address counsel’s own testimony that he did not “believe” he “had that discussion” on percentage to be served. This, too, is error. The PCR court committed further error in presuming prejudice based on only one portion of the evidence.

The PCR court relied on the 1991 case *Alexander v. State* and cabined its consideration to only Taylor’s testimony, going so far as to say his testimony that he would have continued on with his trial but for counsel’s error was “the only evidence in the record on this point....” (App. 433). The PCR court erred both legally and factually in doing so.

Legally, the PCR court failed to consider that since *Alexander*, our courts have expanded and refined the inquiry regarding an applicant’s testimony on this point. In *Stalk* in 2009, our Supreme Court set out, consistent with *Hill*, that the “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.” 383 S.C. at 563, 681 S.E.2d at 595. In 2012, in *Goins v. State*,

397 S.C. 568, 575, 726 S.E.2d 1, 4 (2012), the lower court rejected Goins assertion as not credible, and our Supreme Court afforded deference to that decision. Carefully read, *Goins* shows that the lower court conducted a credibility analysis rather than making a presumption. It follows, then, that such testimony could also be rejected as not credible when viewed in context. And, in continuing that trend, in 2013, in *Taylor v. State*, 404 S.C. 350, 362, 745 S.E.2d 97, 103 (2013), our Supreme Court instructed: “To satisfy the prejudice prong, Petitioner must prove, *through the presentation of probative and credible evidence*, that he would have gone to trial instead of pleading guilty but for counsel’s deficient advice.” Our Court affirmed the denial of relief finding: “Despite ... assertions to the contrary, there is probative evidence in the Record before us that he would not have chosen to proceed to trial on the Georgetown County charges had counsel told him about the strike.” 404 S.C. at 362, 745 S.E.2d at 103. *See also Lee v. United States, supra* (rejecting a convicted defendant’s mere “*post hoc* assertions ... about how he would have pleaded but for his attorney’s deficiencies”); *Hill v. Lockhart*, 474 U.S. at 60 (observing that Hill had “alleged no special circumstances that might support the conclusion that he placed particular emphasis on his parole eligibility in deciding whether or not to plead guilty.”). Yet, this precedent appears completely overlooked and the necessary analysis in context was not performed. Further, even looking only at *Alexander*, the PCR court erred.

In *Alexander*, our Supreme Court noted that “counsel’s sentencing advice was obviously defective,” and set out that counsel had erroneously told Alexander he could potentially be subject to “one hundred years on the four indictments” when sentencing exposure was much lower. Alexander went to trial (like Taylor here) and only pled when offered a fifteen-year plea opportunity to one charge. Alexander’s testimony concerning he would not have pled was accepted as sufficient, with the Court adding, “We find that because trial counsel’s improper sentencing

advice induced petitioner's guilty plea, this case must be reversed." 303 S.C. at 543, 402 S.E.2d at 486. There is no such error here on the original charges and the sentence maximum such as would induce the plea given the choice of life imprisonment potential or fifteen years. Notably, the Court took a much more global approach to review even though it underscored Alexander's testimony was the only testimony in the PCR hearing on this point. *Id.*, at 543, 402 S.E.2d at 485. In sum, even considering *Alexander*, the PCR read the case much too narrowly and failed to engage in the required context analysis to fairly determine whether the assertion was credible in light of the record. The record when reviewed wholly undermines Taylor's assertion.

Critically, Taylor did not have to guess at how the trial would develop for him, he had a full trial and was at the point of the deliberations. He understood the evidence presented, and how the defense was actually presented. Moreover, the jury deliberated many hours and was ultimately given an *Allen*⁷ charge. Then, the pace quickened. The jury continued deliberations after the *Allen* charge around approximately 4:04 pm. (App. 358). Sentencing *concluded* at 4:35. (App. 363). Within those thirty minutes, a deal was considered and offered, the judge conducted a short colloquy, the State argued for twenty-five years, the victim's family spoke, counsel offered mitigation and requested time-served and probation, the defendant spoke (not denying being there but asserting "nobody intended for none of that to happen"). (App. 358-363). That is a lot that happened within the cited time frame and tends to support that Taylor made the decision quickly to take advantage of reduced sentencing exposure, not service of the twenty-year sentence. Taylor's PCR testimony also supports that:

... I was brought back into the courtroom, and my lawyer and the prosecutors approached [the judge] and ... they was deliberating or conversing about my case or the verdict. And I heard the judge say that it beats life and I take the plea – or attempting to plea for involuntary manslaughter and attempted armed robbery.

⁷ *Allen v. United States*, 164 U.S. 492, 17 S.Ct. 154, 41 L.Ed. 528 (1896).

(App. 370, lines 22 – 371, line 2). Note, the first charge reference in this passage – reduction of murder to manslaughter. Counsel similarly testified at the PCR hearing, while not recalling the specifics as to how the offer was made:

... I can tell you this. [Taylor] jumped on it immediately. He was very enthusiastic about it, more so than me. After a half-day deliberation, I was feeling pretty good. And I remember he was very enthusiastic about pleading to this offer. And, of course, that was his decision not mine.

...

He didn't give [a reason for the enthusiasm]. Things moved really fast. It was offered. He immediately said yes. He went in front of the judge for that ... brief guilty plea colloquy, and that was it.

...

I would say we talked about it for maybe 15 minutes at the most.

...

I don't remember specifically [the conversation] other than what I just told you, and that is that he was very anxious to do it.

(App. 380, line 25 – 381, line 20).

Counsel acknowledged that Taylor indicated they spoke of “maximums,” but counsel did not remember such a conversation. (App. 381). Counsel confirmed that he did discuss the maximum for a murder conviction with Taylor before trial. (App. 382).⁸ That Taylor pled to avoid a potential life sentence for non-capital murder is readily apparent. Of no little note, Taylor was aware that the State asked for a *twenty-five year sentence* citing specifically that Taylor, pleading

⁸ Parole eligibility is not the same as a sentence maximum. *See, e.g., Randall v. State*, 356 S.C. 639, 641, 591 S.E.2d 608, 609 (2004) (“This Court has repeatedly acknowledged that normally, parole eligibility is a collateral consequence of sentencing of which a defendant need not be specifically advised before entering a guilty plea.”).

under *Alford* still failed to take responsibility and showed no remorse. (App. 360).⁹ Counsel argued that though “[t]here’s a lot of evidence ... he’s [pleading] under *Alford*.” (App. 363). Judge Miller observed: “Yeah, I know. He’s doing it under *Alford*. That’s not accepting responsibility. Five years on the involuntary manslaughter, 20 years on the attempted armed robbery consecutive.” (App. 363, lines 19-22). There is no suggestion either of the sentences exceed the maximum. Taylor received the benefit of the bargain he struck. But again, the PCR court failed to engage in the full consideration of the context of the decision which precedent requires.

Given the error as demonstrated herein, the PCR court’s grant of relief must be reversed.

⁹ The entirety of the brief on the record discussion focuses on this twenty-five year sentence, not a particular sentence for each count, or concurrent or consecutive sentences.

CONCLUSION

Based on the foregoing, the grant of relief should be reversed.

Respectfully submitted,

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September 30, 2024
Columbia, South Carolina.

¹⁰ The State was previously represented by Assistant Deputy Attorney General Taylor Zane Smith who authored the petition in this appeal. Present counsel acknowledges that much of Mr. Smith's work is likewise included in this brief.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to Greenville County

The Honorable Edward W. Miller, Plea Judge
The Honorable Eugene C. Griffith, Post-Conviction Relief Judge

Appellate Case No: 2022-001571

ANGELO HORACE TAYLOR,

Respondent,

v.

STATE OF SOUTH CAROLINA,

Petitioner.

CERTIFICATE OF SERVICE

The undersigned certifies that as per the March 20, 2020 Order of the Chief Justice, the *Brief of Petitioner* has been forwarded to Appellant’s counsel, Kathrine H. Hudgins, Esquire, via email today to KHudgins@sccid.sc.gov, and to her assistant Chris Stock, at Cstock@sccid.sc.gov.

This 30th day of September 2024.

s/Melody J. Brown

By: _____
MELODY J. BROWN
ATTORNEY FOR PETITIONER

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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County
The Honorable Eugene C. Griffith, Circuit Court Judge

ANGELO HORACE TAYLOR,

RESPONDENT,

V.

STATE OF SOUTH CAROLINA,

PETITIONER

APPELLATE CASE NO. 2022-001571

BRIEF OF RESPONDENT

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RESPONDENT'S QUESTION PRESENTED

Did the PCR judge correctly find that Respondent met his burden of proof in showing deficient performance in plea counsel's erroneous advice as to sentencing and met his burden of proof in showing the resulting prejudice rendering the plea involuntary and requiring the grant of post-conviction relief?

PETITIONER'S QUESTION PRESENTED

Did the PCR court err in finding that Taylor proved that plea counsel was constitutionally ineffective for giving inaccurate advice about Taylor's parole eligibility when the court found that Taylor satisfied his burden merely because his testimony was not contradicted, which constituted a legal error and improperly shifted the burden of proof?

STATEMENT

According to the indictments,¹ on February 13, 2018, the Greenville County Grand Jury indicted Respondent, Angelo Horace Taylor, for murder and attempted armed robbery, indictments #2016-GS-23-2378, 2379. (App. pp. 392-393; 396-397). On September 18, 2018, Respondent proceeded to jury trial before the Honorable Edward W. Miller. Carlyle Steele represented Respondent at trial. Elizabeth Major prosecuted the case. Jury deliberations began at 12:06 PM on September 19, 2018. (App. p. 354, line 1). At 2:29 PM the jury sent out a note that said, "The jury is unable to reach a consensus." (App. p. 354, lines 3-4). The judge asked the jury to continue to deliberate. (App. p. 354, lines 20-21). At 3:52 PM the jury sent a second note indicating deadlock. (App. p. 355, lines 5-6). The judge announced that he was going to give an Allen charge. (App. p. 355, lines 16-18). Counsel for Respondent objected to the Allen charge but failed to move for a mistrial pursuant to S.C. Code §14-7-1330.² The judge gave the Allen charge. (App. pp. 356-358). While the jury was deliberating, Respondent entered Alford³ pleas to involuntary manslaughter and attempted armed robbery. Judge Miller sentenced Respondent to twenty (20) years for attempted armed robbery and five (5) years consecutive to involuntary manslaughter. Respondent did not appeal his sentence or conviction. (App.p. 390, 395).

On August 9, 2019, Respondent filed a *pro se* application for post-conviction relief [PCR]. (App. pp. 404-412). On January 7, 2020, the State filed a return and motion for more definite statement. (App. pp. 413-426). On March 10, 2020, PCR counsel filed an amended

¹ The date listed below the witness name is December 5, 2015. The indictments are stamped as filed in the clerk's office on March 28, 2016. The 2016 term listed on one side of the indictment is scratched out and replaced with 2018. The indictment numbers start with 2016.

² This issue was not raised in post-conviction relief.

³ North Carolina v. Alford, 400 U.S.25 (1970).

application. (App. pp. 427-428). On March 21, 2022, an evidentiary hearing was held, via WebEx, before the Honorable Eugene C. Griffith, Jr. Susannah Ross represented Respondent at the PCR hearing. Taylor Zane Smith represented the State. In a written order signed August 17, 2022, Judge Griffith granted relief and remanded for a new trial. (App. pp. 429-434). The order granting relief was filed on September 14, 2022. The State served a motion to alter or amend on September 21, 2022. Judge Griffith denied the motion on October 11, 2022.

The notice of intent to appeal was served on November 7, 2022. The State filed a petition for writ of certiorari on March 22, 2023. The return was filed on April 20, 2023. On May 9, 2023, pursuant to Rule 243(1), SCACR, the South Carolina Supreme Court transferred the case to the South Carolina Court of Appeals. On May 21, 2024, the South Carolina Court of Appeals granted the petition for writ of certiorari. On September 30, 2024, the State filed the brief of petitioner. This brief of respondent follows.

STANDARD OF REVIEW

The standard of review in PCR cases depends on the specific issue raised on appeal. Smalls v. State, 422 S.C. 174, 180-181, 810 S.E.2d 836, 839–40 (2018). The reviewing court must defer to a PCR court’s findings of fact and will uphold them if there is evidence in the record to support them. Id. (citing Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016)). However, the appellate court reviews questions of law de novo, with no deference to the PCR court. Id.

ARGUMENT

The PCR judge correctly found that Respondent met his burden of proof in showing deficient performance in plea counsel's erroneous advice as to sentencing and met his burden of proof in showing the resulting prejudice rendering the plea involuntary and requiring the grant of post-conviction relief.

Respondent's trial for murder, possession of a weapon during the commission of a violent crime and attempted armed robbery started on September 18, 2018. Deliberations started the next day at 12:06 PM. (App. p. 354, line 1). At 2:29 PM the jury sent out a note that said, "The jury is unable to reach a consensus." (App. p. 354, lines 3-4). The judge asked the jury to continue to deliberate. (App. p. 354, lines 20-21). At 3:52 PM the jury sent a second note indicating deadlock on two of the charges. (App. p. 355, lines 5-6). The judge announced that he was going to give an Allen charge. (App. p. 355, lines 16-18). Counsel for Respondent objected to the Allen charge but failed to move for a mistrial pursuant to S.C. Code §14-7-1330⁴. The trial judge erred in sending the jury back a second time. Counsel's failure to move for a mistrial after the jury deadlocked twice was not raised during the PCR hearing. The judge, over objection, gave the Allen charge. (App. pp. 356-358).

While the jury continued to deliberate, Respondent entered Alford⁵ pleas to involuntary manslaughter and attempted armed robbery. (App. pp. 358-363). During the plea the judge told Respondent, "You understand that we can sit here. You've been through a jury trial. I'm not going through your rights. You know what they are. You can sit here and wait for this jury to

⁴ Section 14-7-1330 provides:

"When a jury, after due and thorough deliberation upon any cause, returns into court without having agreed upon a verdict, the court may state anew the evidence or any part of it and explain to it anew the law applicable to the case and may send it out for further deliberation. But if it returns a second time without having agreed upon a verdict, it shall not be sent out again without its own consent unless it shall ask from the court some further explanation of law."

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

come to a determination. You understand that?” (App. p. 359, lines 10-14). The judge failed to question Respondent about his understanding of the maximum and minimum penalties and the nature of the charges to which he was entering Alford pleas. The judge sentenced Respondent to twenty (20) years for attempted armed robbery and five (5) years consecutive to involuntary manslaughter.

In the amended PCR application Respondent alleged, “ineffective assistance of counsel for advising the applicant the attempted armed robbery was charge that maxed out at 65% when it is an 85% charge . . .” (App. p. 427). During the PCR hearing when PCR counsel asked Respondent if plea counsel discussed the fact that the sentence for attempted armed robbery required service of eighty-five percent of the sentence, Respondent testified, “Well, he – at first originally he told me that I could get probation or I could, you know, get a different – a lesser sentence than 20 years, that it would be carried at 65 percent.” (App. p. 371, lines 11-16). Respondent testified that he thought that he would have to serve sixty-five percent of the sentence imposed and he did not think he would receive consecutive time, as he did. (App. p. 371, lines 8-10). Respondent testified that he would not have pled if he had known that attempted robbery was classified as a violent offense and required service of eighty-five percent of the sentence. (App. p. 371, line 20 – p. 372, lines 1-13). On cross-examination Respondent testified, “He [counsel] told me that the charge that I was pleading to, that my time would carry 65 percent, so I would do a lesser amount of time incarcerated.” (App. p. 373, lines 15-17).

Plea counsel testified at the PCR hearing that, **prior to trial**, he did not believe he discussed with Respondent the percentage of time he would have to serve if convicted of attempted armed robbery because the State had not yet made any plea offers and Respondent wanted a trial. (App. p. 376, lines 8-19). When asked if he ever told Respondent he would only

have to serve sixty-five percent of the sentence imposed, counsel testified, “It’s been three and a half years. It’s been a while. I can’t say we never had that discussion, but I can say I don’t remember that discussion, and I don’t believe we had that discussion.” (App. p. 376, line 20 – p. 377, line 1). When asked if he believed that attempted robbery was categorized as a “no parole” offense, counsel testified, “Apparently it is.” (App. p. 377, lines 8-10). On cross-examination counsel agreed that when Respondent heard the murder charge was being reduced to involuntary manslaughter, he may have thought he was looking at close to time served as he had been in jail for over 1,000 days awaiting trial. (App. p. 383, line 24 – p. 384, lines 1-3).

In the order granting relief the PCR judge wrote, “It is the finding of this Court that the Applicant demonstrated a deficiency of Counsel in this matter which was not cured by the plea colloquy that gives rise to a reasonable probability that but for counsel’s errors, the defendant would not have pled guilty. Therefore, he is entitled to post-conviction relief.” (App. p. 433). As to deficiency, the PCR judge wrote, “As counsel’s testimony did not contradict the Applicant, I find the Applicant’s testimony that his guilty plea was based on inaccurate sentencing advice from counsel to be convincing.” (App. p. 432). As to prejudice, the PCR judge wrote, “As to the ‘prejudice’ requirement of the *Strickland* test, the Applicant’s uncontroverted testimony was that had he known the attempted armed robbery was an 85% charge, he would not have plead guilty and instead waited on the verdict of the jury that was actively deliberating at the time of his plea.” (App. p. 433). The PCR judge correctly granted relief.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117,

386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687–88, 104 S.Ct. 2052. “Under this prong, ‘[t]he measure of attorney performance remains simply reasonableness under prevailing professional norms.’” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id.

The Strickland test operates similarly when an applicant claims counsel was ineffective in the context of a guilty plea. Hill v. Lockhart, 474 U.S. 52, 58, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). A guilty plea may not be accepted unless it is voluntarily and understandingly made. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). “To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him.” Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000). “A defendant's knowing and voluntary waiver of the constitutional rights which accompany a guilty plea ‘may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel, or both.’ ” Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 625 (1999) (quoting State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). “The longstanding 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.’ ” Hill, 474 U.S. at 56, 106 S.Ct. 366 (quoting North Carolina v. Alford, 400 U.S. 25, 31, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970)).

In Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999), the South Carolina Supreme Court wrote:

Entering a guilty plea results in a waiver of several constitutional rights, therefore the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently by defendants. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). The United States Supreme Court has held that before a court can accept a guilty plea, a defendant must be advised of the constitutional rights he or she is waiving. Id. Specifically, a defendant must be aware of the privilege against self incrimination, the right to a jury trial, and the right to confront one's accusers. This Court considered the requirements of a voluntary and knowing guilty plea in State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980) and Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In addition to the requirements of Boykin, a defendant entering a guilty plea 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. Id.

In Dalton v. State, 376 S.C. 130, 138–39, 654 S.E.2d 870, 874 (Ct. App. 2007), the South Carolina Court of Appeals wrote:

“[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.” Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). “When determining issues relating to guilty pleas, this Court will consider the entire record, including the transcript of the guilty pleas and the evidence presented at the PCR hearing.” Roddy, 339 S.C. at 33, 528 S.E.2d at 420. In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997).

In the present case the records of the Alford plea and the PCR hearing reflect that Respondent was not aware that the attempted robbery was classified as a violent offense and

required service of eighty-five percent of the sentence. The misinformation about sentencing was not cured during the plea colloquy. The guilty plea was rendered involuntary. There is a reasonable probability that, but for the erroneous sentencing advice, Respondent would not have pled guilty and would have insisted on going to trial.

Deficient Performance

The PCR judge correctly found that the plea was based on inaccurate sentencing advice from counsel. The Respondent met his burden of proof in showing deficiency. The PCR judge did not shift the burden of proof to the State. Instead, the PCR judge made a factual finding that Respondent's testimony that his plea was based on inaccurate sentencing advice from counsel was convincing writing, "As counsel's testimony did not contradict the Applicant, I find the Applicant's testimony that his guilty plea was based on inaccurate sentencing advice from counsel to be convincing." (App. p. 432). Respondent unequivocally testified that counsel advised him that he would only have to serve sixty-five percent of his sentence. (App. p. 371, 373). Counsel's testimony about his advice to Respondent, on the other hand, was less certain. Counsel testified, "I can't say we never had that discussion, but I can say I don't remember that discussion, and I don't believe we had that discussion." (App. p. 376, line 20 – p. 377, line 1). Counsel also testified that attempted armed robbery was "apparently" a no parole offense. (App. p. 377, lines 8-10). The PCR judge's factual finding that the plea was based on inaccurate sentencing advice from counsel is supported by the record.

In Smalls v. State, 422 S.C. 174, 180–81, 810 S.E.2d 836, 839–40 (2018) (n. 2 omitted), the South Carolina Supreme Court wrote:

Our standard of review in PCR cases depends on the specific issue before us. We defer to a PCR court's findings of fact and will uphold them if there is evidence in the record to support them. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016) (citing Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013))

). We review questions of law de novo, with no deference to trial courts. Sellner, 416 S.C. at 610, 787 S.E.2d at 527 (citing Jamison v. State, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014)).

The PCR judge made a finding of fact that Respondent's testimony that he received erroneous sentencing advice was convincing. Petitioner argues that by stating that counsel's testimony did not contradict the Applicant's testimony, the PCR judge committed an error of law by shifting the burden of proof to the State. The factual finding by the PCR judge was not a burden shifting error of law. The PCR judge did not require the State to disprove Respondent's testimony. Respondent met his burden of proof. The PCR judge made a finding of fact, based on Respondent's convincing testimony, that the plea was based on the erroneous advice from counsel that attempted armed robbery⁶ only requires the service of sixty-five percent of the sentence. There is evidence in the record to support the PCR judge's factual finding that the plea was based on erroneous advice from counsel. The judge correctly made a finding of law that the erroneous advice constituted deficient performance.

Petitioner correctly notes that the PCR court was not required to accept Respondent's testimony that he received erroneous sentencing advice from counsel. (Brief of Petitioner p. 16). In this case, however, the judge accepted Respondent's testimony, finding the testimony to be "convincing." There is evidence in the record to support the PCR judge's factual finding. This Court should uphold the deficiency finding of the PCR court.

⁶S C. Code §24-13-100 provides that a "no parole" offense means a class A, B, or C felony. Attempted armed robbery, S.C. Code §16-11-330(B), is a class C felony, S.C. Code §16-1-90(C), classified as a violent, most serious, no parole offense. S C. Code §24-13-150 provides that an inmate convicted of a no parole offense is required to serve at least eighty-five percent of the sentence.

Prejudice

The PCR judge addressed prejudice writing, “As to the ‘prejudice’ requirement of the *Strickland* test, the Applicant’s uncontroverted testimony was that had he known the attempted armed robbery was an 85% charge, he would not have plead guilty and instead waited on the verdict of the jury that was actively deliberating at the time of his plea. This is the only evidence in the record on this point, and I find that it demonstrates prejudice to the Applicant. See Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (S.C. 1991).” (App. p. 433). In Jackson v. State, 342 S.C. 95, 97–98, 535 S.E.2d 926, 927 (2000), the South Carolina Supreme Court wrote:

Petitioner testified he would not have pled had he known the charge was a felony. The PCR judge found petitioner's testimony was not credible. However, there was no evidence contradicting or conflicting with petitioner's testimony that would support the PCR judge's finding that petitioner would not have pled. In Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (1991), the PCR judge denied a petitioner relief when trial counsel erroneously advised the petitioner about his potential sentence prior to his guilty plea. We reversed and held the petitioner had satisfied the prejudice prong when “the only evidence in the record on this point [was] petitioner's own testimony that had trial counsel not misinformed him that he would face a potential life sentence if he proceeded to trial, he would not have pled guilty.” (citing Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989) (new trial granted where incorrect parole eligibility advice induced plea)).² Here, the only evidence was that petitioner would not have pled had he known the charge was a felony. Thus, petitioner was entitled to PCR.

There was no adverse credibility finding to overcome in the present case as there was in Jackson. Respondent testified that he would not have pled had he known that any sentence for attempted armed robbery required service of eighty-five percent of that sentence. In footnote two the Court in Jackson wrote, “To the extent that Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996), can be read to hold that a petitioner's statement is insufficient evidence to satisfy the prejudice prong, it is hereby overruled.” 342 S.C. at 98, 535 S.E.2d at 927. Respondent only chose to enter Alford pleas when, at the conclusion of the trial and while the jury was still deliberating, the State agreed to reduce the murder charge to involuntary manslaughter. Plea counsel agreed that when

Respondent heard the murder charge was being reduced to involuntary manslaughter, he may have thought he was looking at close to time served as he had been in jail for over 1,000 days awaiting trial. (App. p. 383, line 24 – p. 384, lines 1-3). There is evidence in the record to support the PCR judge’s finding as to prejudice. This Court should uphold the prejudice finding of the PCR court.

Petitioner’s reliance on Stalk v. State, 383 S.C. 559, 681 S.E.2d 592 (2009), is misplaced as Stalk is factually distinct from the present case. In Stalk the allegation was that counsel was so unprepared that Stalk felt coerced into pleading guilty. The South Carolina Supreme Court wrote:

The Court of Appeals followed Hill when it engaged in a prejudice analysis and found no evidence to support the PCR judge's finding that Stalk had met his burden. Stalk's prejudice claim rested on his assertion that his attorney was so unprepared that Stalk felt coerced into pleading guilty. We agree with the Court of Appeals that to meet his prejudice burden Stalk was required to prove more than the fact of counsel's inattentiveness, which is the “deficiency.” For example, Stalk needed to present some evidence that had counsel done an investigation he would have found a witness or evidence that was helpful to Stalk, that is, something that would have affected counsel's advice to Stalk to accept the plea bargain offered or that would have caused Stalk to decline to accept it. Although appellate courts frequently “short-hand” the prejudice prong in a guilty plea ineffective assistance claim 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. We find no error in this portion of the Court of Appeals decision.

Stalk v. State, 383 S.C. at 562–63, 681 S.E.2d at 594–95. Stalk stands for the proposition that when the deficiency prong involves an allegation that counsel was unprepared or failed to investigate, the prejudice prong requires more than an applicant’s assertion.

The present case does not involve an allegation that counsel was deficient for being unprepared or failing to investigate. Instead, the deficiency prong in the present case involves erroneous sentencing advice. Jackson and Alexander stand for the proposition that when the deficiency involves erroneous sentencing advice, as in the present case, the prejudice prong is satisfied by applicant's assertion that, but for counsel's erroneous sentencing advice, the applicant would not have pled guilty and would have insisted on going to trial. The PCR judge correctly found that the prejudice prong was satisfied by Respondent's testimony that that had he known the attempted armed robbery was an eighty-five percent charge, he would not have pled guilty and instead waited on the verdict of the jury that was actively deliberating at the time of his plea.

The present case is also distinguished from Goins v. State, 397 S.C. 568, 726 S.E.2d 1 (2012), and Taylor v. State, 404 S.C. 350, 362, 745 S.E.2d 97, 103 (2013), because in both cases there was evidence in the record to support the PCR court's finding that both failed to prove they would have gone to trial absent the erroneous legal advice. In Goins the Court found that the PCR court's finding that Goins chose to plead guilty after the State offered to dismiss two charges and recommend a ten year sentence was well supported by the record. "Although Goins testified at the PCR hearing that he accepted the plea because of the erroneous advice on the suppression of the evidence, his testimony specifically was found not to be credible." Goins, 397 S.C. at 575, 726 S.E.2d at 4. In Taylor the Court found that, "Despite Petitioner's assertions to the contrary, there is probative evidence in the Record before us that he would not have chosen to proceed to trial on the Georgetown County charges had counsel told him about the strike." Taylor, 404 S.C. at 362, 745 S.E.2d at 103.

In contrast, in the present case, Respondent chose to proceed to trial and only agreed to the Alford pleas when he believed he was close to receiving a time served sentence. There was no adverse credibility finding in the present case as there was in Goins. There is evidence in the record to support the PCR judge's finding that if Respondent had known that attempted armed robbery required service of eighty-five percent of the sentence, he would have waited on a verdict. There is evidence in the record to support the PCR judge's finding of prejudice under the second prong of Strickland.


In Frierson v. State, 423 S.C. 257, 262, 815 S.E.2d 433, 436 (2018), the South Carolina Supreme Court wrote:

In order to establish prejudice when challenging a guilty plea, a defendant must prove "there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have gone to trial." Harden v. State, 360 S.C. 405, 408, 602 S.E.2d 48, 49 (2004). The crux of the inquiry is whether counsel's ineffective performance affected the outcome of the plea process, not whether the defendant would have been successful had he gone to trial. Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991). As the United States Supreme Court stated in Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985), "[I]n order to satisfy the 'prejudice' requirement, the defendant must show there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial."

Respondent showed a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have waited for the verdict. The PCR judge correctly found that Respondent "... demonstrated a deficiency of Counsel in this matter which was not cured by the plea colloquy that gives rise to a reasonable probability that but for counsel's errors, the defendant would not have pled guilty. Therefore, he is entitled to post-conviction relief." (App. p. 433). The guilty plea was rendered involuntary by plea counsel's erroneous advice as to sentencing. Respondent is entitled to the relief granted.

CONCLUSION

Based on the above argument this Court should find that the petition for writ of certiorari was improvidently granted, affirm the grant of relief by the PCR judge, and remand for a new trial.



Kathrine H. Hudgins
Senior Appellate Defender

ATTORNEY FOR RESPONDENT

This 23rd day of October, 2024.

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
The Honorable Eugene C. Griffith, Circuit Court Judge

ANGELO HORACE TAYLOR,

RESPONDENT,

V.


STATE OF SOUTH CAROLINA,

PETITIONER

APPELLATE CASE NO. 2022-001571

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Brief of Respondent in the above-referenced case has been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Angelo Horace Taylor, #377773, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 23rd day of October, 2024.



Kathrine H. Hudgins
Senior Appellate Defender

ATTORNEY FOR RESPONDENT

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Angelo Horace Taylor, Respondent,

v.

State of South Carolina, Petitioner.

Appellate Case No. 2022-001571

Appeal From Greenville County
Eugene C. Griffith, Jr., Circuit Court Judge

Unpublished Opinion No. 2025-UP-323
Submitted June 2, 2025 – Filed September 24, 2025

AFFIRMED

Attorney General Alan McCrory Wilson, Deputy
Attorney General Donald J. Zelenka, and Senior
Assistant Deputy Attorney General Melody Jane Brown,
all of Columbia, for Petitioner.

Senior Appellate Defender Kathrine Haggard Hudgins, of
Columbia, for Respondent.

PER CURIAM: In this action for post-conviction relief (PCR), Angelo Horace Taylor was granted relief from his 2019 *Alford*¹ plea for attempted armed robbery and involuntary manslaughter. The State argues the PCR court erred in finding trial counsel was ineffective and in finding Taylor was prejudiced by trial counsel's failure to accurately advise him on his possible maximum sentence. We affirm.

FACTS/PROCEDURAL HISTORY

In 2018, Taylor stood trial for murder, attempted armed robbery, and possession of a weapon during the commission of a violent crime. During jury deliberation, the jury twice notified the trial court it was deadlocked. After the second notification, the trial court gave the jury an *Allen*² charge. Shortly thereafter, Taylor entered an *Alford* plea to attempted armed robbery and involuntary manslaughter.³ The jury left the courtroom after the *Allen* charge at 4:04 p.m., and the plea concluded at 4:35 p.m. The plea colloquy follows:

The Court: You understand, Mr. Taylor that [an *Alford* plea] doesn't change the consequences in any way? You understand that?

The Defendant: Yes, sir.

The Court: How many days jail does he get?

Solicitor: 1019

The Court: You understand that we can sit here. You've been through a jury trial. I'm not going to go through your rights. You know what they are. You can sit here and wait for this jury to come to a determination. You understand that?

The Defendant: Yes, sir.

¹ *North Carolina v. Alford*, 400 U.S. 25, 37 (1970) (holding a guilty plea can be accepted even if the defendant maintains his innocence provided the plea is made voluntarily and intelligently, and there is a strong factual basis for the plea).

² *Allen v. U.S.*, 164 U.S. 492, 501 (1896) (holding a trial court may instruct a deadlocked jury to reconsider their positions and attempt to reach a unanimous verdict).

³ The State dismissed the weapons charge.

The Court: And you want to go ahead with this plea; is that right?

The Defendant: Yes, sir.

The Court: Anything you want to tell me?

The Defendant: No, sir.

The Court: No? All right.

....

The Court: Anything you want to say?

The Defendant: That night, nobody intended for none of that to happen. I want to apologize to the family of the victim cause I didn't – I didn't kill nobody, but I understand how the law works.

Plea Counsel: There's a lot of evidence. We understand that and he's doing it under *Alford*.

The Court: Yeah, I know. He's doing it under *Alford*. That's not accepting responsibility.

The plea court sentenced Taylor to five years' imprisonment for involuntary manslaughter consecutive to twenty years' imprisonment for attempted armed robbery. Taylor did not file a direct appeal.

In his amended PCR application, Taylor alleged ineffective assistance of plea counsel for advising him "the attempted armed robbery was [a] charge that maxed out at 65% when it is an 85% charge." Taylor further alleged "due process violations because the plea was not knowingly and voluntarily made due [to] the applicant[] not understanding the maximum sentence he faced when he pled guilty."

At the PCR hearing, Taylor's PCR counsel argued that because of the hurried nature of the decision to plead guilty, Taylor did not realize he was pleading to a no-parole offense. Taylor testified that after the *Allen* charge, trial counsel and the State approached the trial court and discussed his case "or the verdict," and Taylor heard the trial court say "it beats life." Taylor stated, "I figured I would get five with the involuntary manslaughter, but I thought I'd at least, on the attempted

armed robbery, get about . . . ten or 15. . . . [and 65% of that time] . . . and not consecutive." Taylor claimed he would not have pled guilty if he had known he was pleading to a violent charge. Taylor stated the decision to plead was rushed, "which is why the *Alford* plea, because I didn't understand the context of the plea." Taylor stated plea counsel told him "the charge I was pleading to, that my time would carry 65 percent, so I would do a lesser amount of time incarcerated."

Plea counsel testified Taylor always planned to stand trial, and before trial, he did not discuss the percentage of the sentence Taylor would have to serve if convicted of attempted armed robbery. He did not have any notes showing that he had discussed with Taylor that attempted armed robbery was a no-parole offense. Plea counsel stated he "must" have discussed the possible maximum sentences for murder and attempted armed robbery before trial but he did not have a specific memory of it. He said the State offered the plea and "it might have even been at the suggestion of [the trial court]." He stated "things moved really fast" after the plea was offered. Plea counsel explained it was his normal practice to discuss maximum potential sentences with clients before a plea but he had no specific recollection of such a discussion happening in this case. He recalled Taylor was "very enthusiastic" about the plea, he discussed the plea with Taylor for "maybe 15 minutes at the most," and the plea was "rushed." Plea counsel testified it was possible that Taylor "heard involuntary" and thought he would receive close to time served.

The PCR court found Taylor's testimony that his guilty plea was based on inaccurate sentencing advice was convincing and uncontradicted. It found the deficiency of plea counsel's advice was not cured by the plea colloquy and Taylor's plea was not knowingly and intelligently made. The PCR court found Taylor was prejudiced by plea counsel's deficiency because he would not have pled guilty if he had known that the attempted armed robbery "was an 85% charge," but instead, he would have waited on the jury verdict. The PCR court granted Taylor post-conviction relief.

ISSUE ON APPEAL

Was plea counsel's performance deficient such that it rendered Taylor's guilty plea involuntary?

STANDARD OF REVIEW

"[Appellate courts] will uphold the findings of the PCR court when there is any evidence of probative value to support them." *Taylor v. State*, 422 S.C. 222, 226,

810 S.E.2d 862, 864 (2018). "However, [appellate courts] will reverse the PCR court's decision when it is controlled by an error of law or unsupported by the evidence." *Id.* "We give great deference to a judge's findings when matters of credibility are involved since we lack the opportunity to directly observe the witnesses." *Solomon v. State*, 313 S.C. 526, 529, 443 S.E.2d 540, 542 (1994), *overruled on other grounds by*, *State v. Cheeks*, 401 S.C. 322, 737 S.E.2d 480 (2013).

LAW/ANALYSIS

The State argues the PCR court impermissibly shifted the burden of proof to the State to disprove Taylor's testimony. We disagree.

"The applicant in a PCR hearing bears the burden of establishing he is entitled to relief." *Goins v. State*, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012). "An ineffective assistance claim has two components: A petitioner must show that counsel's performance was deficient, and that the deficiency prejudiced the defense." *Sellner v. State*, 416 S.C. 606, 610-11, 787 S.E.2d 525, 527 (2016) (quoting *Wiggins v. Smith*, 539 U.S. 510, 521 (2003)). "The two-part test also 'applies to challenges to guilty pleas based on ineffective assistance of counsel.'" *Id.* At 611, 787 S.E.2d 525, (quoting *Hill v. Lockhart*, 474 U.S. 52, 58 (1985)). "A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial." *Id.* (quoting *Holden v. State*, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011)).

"[T]here is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (quoting *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007)). "To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him." *Holden v. State*, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011) (quoting *Roddy v. State*, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000)). Before a court can accept a guilty plea, "a defendant must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers." *Roddy*, 339 S.C. at 33, 528 S.E.2d at 421.

"In addressing the adequacy of a PCR applicant's guilty plea, it is proper to consider both the guilty plea transcript and the evidence presented at the PCR hearing." *Sellner*, 416 S.C. at 611, 787 S.E.2d at 527.

Specifically, the voluntariness of a guilty plea is not determined by an examination of a 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 also from the record of the PCR hearing.

Holden, 393 S.C. at 573, 713 S.E.2d at 615 (quoting *Roddy*, 339 S.C. at 33, 528 S.E.2d at 420).

Here, the PCR hearing transcript supports Taylor's contention that he did not have correct sentencing advice and therefore his plea was not knowing and voluntary. The record shows plea counsel did not properly discuss with Taylor the possible sentence he was facing and, therefore, Taylor did not know the maximum sentence he faced. Plea counsel stated he did not remember discussing the amount of time Taylor might have to serve for the attempted armed robbery charge. Taylor stated plea counsel told him that the charge he was pleading to carried a lesser amount of time incarcerated. We note the PCR court was in the best position to judge the credibility of Taylor's testimony that he did not have a full understanding of the consequences of his decision to plead guilty. Taylor has demonstrated that, in the "rushed" circumstances of this plea, plea counsel was deficient in his representation of Taylor by not fully informing him of the consequences of the plea. The PCR court's findings of fact on this matter are supported by the record.

Often, our courts have found any alleged deficiency in plea counsel's representation was cured by the plea colloquy. See *Holden*, 393 S.C. at 575, 713 S.E.2d at 616 (noting multiple cases in which the grant of PCR was reversed because the plea colloquy cured any deficiency). However, in those cases, unlike here, the plea colloquy was comprehensive and thorough. See *Bennett v. State*, 371 S.C. 198, 205 n.6, 638 S.E.2d 673, 676 n.6 (2006) ("[E]ven where counsel offers misinformation, this deficiency can be cured where the trial court properly informs the defendant about the sentencing range."); *Wolfe v. State*, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997) (reversing grant of PCR and recognizing that in considering 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).

Here, the plea colloquy was not sufficient to demonstrate that Taylor's plea was knowing and voluntary, and it did not cure the deficiency of plea counsel's representation. The circumstances of this plea were unnecessarily hurried, and the error could have been cured if the plea court had asked Taylor if he knew the sentence he faced. "To ensure the defendant understands the consequences of his guilty plea, the trial judge usually questions the defendant about the facts surrounding the crime and punishment that could be imposed." *Roddy*, 339 S.C. at 34, 528 S.E.2d at 421. The plea court merely asked Taylor if he understood that an *Alford* plea did not "change the consequences in any way" but did not question him about the sentencing range or the consequence of the charges. The plea court stated, "I'm not going through your rights. You know what they are." The plea court did not sufficiently determine whether Taylor understood his rights in the plea process or the possible sentence he faced. *See Pittman v. State*, 337 S.C. 597, 601, 524 S.E.2d 623, 625 (1999) ("[T]he trial court's lack of questions to ensure Pittman's understanding of the consequences of his plea, coupled with the trial court and attorney's failure to explain the elements charged, further indicates Pittman's plea was not voluntary, intelligent, and knowing.").

Under *Strickland v. Washington*, 466 U.S. 668 (1984), when determining prejudice to the PCR applicant, the court "focuses on whether counsel's ineffective performance affected the outcome of the plea process. In other words, in order to satisfy the prejudice requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty" *Alexander v. State*, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991). The *Alexander* court found the petitioner's testimony that if trial counsel had not misinformed him he would not have pled guilty fulfilled the prejudice requirement of *Strickland*. *Id.* at 543, 402 S.E.2d at 485. Here, the record supports the PCR court's finding that Taylor's testimony that he would not have pled guilty if he had been correctly informed about the sentencing range demonstrates prejudice to Taylor entitling him to post-conviction relief.

Accordingly, the order of the PCR court is

AFFIRMED.⁴

WILLIAMS, C.J., and GEATHERS and TURNER, JJ., concur.

⁴ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Eugene C. Griffith, Jr., Post-Conviction Relief Judge

Appellate Case No. 2022-001571

ANGELO HORACE TAYLOR.,

RESPONDENT,

v.

THE STATE OF SOUTH CAROLINA,

PETITIONER.

PETITION FOR REHEARING

On September 24, 2025, this Court affirmed the PCR court's grant of a new trial for Petitioner's case in an unpublished opinion. *Taylor v. State*, Unpublished. Op. No. 2025-UP-323 (S.C. Ct. App. filed September 24, 2025). Pursuant to Rule 221(a), SCACR, Petitioner respectfully petitions this Court for rehearing because this Court appears to have overlooked the relevant presumption and facts for evaluating deficiency and failed to apply the comprehensive consideration of the record as mandated by *Strickland v. Washington*, 466 U.S. 668 (1984). Consequently, the State respectfully petitions for rehearing.

DISCUSSION

Taylor initiated his PCR action on August 9, 2019, and an evidentiary hearing was convened on the matter on March 21, 2022. Subsequently, the PCR court granted Taylor relief by

Order filed September 14, 2022, finding that counsel was deficient for failing to accurately advise Taylor on his possible maximum sentence, and that counsel's incorrect advice induced Taylor's guilty plea thus warranting relief. The State appealed the grant of relief arguing the lower court had misapprehended the relevant facts and failed to faithfully apply the deferential *Strickland* standard or the comprehensive review of the record required in assessing prejudice.

Similar to the lower court, this Court erred by disregarding certain circumstances of Taylor's plea and failed to give plea counsel the "strong presumption that counsel's conduct [fell] within the wide range of reasonable professional assistance." *Strickland*, 466 U.S. at 689. In concluding that the PCR court's findings of fact were supported by the record, this Court noted that "[p]lea counsel stated he did not remember discussing the amount of time Taylor might have to serve for the attempted armed robbery charge." As to Taylor, this Court noted that "Taylor stated plea counsel told him that the charge he was pleading to carried a lesser amount of time incarcerated." This Court erroneously refused plea counsel the presumption of reasonable representation under *Strickland* and used plea counsel's lack of memory to support the conclusion that he affirmatively misadvised Taylor. The absence of evidence simply cannot overcome the presumption of reasonable professional assistance. *See Burt v. Titlow*, 571 U.S. 12, 23 (2013) ("It should go without saying that the absence of evidence cannot overcome the 'strong presumption that counsel's conduct [fell] within the wide range of reasonable professional assistance.'" (citing *Strickland*, at 689)).

Further, this Court failed to consider the context of Taylor's decision to accept the State's plea offer which our precedent requires. This Court relied on *Alexander v. State*, 303 S.C. 539, 402 S.E.2d 484 (1991) to support the conclusion that the prejudice prong was fulfilled simply by Taylor's testimony that he would not have pled guilty (*i.e.*, he was prejudiced) had he not been

misadvised as to the amount of time he would have to serve. However, in contrast with post-*Alexander* precedent, this Court did not consider plea counsel’s testimony that Taylor was enthusiastic about the plea offer and that Taylor *immediately agreed* to the offer. (App. 380-381) (emphasis added). See *Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009) (generally “require[ing] more than simply a defendant’s assertion that but for counsel’s deficient performance he would have not pled guilty but would have gone to trial”); *Taylor v. State*, 404 S.C. 350, 362, 745 S.E.2d 97, 103 (2013) (requiring a defendant present “probative and credible evidence” to show the required prejudice).

Critically, and in similar context, the Supreme Court in *Hill v. Lockhart*, 474 U.S. 52 (1985) – the leading case for *Strickland* application in context of a guilty plea— observed that Hill had “alleged no special circumstances that might support the conclusion that he placed particular emphasis on his parole eligibility in deciding whether or not to plead guilty” in finding he had not carried his burden. *Id.*, at 60. Here, Taylor made the decision *to avoid a life sentence* and take advantage of reduced sentencing exposure. That appears to be wholly overlooked by the lower court and this Court in review of that ruling. Looking at the decision in context, however, as *Strickland* and *Hill* require, it must be noted that Taylor received a full trial and was waiting on the jury to reach a verdict after they were given an *Allen*¹ charge. Taylor was not simply facing a life sentence in theory, it was a real and present danger for him at the time. Taylor undoubtedly made a decision to accept the offer to escape the potential life sentence he could receive if the jury found him guilty of murder.

¹ *Allen v. United States*, 164 U.S. 492 (1896).

In consideration of the evidence presented and in review of the circumstances in context, the PCR court’s conclusion that Taylor would not have pled had plea counsel—credible only because counsel did not expressly recall a conversation, *i.e.*, an absence of evidence—regarding counsel allegedly misadvised him concerning parole eligibility does not, indeed cannot, establish *Strickland* prejudice under correct application of the case law. Similarly, and in another legal error, this Court also failed to acknowledge that the State does not have to disprove a PCR applicant’s testimony. There is no presumption of correctness or other theory that would support the testimony must be accepted as true. And in this case, it must not when the proper context is considered.

Plainly, a defense lawyer’s inability to remember certain things about his representation of an applicant does not relieve the applicant of his burden under *Strickland* to present credible supporting evidence nor negate the “strong presumption” under *Strickland*. *Stalk v. State, supra*; *Taylor, supra*. The opinion to the contrary should be reconsidered.

CONCLUSION

For all the above reasons, the State petitions for rehearing pursuant to Rule 221(a), SCACR, and requests this Court grant rehearing, modify the opinion, and reinstate Petitioner’s convictions.

Respectfully submitted,

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October 9, 2025
Columbia, South Carolina

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Eugene C. Griffith, Jr., Post-Conviction Relief Judge

Appellate Case No. 2022-001571

ANGELO HORACE TAYLOR.,

RESPONDENT,

v.

THE STATE OF SOUTH CAROLINA,

PETITIONER.

PROOF OF SERVICE

I, **Kaylee C. Kemp**, attorney for Respondent, hereby certify that the **Petition for Rehearing** has been forwarded to Respondent’s counsel, Katherine H. Hudgins, and her legal assistant, Chris Stock via email today, October 9, 2025, at khudgins@sccid.sc.gov and cstock@sccid.sc.gov.

I further certify that all parties required by Rule to be served have been served.

This 9th day of October 2025.

Kaylee C. Kemp

s/ _____

KAYLEE C. KEMP
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The South Carolina Court of Appeals

Angelo Horace Taylor, Respondent,

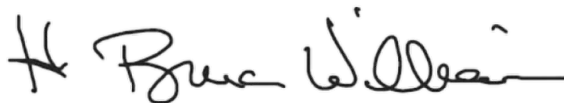
v.

State of South Carolina, Petitioner.

Appellate Case No. 2022-001571

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



C.J.



J.



J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire

Kathrine Haggard Hudgins, Esquire

Melody Jane Brown, Esquire

Donald J. Zelenka, Esquire

FILED
Nov 21 2025

Kaylee Christene Kemp, Esquire
The Honorable Eugene C. Griffith, Jr.