THE STATE OF SOUTH CAROLINA

In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM THE COUNTY OF MARLBORO

Court of Common Pleas

The Honorable Circuit Court Judge, S.B. DOBY

Case No. 2025-CP-34-00021

Zaquai R. Shuler, SCDC # 372507.. Applicant

v.

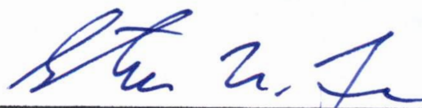
State of South Carolina, ...Respondent.

NOTICE OF APPEAL

The Petitioner hereby appeals against the above-named Honorable Judge Order filed denying post-conviction relief to the Applicant.

The Order was received by the undersigned counsel on December 29, 2025. The said Order was filed on December 29, 2025, in Marlboro County Clerk of Court and is in their records.

This is the 29th day of December 2025.



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STATE OF SOUTH CAROLINA
COUNTY OF MARLBORO

IN THE COURT OF COMMON PLEAS
FOR THE FOURTH JUDICIAL CIRCUIT

Zaquai R. Shuler, #372507,

Applicant,

v.

State of South Carolina,

Respondent.

CASE NO. 2025-CP-34-00021

**ORDER OF DISMISSAL
WITH PREJUDICE**

Presiding Judge:	Hon. S. Bryan Doby
Applicant's Attorney:	Steven W. Fowler, Esq.
Respondent's Attorney:	MacKinnon Westraad, Esq.
Plea Counsel:	Jacob L. Godwin, Esq.
Date of Hearing:	September 3, 2025
Court Reporter:	Brenda L. Jones

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CLERK OF COURT
MARLBORO COUNTY, S.C.

This matter comes before the Court pursuant to an application for post-conviction relief ("PCR") filed by Zaquai R. Shuler ("Applicant") on January 29, 2025. Respondent filed its Return, requesting that an evidentiary hearing be held on the allegations. On September 3, 2025, an evidentiary hearing was held at the Darlington County Courthouse before the Honorable S. Bryan Doby. Applicant was present and represented by Steven W. Fowler, Esquire. Assistant Attorney General MacKinnon Westraad represented Respondent. Applicant proceeded on the allegations within his original PCR application. In support of these claims, Applicant testified on his own behalf. Respondent called Jacob L. Godwin, Esquire (Plea Counsel) to testify.

Following a thorough review of the record, along with the testimony and evidence presented at the hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, **DENIES** and **DISMISSES** this action with prejudice.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment of the Darlington County Clerk of Court. During its June 2024 term, the Marlboro County Grand Jury indicted Applicant for Attempted Murder (2024-GS-34-0234). Applicant was represented by Jacob L. Godwin, Esquire. Fourth Circuit Assistant Solicitor Margaret B. Scott prosecuted the case. On August 27, 2024, Applicant appeared before the Honorable R. Kirk Griffin and pleaded guilty to the lesser included charge of Assault and Battery of a High and Aggravated Nature. Judge Griffin sentenced Applicant to the negotiated twelve (12) years imprisonment.

Applicant did not appeal his conviction or sentence.

Facts Giving Rise To The Conviction

At Applicant's plea hearing, Assistant Solicitor Margaret B. Scott articulated the facts giving rise to the plea as follows:

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> Thank you, Your Honor. On January 27th of this year Special Agent Jared Greenway with the Office of Inspector General with SCDC was notified that there was an inmate on an employee assault that took place in Evans Correctional Institution here in Marlboro County. When he arrived he spoke to numerous witnesses to include the victim in this case, Lieutenant Oscar Martinez. He was able to pull video surveillance, get reports from all the officers that were working that day. Essentially, about eight o'clock that morning Officer Martinez was tasked with the, um, going to get - remove one inmate from a cell on the I believe to KIOWA Dorm, the second floor. When he went up there to remove that inmate for safe keeping, the defendant Mr. Shuler stood in the doorway and wouldn't let him get through. They were exchanging words and it became violent when Mr. Shuler pushed Officer Martinez. He fell to the ground, hit his face. At that point, he began punching him numerous times I believe anywhere from roughly 30 punches, blows to the head. He also began kicking him. At one point, he attempted to do a choke hold, the defendant did, but was not successful, luckily. But while he was on the ground he took a few seconds break from the assault and then went back at it again. Luckily, the victim, Mr. Martinez, was able to break free from this. He did end up going to hospital that night. He had multiple contusions on his head. He did also have a brain bleed, one on the left frontal head area, and then one to the right. I did speak to the victim. He says he's physically doing well now. He did have – he was

> discharged that day but had to go back for follow ups to make sure that the bleeding didn't get worse. But he is doing well. He is suffering, he says, from PTSD from the assault. Your Honor, I do have a video of the assault if you would like to see it. It's pretty brutal. Just the amount of violence from this defendant.

(Plea Tr. pp. 6-8).

CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being detained unlawfully for the following reasons:

1. Ineffective Assistance of Plea Counsel
   a. Failed to file appeal.
   b. Failed to review discovery.
   c. Failed to explain the time he would serve.
2. Involuntary Guilty Plea
3. Mentally Incompetent

Applicant requested relief in the form of a "time reconsideration."[1]

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Before this Court are the Marlboro County Clerk of Court records regarding the subject's convictions and sentences, Applicant's records from the SCDC, the guilty plea transcript, and the records of the current PCR action.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act[2] (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based on the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

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[1] At his hearing, Applicant testified he understood this would not be an option for relief. (PCR Tr. p. 9).
[2] S.C. Code Ann. §§ 17-27-10 to -160.

5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, 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). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland v. Washington to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687–88; accord. Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that

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"[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable." (citation and internal quotation marks omitted)).

Regarding the deficiency prong of the Strickland analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. Butler, 286 S.C. at 442. When analyzing counsel's performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for rebutting that presumption "by proving that his attorney's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy." Kimmelman v. Morrison, 477 U.S. 365, 384 (1986); cf. Cullen v. Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation).

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Furthermore, the reviewing court will scrutinize counsel's performance in a highly deferential manner, make every effort "to eliminate the distorting effects of hindsight," and "evaluate the conduct from counsel's perspective at the time" in light of then-existing circumstances. Strickland, 466 U.S. at 689. In order to establish counsel's performance was deficient, the applicant must demonstrate that "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 687. Accordingly, counsel's performance will be considered deficient only when it was objectively incompetent under prevailing professional norms and *not* when it simply "deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86, 105 (2011).

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the

burden of establishing prejudice in order to be entitled to relief as "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691. To meet this burden, counsel's deficient performance must have prejudiced the applicant to such an extent, there is a reasonable probability the result of the proceeding would have been different but for counsel's unprofessional errors. Cherry, 300 S.C. at 117–18; see Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) ("To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel's representation fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been different.").

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). A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel's performance was deficient; and second, evidence that counsel's deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. Hill, 474 U.S. 52.

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; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was

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not "within the range of competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56.

The second, or "prejudice" prong, however, "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Id. at 58–59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59. This inquiry "focuses on a defendant's decision making" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. 357, 137 S. Ct. 1958, 1966, 198 L. Ed. 2d 476 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

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 368–69 (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 58 ("[R]equiring a showing of 'prejudice' 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 369. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's

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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 Evidentiary hearing. Harres v. State, 282 S.C. at 134, 318 S.E.2d at 361 (1984).

Finally, the Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90. Courts must be wary of second-guessing counsel's 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 applicant's burden of proving both Strickland components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690.

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FINDINGS OF FACTS AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility.

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), SCRCP (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a

preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

Accordingly, set forth below are the relevant findings of fact and conclusions of law as required by § 17-27-80 of the South Carolina Code:

INITIAL FINDINGS

This Court finds applicable the strong presumption that at all stages of Plea Counsel's representation of Applicant, he rendered adequate assistance and exercised reasonable professional judgment in his representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

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ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF PLEA COUNSEL

Allegation 1: Failed to file appeal

Applicant alleges Plea Counsel's representation was constitutionally ineffective for failing to appeal his conviction. This Court finds this allegation is without merit.

Though counsel is required to make certain that a defendant is made fully aware of his or her right to appeal after a *trial*, a different standard applies to a guilty plea:

> Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in

appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.

Turner v. State, 380 S.C. 223, 224-25, 670 S.E.2d 373, 374 (2008) (citations omitted); see also Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000) (imposing the duty to consult when there is reason to think either that a rational defendant would want to appeal or that the particular defendant reasonably demonstrated interest in doing so); contra Frazer v. South Carolina, 430 F.3d 696 (4th Cir. 2005) (reading Flores-Ortega to mean counsel generally has a duty to consult with his client regarding whether to pursue an appeal). Therefore, in a collateral action attacking a guilty plea, the "bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief." Jones v. State, 382 S.C. 589, 598, 677 S.E.2d 20, 23-24 (2009) (quoting Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995)).

Where an Applicant reasonably demonstrates an interest in appealing, or where there is a reason to think a rational defendant would want to appeal, and where Counsel fails to either initiate that appeal or comply with Anders procedure, "White permits consideration of the full trial record on [an] issue in conjunction with appellate review of the PCR proceeding under an exception to the prohibition against appellate courts considering appeals in the absence of notice of direct appeal given and timely served." Smith v. State, 309 S.C. 413, 415, 424 S.E.2d 480, 481 (1992) (citing Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986)).

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PCR Evidentiary Hearing

On direct examination, Applicant testified that Plea Counsel told him if he took the plea, he couldn't appeal it, and that there was nothing that could be done, so Applicant filed the PCR. (PCR Tr. p. 10). Applicant testified he did not understand what the judge at his plea hearing meant when he said Applicant had ten days to appeal. (PCR Tr. p. 10).

On direct examination, Plea Counsel testified Applicant did not ask him for an appeal or for a motion to reconsider. (PCR Tr. p. 36). Plea Counsel testified he had a pretty strict policy when clients asked for an appeal or motion to reconsider, which was to get it done that day, and he would not leave the courthouse until he got it done. (PCR Tr. p. 36).

Findings

This Court finds from the record that the plea court did advise Applicant of his right to appeal his guilty plea. (Plea Tr. p. 6). Further, the plea court questioned Applicant's understanding of the proceeding and considered the circumstances of Applicant's crime. This Court further finds no extraordinary circumstances objectively warranted counsel to inform Applicant about appealing his conviction. See Roe v. Flores–Ortega, 528 U.S. 470 (2000) (holding that counsel has a constitutional duty to inform a defendant of his right to appeal a guilty plea if there is reason to think that a rational defendant would want to appeal or that the defendant demonstrated an interest in appealing). Furthermore, this Court finds Plea Counsel's testimony *credible* that he would have filed a notice of appeal or motion to reconsider that same day if Applicant had asked him to file one. (PCR Tr. p. 36).

As such, Applicant has failed in his burden of presenting any *credible* evidence to this Court that he was not advised of the right to appeal his guilty plea, nor did Applicant present any *credible* evidence that he requested Plea Counsel file an appeal. Moreover, to whatever extent Applicant was not entirely satisfied with the plea, he was presented an opportunity to express his dissatisfaction with the plea court, knowingly opted not to do so, and instead chose to proceed with his guilty plea so that he would not face a charge of attempted murder on an SCDC officer.

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Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED and DISMISSED with PREJUDICE**.

Allegation 1(b): **Failed to review discovery**
Allegation 1(c): **Failed to explain the time he would serve**
Allegation 2: **Involuntary Guilty Plea**

Applicant alleged Plea Counsel's representation was constitutionally ineffective for failing to review discovery and failing to explain the time Applicant would serve. This Court finds these allegations to be without merit.

In order to prevail upon a claim that counsel did not adequately prepare, investigate, or review discovery in a case, an applicant must present evidence to show how additional time spent in consultation regarding discovery would have resulted in a different outcome or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). The applicant must further present evidence demonstrating how the discoverable matters or defenses would have resulted in a different outcome. Id. Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a complete understanding of the consequences of the plea and the charges against him or her. Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991); see also Boykin v. Alabama, 395 U.S. 238, 244 (1969) (Courts must make sure defendants have "a full understanding

of what the plea connotes and of its consequences. When the judge discharges that function, he leaves a record adequate for any review that may be later sought and forestalls the spin-off of collateral proceedings that seek to probe murky memories."). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as the evidence presented at the PCR hearing. See Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984) (finding the voluntariness of a guilty plea "is not determined by an examination of the specific inquiry made by the sentencing judge alone but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.").

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that 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 instead. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001); Richardson v. State, 310 S.C. 360, 363, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

PCR Evidentiary Hearing

On direct examination, Applicant testified that Plea Counsel did not help him understand the plea, and the only thing Plea Counsel showed him was the video. (PCR Tr. p. 12). Applicant testified that Plea Counsel showed him the video on August 17, the same day of court. (PCR Tr. p. 12). Applicant testified he felt Plea Counsel was not doing his job correctly because he was not trying to help Applicant understand what was going on at the time. (PCR Tr. pp. 12, 21). Applicant testified that Plea Counsel told him that if he took the twelve-year plea, it would run concurrent to

his active sentence of ten years, and Plea Counsel told him that meant he would have two years left. (PCR Tr. p. 13). Applicant testified he believed he testified to the court that the plea was voluntary, but Applicant feels it was involuntary because his attorney lied by saying he would have two more years, when in reality he would be doing "almost ten more years." (PCR Tr. p. 13). Applicant testified Plea Counsel told him he knew the judge personally and that the judge would not show Applicant leniency. (PCR Tr. p. 14).

Applicant testified that when he came to court for his plea, a lady approached him and asked if he had "been admonished," and he said no, so she said she would get someone to talk to him. (PCR Tr. p. 16). Applicant testified that before, he was not represented by anyone because the public defender's office would not respond to him despite his reaching out. (PCR Tr. pp. 16-17). Applicant testified he guessed he was scheduled that day to take a plea, but he did not know for sure; they just came to his door and let him know he had a court hearing. (PCR Tr. pp. 17-18). Applicant testified that for the eight years he had been incarcerated, he did not have an attorney. (PCR Tr. p. 18). Applicant testified he thought his attorney's name was Godwin, and agreed the attorney was in the courtroom for this PCR hearing. (PCR Tr. p. 18).

Applicant testified Plea Counsel approached him the day of his plea at around 1:30 PM and said he was going to represent Applicant. (PCR Tr. pp. 18-19). Applicant testified he pleaded guilty fifteen to thirty minutes later, after Plea Counsel showed Applicant the video on Plea Counsel's cell phone. (PCR Tr. p. 19). Applicant testified that he told Plea Counsel they were not showing the beginning of the video in which the victim pushed him first, and Plea Counsel told him, "Well, this is all I have," but stated they would drop Applicant's charge to a lesser charge. (PCR Tr. pp. 19-20). Applicant testified he asked Plea Counsel if he could get time served or five years or something, but Plea Counsel told him he could not. (PCR Tr. p. 20).

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Applicant testified he guessed Plea Counsel never had his discovery, and Applicant never told Plea Counsel he needed it because he did not know how it really works. (PCR Tr. p. 21). Applicant testified Plea Counsel did not give him advice, and Applicant did not feel he had enough time to talk to him, despite telling the plea court he did. (PCR Tr. pp. 21-22). However, Applicant then testified he did feel like it was enough time because Plea Counsel did not have paperwork or anything. (PCR Tr. p. 22). Applicant testified Plea Counsel was ineffective for that because he felt Plea Counsel should have had the paperwork on hand. (PCR Tr. p. 22).

Applicant testified he heard people talk about a negotiated plea, but was not familiar with it. (PCR Tr. p. 29). Applicant testified they dropped his charge to assault and battery of a high and aggravated nature, which Plea Counsel told him carried zero to twenty years, but if he took the twelve-year plea, it would be run concurrently. (PCR Tr. p. 29). Applicant testified his sentences were not running concurrently right now. (PCR Tr. p. 30).

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On direct examination, Plea Counsel testified he was in fact appointed to represent Applicant the day of his plea after the special SCDC prosecutor talked to him. (PCR Tr. p. 33). Plea Counsel testified that the court appearance that day was just to get Applicant assigned a lawyer. (PCR Tr. p. 33). Plea Counsel testified they reviewed the video together, which showed Applicant "beating the crap out of an SCDC guard." (PCR Tr. pp. 33-34). Plea Counsel testified the video showed Applicant walking away and then coming back for more and continuing to beat on the guard. (PCR Tr. p. 34). Plea Counsel testified at that point, he was not sure how much paper discovery was needed because it was "pretty clear," and the guard was going to testify against Applicant. (PCR Tr. p. 34).

Plea Counsel testified he stopped everything and talked with Applicant for a long time–over an hour–about how Applicant had a plea offer but did not have to take it that day. (PCR Tr.

p. 35). Plea Counsel testified that Applicant told him if there was a plea offer, he wanted to take it that day. (PCR Tr. p. 35). Plea Counsel testified he remembered saying, “Are you sure? Nobody is making you do anything today,” and Applicant said he was sure and he wanted to get it over with, so Plea Counsel proceeded to negotiate accordingly. (PCR Tr. p. 35). Plea Counsel testified that Applicant seemed to understand everything Plea Counsel discussed with him. (PCR Tr. p. 35). Plea Counsel testified he explained to Applicant the difference between concurrent and consecutive and how his sentence would work, and Applicant did not seem confused. (PCR Tr. p. 36). Plea Counsel testified he was not sure he understood Applicant’s complaint in this PCR about the time he was serving. (PCR Tr. p. 36). Plea Counsel testified he stood by his representation of Applicant, as Applicant had a recommended fifteen-year sentence and Plea Counsel got him a negotiated twelve-year sentence, which he was proud of. (PCR Tr. p. 36).

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On cross-examination, Plea Counsel testified the sentencing sheet, which Applicant signed, showed that Applicant wanted to plead guilty that day. (PCR Tr. p. 38). Plea Counsel testified that during their hour conversation, he and Applicant talked about the video, the potential sentence, the charge against him, and what a trial might look like. (PCR Tr. pp. 38-39). Plea Counsel testified he did not ask the court for a continuance because Applicant did not want one, even after Plea Counsel told him he did not have to move forward that day. (PCR Tr. p. 40). Plea Counsel testified he was sure he did see paper discovery, and he may have gone over it with Applicant, but he did not remember. (PCR Tr. p. 40). Plea Counsel testified he felt the case was very serious. (PCR Tr. p. 41).

Findings

As an initial matter, this Court finds Applicant has failed to meet his burden to present evidence that the plea was involuntary. Additionally, this Court concludes that Applicant did not

provide any *credible* evidence that additional time reviewing discovery would have led him not to plead guilty, but instead to proceed to trial. Plea Counsel *credibly* testified that he was sure he saw paper discovery, but the video and testimony were "pretty clear" and would have been "damning" to Applicant at trial. (PCR Tr. p. 34). Applicant did not present any discovery at the hearing that would have led him to go to trial instead of pleading guilty.

Although Plea Counsel was appointed the same day Applicant decided to plead guilty, this Court finds sufficient that Plea Counsel met with Applicant for an hour, thoroughly explained the evidence, charge, risks, and plea offer, and insisted that Applicant did not need to plead guilty that day, but ultimately honored Applicant's desire to plead. See Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) (no constitutional minimum number of meetings to satisfy competency); United States v. Olson, 846 F.2d 1103, 1108 (7th Cir. 1988) (reciting that there is no constitutional minimum number of meetings between attorney and client and observing that an experienced attorney may get more out of a single meeting than a neophyte). "Brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). Further, to whatever extent Applicant was not entirely satisfied with the amount of time or extent he and Plea Counsel reviewed discovery, he was presented an opportunity to express his dissatisfaction to the plea court and chose to proceed with his guilty plea.

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Applicant also alleged that his sentences were not running concurrently; however, based on the record before this Court, his twelve-year sentence is running concurrently with his ten-year sentence. Additionally, Applicant did not present any evidence to this Court that his sentences were not running concurrently. Applicant further argued that Plea Counsel misinformed him by telling him he would get credit for time served for the eight years he already served on his ten-year

sentence, and that he would thus only serve two additional years. However, Applicant clearly understood he would be serving more time than that, as he testified he specifically asked Plea Counsel if he could get time served or five years. Plea Counsel told him he could not get that amount, and that even ten years would be pushing it. (PCR Tr. pp. 20, 29). Applicant also testified that his sentencing sheet reflected only 214 days of credit, with a twelve-year negotiated sentence to run concurrently with his active sentence, and he signed the sentencing sheet. (PCR Tr. pp. 13, 38). Combined with Plea Counsel's testimony that Applicant seemed to understand the sentence he would receive and the meaning of a concurrent sentence, this Court finds Plea Counsel was not deficient in advising Applicant of the time he would serve.

Applicant also failed to prove he suffered any prejudice on this allegation. He was facing a charge of attempted murder of an SCDC officer, with powerful video evidence and testimony from the victim. After seeing the video evidence and speaking with Plea Counsel, he wanted to take a plea offer that day if he could. Thus, instead of facing thirty years in addition to his active sentence, Applicant could be released in the next ten years. This Court finds Applicant made the rational decision to take the offer, with an understanding of the length of the sentence and the consequences of the plea, and he received the benefit of the bargain.

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Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, these allegations must be **DENIED and DISMISSED with PREJUDICE**.

Allegation 3: Mentally Incompetent

Applicant alleged Plea Counsel's representation was constitutionally ineffective for failing to further investigate his mental health. This Court finds this allegation to be without merit.

Due process prohibits the conviction of a person who is mentally incompetent, and that

right cannot be waived by a guilty plea. Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 595 (1992) (citing Bishop v. U.S., 350 U.S. 961 (1956); Pate v. Robinson, 383 U.S. 375 (1966)). The test of competency to enter a plea is the same as required to stand trial: the accused must have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings against him. Id., 417 S.E.2d at 596 (citing State v. Lambert, 266 S.C. 574, 225 S.E.2d 340 (1976); Carnes v. State, 275 S.C. 353, 271 S.E.2d 121 (1980)). An applicant alleging incompetence in fact must show by a preponderance of the evidence that he was incompetent at the time of his plea. Id.

An applicant alleging ineffective assistance of counsel for failure to seek a mental health evaluation, however, must still satisfy the two prongs of Strickland, though considered in reverse as a practical necessity: applicant must demonstrate (1) a 'reasonable probability' that he was not competent at the time of the crime or at the time of the plea, and (2) that counsel's failure to seek an evaluation was unreasonable. Id. at 233, 417 S.E.2d at 596. Counsel may reasonably rely on his own perceptions in deciding if a client is competent to stand trial. Id.

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PCR Evidentiary Hearing

On direct examination, Applicant testified that Plea Counsel did not mention to the judge that he "[had] mental health." (PCR Tr. p. 14). Applicant testified he had depression, anxiety, and PTSD. (PCR Tr. p. 14). Applicant testified his mental illnesses impacted his choice to plead guilty because he did not want to do more time, which got him depressed and had him upset because of his anxiety, so he felt like it was the right thing to do. (PCR Tr. p. 14). Applicant testified he is currently on medication, but that day he did not take his medicine the day of the plea. (PCR Tr. pp. 14-15). Applicant testified he took Lexapro and Rexulti, which were for anxiety, depression, and hearing things. (PCR Tr. p. 15). Applicant testified he stood by his statement to the plea court

that he was in his right mind and not under the influence of medicine. (PCR Tr. p. 15). Applicant testified he believed he was able to enter into the plea "correctly," but also felt he was forced to do it. (PCR Tr. p. 15).

Applicant testified that his allegation of mental incompetence was because he was not on his medication at the time of the plea, and his medicine helped him with anxiety, depression, and staying focused, and he felt like, at that time, he was not comprehending what was really going on. (PCR Tr. pp. 22-23, 24). Applicant testified he thought he told the judge he understood everything, but he told the judge that because of anxiety. (PCR Tr. p. 23). Applicant testified he told Plea Counsel he "was mental health," but Plea Counsel did not ask about medicine, so Applicant did not tell him. (PCR Tr. p. 23). Applicant testified he did not take his medicine that day because they got him before the pill line came. (PCR Tr. p. 23). Applicant testified that the only medicine he takes in the morning is Lexapro. (PCR Tr. p. 24). Applicant testified he told Plea Counsel he was telling him about mental health because he had "been stabbed," and Plea Counsel told the plea court he was stabbed and he was under the influence during the incident. (PCR Tr. pp. 24-25). Applicant testified Plea Counsel told the court something else, but he could not remember. (PCR Tr. p. 25).

Applicant testified he has never had a competency evaluation, but he talked to the psychologist every three months, which was how he started the medicines. (PCR Tr. p. 25). Applicant testified that he would talk about hearing things, having suicidal thoughts, and how the medicine was working for him. (PCR Tr. pp. 25-26). Applicant testified he felt Plea Counsel not going into his mental health history was ineffective because it played a part since Applicant was not on his medicine at the time of the incident with the officer. (PCR Tr. p. 26).

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On cross-examination, Applicant testified he did not recall the judge at his plea hearing asking about treatment for mental health problems, and he did not recall telling the judge he never had any treatment for mental health problems. (PCR Tr. p. 31).

On direct examination, Plea Counsel testified Applicant never discussed mental illness problems with him, and he did not have any competency concerns. (PCR Tr. p. 35). Plea Counsel testified that if he has competency concerns, he always gets an evaluation, even as a prosecutor, just to be sure. (PCR Tr. p. 35).

On cross-examination, Plea Counsel testified they did not talk about Applicant's mental health history because it did not come up, and Plea Counsel did not ask because there was no cause to ask him. (PCR Tr. p. 39). Plea Counsel testified he did not see any mental health concerns that would cause him to ask about Applicant's condition. (PCR Tr. p. 39).

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Findings

As an initial matter, this Court finds Plea Counsel's testimony *credible* and Applicant's testimony on this topic *not credible*. Applicant testified he did not recall his discussions with the plea court about mental health problems, despite seemingly being able to recall all his discussions with Plea Counsel and recalling how his anxiety and depression influenced those discussions. Applicant specifically informed the plea court that he had no treatment for any mental health problems.[3] Additionally, Applicant has failed to meet his burden to present evidence that he was incompetent at the time he entered his guilty plea. This Court finds from the record that Applicant understood the charges, the weight of the evidence, and the proceedings against him. There was no indication or evidence presented at the PCR evidentiary hearing to dispute Applicant was competent at the time of plea.

[3] Plea Tr. p. 4.

While the record reflects that Applicant has some mental health concerns, they do not rise to the level of incompetence. No evidence was presented that would have prompted counsel to seek a competency evaluation. Plea Counsel, newly appointed, *credibly* testified that he saw no cause for concern in terms of competency during his discussions with Applicant.

As such, this Court finds Applicant has failed in his burden of proving any deficiency or prejudice flowing from the deficiency. Notably, the record before this Court wholly refutes Applicant's allegation. Accordingly, this allegation is **DENIED** and **DISMISSED with PREJUDICE**.

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|CONCLUSION & SIGNATURE PAGE FOLLOWS|

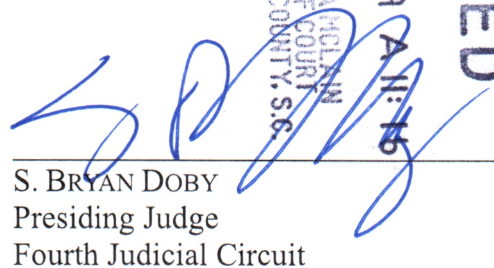
Conclusion

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be **DENIED** and **DISMISSED with PREJUDICE**.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf if the Applicant wishes to seek appellate review. Your attention is directed to South Carolina Appellate Court Rule 243 for the appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.



S. Bryan Doby
Presiding Judge
Fourth Judicial Circuit

Bishopville, South Carolina
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