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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

On Petition for Writ of Certiorari from the Court of Common Pleas
Appeal from Spartanburg County
Honorable J. Derham Cole, Circuit Court Judge

Appellate Case No. 2025-000160

LAMARCUS D. THOMPSON,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Petitioner's Statement of the Issue

Whether the PCR court erred finding petitioner's guilty plea was voluntary where counsel admittedly failed to show petitioner crucial discovery in his case before petitioner made the decision to plead guilty?

Respondent's Counterstatement of the Issue

Whether the PCR court properly found that Petitioner failed to prove that counsel was constitutionally ineffective and properly found that Petitioner suffered no prejudice when the record establishes that Petitioner's plea was freely, intelligently, and voluntarily entered after being fully aware and understanding of the circumstances surrounding his guilty plea and the State's evidence against him?

STATEMENT OF THE CASE

On February 20, 2017, law enforcement with the Spartanburg County Sheriff's Office arrested Petitioner during their investigation of a string of armed robberies across gas stations in Chesnee, South Carolina. In its August 2017 term, the Spartanburg County Grand Jury indicted Petitioner for three counts of armed robbery and possession of a weapon during the commission of a violent crime (2017-GS-42-04368); -04369; -04370), and six counts of intent to defraud a lottery (2017-GS-04371; -04372; -04373; -04374; -04375; -04376). During its September 2017 term, the Spartanburg Grand Jury indicted Petitioner for armed robbery and possession of a weapon during the commission of a violent crime (2017-GS-42-05285).

On October 19, 2017, Petitioner appeared before the Honorable J. Mark Hayes, II, circuit court judge, and pleaded guilty as indicted on the charges, pursuant to a negotiated sentencing range of ten to twenty years' incarceration. Petitioner was represented by James A. Cheek, Esquire ("Plea Counsel"). Seventh Circuit Assistant Solicitor Spenser H. Smith prosecuted the case. Judge Hayes sentenced Petitioner to twenty years' imprisonment for each armed robbery conviction, five years' imprisonment for each possession of a weapon during the commission of a violent crime conviction, and five years' imprisonment for each intent to defraud a lottery conviction, all to run concurrently with credit for 241 days' time served. Petitioner did not pursue a direct appeal of his convictions or sentences.

On January 8, 2019, Petitioner filed an application for post-conviction relief[1] (PCR), alleging he was being held in custody unlawfully on the following grounds (excerpts verbatim):

I. Ineffective Assistance of Counsel
   a. "Violation of the 4th, fifth, sixth, eighth, & 14th Amendments of U.S. Constitution".

II. Due Process Violation

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[1] (2019-CP-42-00090).

a. "Same as above".

The State filed its Return and Motion for a More Definite Statement on March 25, 2019. On March 19, 2021, Petitioner filed an amended application through his counsel Susannah C. Ross, Esquire (PCR Counsel), incorporating the following claims:

I. Ineffective Assistance of Counsel:
   a. Failing to provide the Applicant with discovery prior to his guilty plea;
   b. Failure to review discovery with Applicant;
   c. Failing to explain the elements of armed robbery and possible sentences; and
   d. Advising the Applicant to plea when there was not enough evidence to prove guilty beyond a reasonable doubt.

II. Due Process violations because the plea was not knowingly and voluntarily made.

An evidentiary hearing into the matter convened via Webex on April 8, 2021, at the Spartanburg County Courthouse before the Honorable J. Derham Cole, circuit court judge. Petitioner was present and represented by PCR Counsel. Assistant Attorney General William Harold Ray of the South Carolina Attorney General's Office represented the State. At the hearing, Petitioner proceeded on the claims in his amended PCR application. (App. 53 - 56). Through Petitioner's testimony, he raised an additional allegation, claiming:

I. Ineffective Assistance of Counsel
   e. Failure to Investigate
      i. "Well, [Plea Counsel] failed to investigate my case and – and if he – and if he would have investigated my case properly he would have seen that nobody ever identified me as the suspect. Nobody never pointed me out. No fingerprints, no nothing. And – and – and he would have seen that, so."

On January 15, 2025, Judge Cole denied Petitioner's PCR application and dismissed it with prejudice. (App. 102 – 141). On January 29, 2025, Petitioner timely filed a notice of appeal of the Order of Dismissal. On July 11, 2025, Petitioner filed a Petition for Writ of Certiorari and Appendix.

STATEMENT OF FACTS

The facts of Petitioner's case were thoroughly articulated by the Solicitor at Petitioner's plea hearing as follows:

> The first armed robbery occurred on January 16 of [2017]. Deputies responded to Chesnee Highway for an armed robbery at Li'l Cricket. The clerk described a black male who came in with his face concealed. He pointed a gun at her and she gave him money from inside the register. He was wearing a pair of gray gloves and armed with what she believed to be a rifle.
>
> On January 16th, that same night, deputies also responded to another Li'l Cricket in the Chesnee area for an armed robbery. The clerk stated that a black male wearing a bandana came in with what she believed to be a shotgun yelling, hurry up. She opened the register and grabbed money.
>
> Video was obtained and the suspect matched the description from the armed robbery that occurred earlier that night. He had on a pair of distinctive gray gloves. I'm going to hand up some pictures at the end of this, ..., that kind of show what we're talking about.
>
> Next was February 15th, 2017, there was an armed robbery at the Li'l Cricket on Chesnee Highway. The clerk stated that a black male came in with his face concealed with a bandana. He was armed with a small black pistol. He got away with money and cigarettes. He was wearing a distinctive pair of orange and black gloves. That actually ended up being the same clerk that he had robbed a month before.
>
> And then on February 17th, 2017, deputies responded to Scotchman on Chesnee Highway for another armed robbery. The clerk stated a black male entered the store with his face concealed by a bandana, armed with a pistol. She gave the man money and lottery tickets that he demanded. He was wearing a pair of orange and black gloves.
>
> ... There's four separate surveillance shots from armed robberies. And then the remaining pictures are pictures from a search warrant that was executed I'll go into now. But you can see the distinctive gloves.
>
> And in the search warrant we've got the .25 caliber pistol, which matches the description of the pistols that is used in this case. And there was a BB gun found

behind the laundry machine that looks very close to the – what the victim described as a rifle or a shotgun.

The day after the lottery tickets were stolen SLED got a hit that some of the lottery tickets had been cashed at a local business in the Chesnee area, another gas station. SLED contacted the sheriff's office, who immediately went out to that location.

They were able to secure the lottery tickets as well as video surveillance, which ultimately ended up showing Mr. Thompson, but at that time they didn't know who he was. They got fingerprints off of the lottery tickets and ran those. It came back to Lamarcus Thompson. They began doing research into him.

They had a description of a white Chevy Equinox with a broken windshield wiper that was the car that he arrived in to cash those lottery tickets. They went on Facebook. They found that he dated a lady named Brittany Fowler. They did a DMV car check on Brittany Fowler, and she had a white Chevy Equinox.

They then did a tag reader search through TLO and they found that white Equinox had been seen inside the Spartanburg area or they were able to get surveillance video of that confirmed that her white Chevy Equinox had a broken back windshield wiper, which was matched with the car that was used at the cashing of the lottery tickets.

They took all of that information to get a search warrant for the house that Mr. Thompson and Ms. Fowler were living in together at the time along with another female. They found numerous items, clothing items consistent with the robbery. Most of his clothing was very generic, hard to be specific.

But as you can see on the gray gloves, there's like an upside down triangle mark with a brand name on it that looks identical to the ones that were seized in the search warrant and the ones seen in the armed robbery. And they also found a pair of orange and black gloves that seemed to match perfectly with what was seen in this.

Mr. Thompson did speak with investigators. He admitted that he was the person that cashed the lottery tickets. He's written me multiple letters saying that he knew that they were stolen, that he was willing to plead guilty to that. His story at that time was that his roommate sometimes picks up cans and stuff off the street and had brought that back into his house, and he had been stupid enough to cash them.

(App. 13 - 16).

STANDARD OF REVIEW

The standard of review for post-conviction relief depends on the specific issue before the appellate court. Smalls v. State, 422 S.C. 174, 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 any probative evidence in the record supports them. Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40. However, pure questions of law will be reviewed *de novo* without deference to the post-conviction relief 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 PROPERLY FOUND THAT PETITIONER FAILED TO PROVE THAT PLEA COUNSEL WAS CONSTITUTIONALLY INEFFECTIVE AND PROPERLY FOUND THAT PETITIONER SUFFERED NO PREJUDICE WHEN THE RECORD ESTABLISHES THAT PETITIONER'S PLEA WAS FREELY, INTELLIGENTLY, AND VOLUNTARILY ENTERED AFTER BEING FULLY AWARE AND UNDERSTANDING OF THE CIRCUMSTANCES SURROUNDING HIS GUILTY PLEA AND THE STATE'S EVIDENCE AGAINST HIM.

On appeal, Petitioner contends that his guilty plea was not voluntarily entered due to ineffective assistance of counsel, asserting that Plea Counsel failed to show Petitioner crucial discovery in his case before Petitioner made his decision to plead guilty. Specifically, Petitioner contends that Plea Counsel did not review four surveillance videos of the armed robberies with Petitioner prior to entering his guilty plea. Petitioner asserts that if he would have reviewed these videos with Plea Counsel, he would not have plead guilty but would have instead proceeded to trial. However, Petitioner's claims are without merit. The PCR court properly found that Petitioner's guilty plea was voluntarily, freely, and intelligently entered. The PCR court also properly found that Plea Counsel rendered effective assistance of counsel in both preparation for the plea hearing and at the plea hearing, and that Petitioner suffered no prejudice. Lastly, the PCR court found Plea Counsel's testimony to be credible, while Petitioner's testimony was not credible. Therefore, this Court should deny certiorari.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Petitioner, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Petitioner has the burden of proving the allegations in his PCR action, and when alleging counsel was constitutionally ineffective, he must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just

result." Strickland, 466 U.S. at 686. In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Petitioner must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Petitioner must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Petitioner such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel." Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). When reviewing a guilty plea, the analysis of counsel's

performance under the first prong of Strickland remains unchanged—the applicant must show counsel's representation fell below the objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59. The second, or "prejudice" prong, however, "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Id. at 58–59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59. This inquiry "focuses on a defendant's decisionmaking" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. 357, 366 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372.

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

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

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

An applicant who enters a plea on the advice of counsel may "only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the [Applicant] would not have pled guilty but would have insisted on going to trial." Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). As with all post-conviction relief actions, it is the applicant who bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of involuntariness of a plea or ineffectiveness of counsel is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Here, Petitioner did not and could not meet his burden of proof and, accordingly, the post-conviction relief court properly rejected this claim and denied relief.

Petitioner contends Plea Counsel was deficient for failing to adequately review discovery with him prior to his guilty plea hearing, and that Petitioner would have insisted on proceeding to trial had the discovery been shown to him by Plea Counsel. Courts must be wary of second-guessing counsel's trial tactics, and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119,

417 S.E.2d 529 (1992). The post-conviction relief court properly found Plea Counsel's testimony regarding his strategy and practices with reviewing discovery to be credible.

RELEVANT TESTIMONY

Petitioner's plea hearing was a group plea with other defendants present, to which they answered the questions of the plea court by standing to represent an affirmative answer to which they could elaborate further, or by remaining seated to represent an answer of "no". (App. 3 – 5). Prior to questioning Petitioner regarding the sufficiency of the factual basis for the guilty plea, the plea court informed Petitioner of his constitutional rights, including the right to a jury trial, and the fact that these would be waived by entering a guilty plea. Petitioner was informed by the plea court twice that he would be allowed to speak with his lawyer privately at any point during the plea process. When asked if he was satisfied with the representation of Plea Counsel, Petitioner stood affirmatively. When asked if he was coerced or threatened in any way or made promises in exchange for entering a guilty plea, Petitioner remained seated. When asked if his decision to enter his guilty plea was made freely and voluntary, Petitioner stood affirmatively. When asked if he would like to proceed to a jury trial, Petitioner remained seated. (App. 5 - 9).

Prior to the solicitor's recitation of the facts of the case, the plea court questioned Petitioner regarding his intent of entering a guilty plea based off the charges that were announced at the hearing, including the four counts of armed robbery that Petitioner now contends he did not voluntarily plead guilty to. At his plea hearing, Petitioner stated that it was his intent to plead guilty as indicted on all charges. (App. 9 - 11). The following colloquy occurred with the plea court and Petitioner:

THE COURT: And Mr. Thompson, were you able to hear the solicitor when he related the facts to me?
PETITIONER: Yes, sir.

THE COURT: The manner in which he related the facts to me, do you believe that he is substantially correct?

PETITIONER: Yes, sir.

THE COURT: And, sir, do you understand that on the – on all of the defrauding the lottery charges that I could sentence you up to five years on those charges?

PETITIONER: Yes, sir.

THE COURT: And, sir, do you understand that on the armed robbery charges that – I'm sorry. Yes, sentence you up to five years on those charges. And, sir, do you understand that on the armed robbery charges that these are being presented to me as negotiated sentences, therefore, if I accept the pleas I'll be bound by the negotiations and will have to impose a sentence between ten to 30 years? I'm sorry, ten to 20 years?

PETITIONER: Yes, sir.

THE COURT: Sir, do you also understand that all of the armed robbery charges, that they are classified as both violent and most serious?

PETITIONER: Yes, sir.

THE COURT: And have you been able to talk to your lawyer as to the consequences of those offenses being classified as violent and most serious?

PETITIONER: Yes, sir.

THE COURT: And you still wish to enter these pleas?

PETITIONER: Yes, sir.

THE COURT: Do you also understand that on the possession of weapon during the commission of a violent crime that all of those charges carry up to five years?

PETITIONER: Yes, sir.

THE COURT: Understanding that this – that this case is being presented to me as a negotiated plea with the range being ten to 20 years, concurrent, do you still wish to enter the plea?

PETITIONER: Yes, sir.

THE COURT: Are you, in fact, guilty of all six of the defrauding the lottery charges?

PETITIONER: Yes, sir.

THE COURT: Are you also guilty of all four counts of armed robbery?

PETITIONER: Yes, sir.

THE COURT: And are you also guilty of all four of the possession of a weapon during the commission of a violent crime charge?

PETITIONER: Yes, sir.

THE COURT:	Have all of your answers to my questions today been truthful and honest?
PETITIONER:	Yes, sir.

(App. 16 – 18).

EVIDENTIARY HEARING

At Petitioner's PCR evidentiary hearing, Petitioner testified on direct examination that Plea Counsel was deficient for failing to investigate his case properly. Petitioner testified that he could not recall when he received discovery in his case but knew that it was later in his proceedings. Applicant testified that he and Plea Counsel looked at the discovery during their meetings, but only to "skim through" the materials. (App. 57 – 58). Petitioner was asked what a further investigation by Plea Counsel would have uncovered, to which Petitioner answered that Plea Counsel could have "put up more of a fighting chance". (App. 66). When asked whether he would have made the decision to plead guilty had Plea Counsel reviewed the discovery with him, Petitioner testified that he would not have and would have insisted on going to trial. (App. 67).

On cross-examination, Petitioner testified that he was initially appointed Chad Snyder[2] as counsel for his charges, and that Snyder informed Petitioner of how serious his charges were. (App. 68 – 69). Petitioner further testified that he came into contact with Plea Counsel after Petitioner wrote the solicitor a letter, which resulted in Plea Counsel visiting Petitioner twice while in custody. Petitioner testified that he and Plea Counsel reviewed the evidence of the case during their meetings, but Petitioner cannot recall what that evidence was. (App. 69 – 71).

When asked why Petitioner pled guilty to the armed robberies when he contends that he did not commit them, the following colloquy occurred on cross-examination:

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[2] Petitioner mistakenly refers to Chad Snyder as Charles Snyder at the PCR evidentiary hearing. (App. 68).

Q. Now, let me ask you. If you knew you didn't commit the crime, why did you plead guilty?
A. Because – because I thought I was pleading to the tickets.
Q. You thought that was it?
A. Yeah, because I told him – because I told him I'm guilty of turning in the tickets, you know what I'm saying, at the – at the store.
Q. So, you – you were unaware when you were in court that you were pleading guilty to armed robbery?
A. Yes, sir.
Q. And you didn't realize you were pleading guilty to armed robbery?
A. No. I'm thinking – I'm thinking – I'm thinking they didn't want to drop the charges, drop the armed robberies, and – and charge me with the tickets because that's all the evidences they have on me of – of the tickets. So – so, you know what I'm saying, so – so why would I plead guilty to armed robberies when you have no actual evidence of me committing the crimes?
Q. Well, that's what I'm asking you. I don't understand why you plead guilty to armed robbery if you're saying that there is no evidence of you committing the crime. It doesn't make much sense to me.
A. Right.

(App. p. 73 – 74).

Regarding Petitioner's contention that he was not shown discovery prior to his guilty plea, Petitioner testified on cross-examination that he recalls the solicitor informing the Court that discovery had been shared with the defense. When asked why Petitioner did not speak up when he was alleging he did not receive discovery or have sufficient time to review it, Petitioner testified that he did not know what was happening at the time because he is "new to all of this going to court and seeing the judge and seeing the lawyers".[3] (App. 74 – 75).

On direct examination, Plea Counsel testified that Chad Snyder was initially appointed through the public defender system to represent Petitioner. Plea Counsel explained that he does

[3] The solicitor at Petitioner's guilty plea hearing informed the court that Petitioner has a prior record.

not try the cases that come to him but rather takes referrals from the attorneys appointed to go speak with the client while in jail custody. (App. 78 – 79). Plea Counsel testified that he does not recall when he first met Petitioner, but he does recall meeting with him at the jail two or three times. Plea Counsel testified that he and Petitioner discussed the advantages and disadvantages of going to trial on the charges Petitioner was facing, and that Plea Counsel allowed Petitioner to think about his decision to go forward with trial before their next meeting. (App. 79 – 81).

Plea Counsel testified on direct examination that he and Petitioner reviewed the discovery in his case, discussed the elements of the offenses, and discussed the potential sentences Petitioner would be facing. Plea Counsel testified that he attempted to secure a plea deal with the solicitor's office, but the solicitor's office was not interested in offering the requested guilty plea to common-law robberies that he and Petitioner were seeking. (App. 81). Plea Counsel testified that while he brings discovery with him to the jail to review with clients, he is very careful about leaving copies of discovery with clients at the jail because it is almost impossible to ensure it is maintained securely, and it can often cause evidentiary issues down the road when discovery is shared among inmates. (App. 82).

Plea Counsel testified to his recollection that during his meetings with Petitioner, they discussed the homeless woman who Petitioner contended found the lottery tickets on the side of the road and later gave to him. Plea Counsel testified that he asked Petitioner why the woman, who is in need herself, would give Petitioner these lottery tickets instead of keeping them for herself. (App. 83). Plea Counsel further testifies that he then explained to Petitioner the meaning of the word, "integrity". Plea Counsel testified that when he asked Petitioner what the woman would say if Plea Counsel were to go ask her about the lottery tickets, Petitioner's response was not in his

best interest. Plea Counsel testified that Petitioner informed him that attempting to contact this woman would be a waste of time. (App. 83).

When asked about Petitioner's involvement in his case discussions and preparation, Plea Counsel testified that Petitioner was very active in the discussions and that Petitioner is a "very articulate, intelligent young man". (App. 82). Plea Counsel testified that there was no reason to believe that Petitioner did not understand their discussions during his time of representation. (App. p. 85). Plea Counsel testified that he explained to Petitioner what circumstantial evidence is, and what evidence Petitioner could potentially offer should he decide to go forward with trial and take the stand or call witnesses in his defense. Plea Counsel further testified that he had Petitioner write down all the charges and consecutive sentences he could potentially face if he were to go to trial and be found guilty on some or all charges. (App. 84 – 85). When asked if it was ultimately Petitioner's decision to plead guilty, Plea Counsel testified that had the Petitioner shown any interest in going forward with trial, he would have been bound to refer him back Chad Snyder for trial preparation. Plea Counsel further testified that he informed Petitioner to let him know as soon as possible if he wants to go forward with trial, and that Petitioner ultimately made the decision to plead guilty. (App. 86 – 87).

Petitioner relies on State v. Hazel[4], where the court held that a defendant's guilty plea was not knowingly entered due to the defendant being unaware of the mandatory sentences of her plea. This was caused by improper advice by the defendant's attorney, and the defendant being misled by the trial judge stating that he "could" sentence the defendant to life imprisonment when her charge carried a mandatory life sentence. Id. at 394. Here, this is irrelevant and inapplicable considering the colloquy that Petitioner went through with the plea court showing that he was

[4] 275 S.C. 392, 271 S.E.2d 602 (1980).

aware and understanding of the potential sentences he was facing, and Plea Counsel's testimony at the evidentiary hearing regarding his discussions with Petitioner in preparation for his case. (App. 16 - 18).

Petitioner also relies on Dover v. State[5], where the court found the defendant's guilty plea was not knowingly and voluntarily entered based on misunderstanding of the consequences of his guilty plea. In this case, the defendant was not questioned by the court about his understanding of the offenses he was charged with nor the sentences he was facing. Id. at 435. Here, this is again irrelevant and inapplicable considering the colloquy that Petitioner went through with the plea court showing that he was aware and understanding of the potential sentences he was facing, and Plea Counsel's testimony at the evidentiary hearing regarding his discussions with Petitioner in preparation for his case. (App. 16 – 18; App. 78 – 87).

Petitioner also cites Rollinson v. State[6] and Sellner v. State[7] in support of his claim. Rollinson involves a defendant that pled guilty to a second drug offense while he also pled guilty to his first drug offense. The court in Rollinson held, "all that is required before a plea can be accepted is that the defendant understands the nature and crucial elements of the charges, the consequences of the plea, and the constitutional rights he is waiving, and that the record reflect a factual basis for the plea." Id. at 511. In accordance with the holding in Rollinson, Petitioner's guilty plea was voluntarily entered as he met the requirements of understanding the nature and crucial elements of the charges, the consequences of him entering a guilty plea for each of the charges, and the constitutional rights he is waiving, and the record in Petitioner's case reflects a factual basis for the plea. (App. 16 – 18).

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[5] 304 S.C. 433, 405 S.E.2d 391 (1991).
[6] 346 S.C. 506, 507, 552 S.E.2d 290 (2001).
[7] 416 S.C. 606, 607, 787 S.E.2d 525 (2016).

In Sellner, the court reversed the PCR court's denial of relief and granted the defendant a new trial, as it held that counsel's representation was constitutionally ineffective in advising the defendant he could be convicted of armed robbery without evidence of a physical representation of a deadly weapon. Id. at 612. Here, Petitioner's case differs from that of Sellner because the State had overwhelming evidence to support a conviction for Petitioner's armed robbery charges. Plea Counsel effectively advised Petitioner as to the advantages and disadvantages of going to trial on each offense that Petitioner was charged with, including the armed robberies, to allow him to make an informed decision whether to plead guilty or proceed to trial. (App. 78 – 87).

Petitioner contends that if Plea Counsel would have investigated his case properly, Plea Counsel "would have seen that nobody ever identified" Petitioner as the perpetrator of the armed robberies he pled guilty to. (App. 57). However, the State's evidence in Petitioner's case was more than sufficient to support a conviction for armed robbery. Plea Counsel testified that Petitioner matched the physical description provided by the victims of the armed robberies, the gloves and clothing found pursuant to a search warrant matched the descriptions given by the victims of the armed robberies, and the photographs and videos taken of the armed robberies by surveillance cameras at the armed robbery locations matched some of the very specific clothing items found pursuant to the search warrant. (App. 13 – 16). In addition to this, Plea Counsel indicated that Petitioner's story as to how he obtained the stolen lottery tickets was not believable, and that Petitioner himself advised Plea Counsel to not waste time investigating that version of facts. (App. 34). Finally, Petitioner knowingly, intelligently, and voluntarily entered his guilty plea with a complete understanding of the offenses he was charged with and the sentences he was facing. (App. 16 – 18).

Therefore, the post-conviction relief court properly found that Petitioner failed to meet his burden of proving both deficiency and prejudice and the Court should deny certiorari to this issue.

[CONCLUSION AND SIGNATURE PAGE FOLLOWS]

CONCLUSION

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

Respectfully Submitted,

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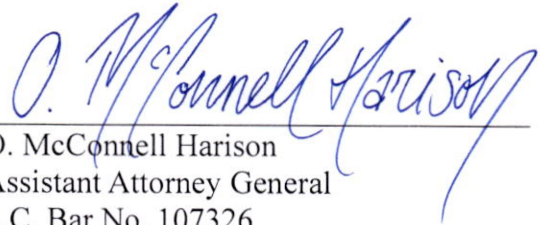

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December 29, 2025