

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Derrick L. Bennett, #365506,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE SEVENTH JUDICIAL CIRCUIT

) CASE NO. 2021-CP-42-03726

**ORDER OF DISMISSAL
WITH PREJUDICE**

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SPARTANBURG COUNTY

Presiding Judge: Hon. J. C. Maddox, Jr.
Applicant's Attorney: Rodney W. Richey, Esq.
Respondent's Attorney: Jordan Brett Killough, Esq.
Plea Counsel: Elizabeth Jennings Byford, Esq.
Date of Hearing: November 18, 2025
Court Reporter: Lora L. McDaniel

This matter comes before the Court by way of Derrick L. Bennett's (Applicant) application for post-conviction relief (PCR) filed on November 1, 2021. Respondent, the State of South Carolina, filed its Return and Motion to Dismiss on January 19, 2022, and its Amended Return on March 11, 2025.¹ On November 14, 2025, Applicant, through counsel, made additional allegations in his amended PCR application.

On November 18, 2025, an evidentiary hearing was held at the Spartanburg County Courthouse before the Honorable J. C. Maddox, Jr. Assistant Attorney General Jordan Brett Killough represented Respondent. Applicant was present and represented by Rodney W. Richey, Esquire. At the hearing, Applicant proceeded on the claims in his PCR application and his

¹ Initially, Respondent filed a Return and Motion to Dismiss because Applicant's application was filed after the statutory filing period ended, but it was later determined that Applicant had mailed his application within the statutory filing period.

amended application. In support of these claims, Applicant testified on his own behalf and presented testimony from Elizabeth Jennings Byford, Esquire.

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

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment from the Spartanburg County Clerk of Court. During its January 2018 term, the Spartanburg County Grand Jury indicted Applicant for Weapons/Unlawful Carrying of Pistol (2017-GS-42-03201). In May 2018, the Spartanburg County Grand Jury indicted Applicant for murder (count one) and possession of a weapon during a violent crime (count two) (2018-GS-42-02207), and armed robbery (count one) and possession of a firearm during the commission of a violent crime (count two) (2018-GS-42-02208). Elizabeth Jennings Byford, Esquire, represented Applicant. Deputy Solicitor Derrick Balsa (D.S. Balsa) prosecuted the case.

On October 26–27, 2020, Applicant pled guilty to murder, armed robbery, and one weapons possession count before the Honorable J. Derham Cole, circuit court judge. Judge Cole sentenced Applicant to thirty-five (35) years' imprisonment for murder, thirty (30) years' imprisonment for armed robbery, and five (5) years' imprisonment for possession of a weapon during the commission of a violent crime, to run concurrently and with credit for time served.

Applicant did not appeal his conviction or sentence.

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FACTS GIVING RISE TO THE CONVICTION

The facts are taken from the guilty plea transcript as articulated by the State:

D.S. BULSA: Thank you, Your Honor. This dates back to November 27th of 2018. Excuse me. Actually 2017. It happened at 217 Fisher Avenue in the city limits of Spartanburg. That's the Pineview Hills community. Police were called to that location. That's a vacant house. When they got there they found a deceased black male named [Victim] lying in the hallway. He had been shot multiple times, once in the head and several times in the torso and in the leg. I think there were three -- there were four wounds, and three actual bullets struck him. They found five shell casings at the scene. They all came back to a 45 caliber type weapon. In beginning their investigation they learned of a young lady contacting the police from the Jonesville area. Her family came in telling them that she was in trouble. She was trying to get away from [Applicant]. Her name is Regina Foster. And we're connecting Ms. Foster with some conversations from [Victim]'s phone. They learned that Ms. Foster essentially was asked to invite [Victim] to this vacant house for the purpose of buying some marijuana. Ms. Foster went along with the plan. She did know that it was going to be an armed robbery. She went with [Applicant], as well as codefendant Jacory Foster. This was around 6:00 o'clock in the evening. The three of them were waiting inside the house for [Victim] to arrive. He actually arrived and they had given him the wrong address. They'd given him 215. They saw that he was going to the wrong house and they alerted him that he needed to come one house up. Ms. Foster actually opened the door and let him, let [Victim], in the house. And she went and hid in the bathroom. From then on we were kind of piecing it together based on what Ms. Foster could tell from her vantage point. But what we do know is the house was vacant. It had numerous debris strewn throughout every room. Something happened in the hallway because that's where the victim was shot and basically fell and died. Ms. Foster tells us that the defendant, [Applicant], was in the first bedroom as you come down the hall on the left and that Mr. Foster, Jacory Foster, was down in the bedroom at the end of the hall basically facing the hallway. Ms. Foster believes that Jacory Foster is the one that actually fired the weapon that killed [Victim]. However, it was learned that both men had firearms. [Applicant] himself when they arrested him in Union -- he actually gave a couple of statements. First

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statement, he invited law enforcement to Union to talk to him because he was trying to convince them that he wasn't involved and he had information that would help lead to the identity of the killer. He tried to tell them about the disposition of some one of the weapons -- one of the weapons and some clothing. The police actually took that information and tried to find what he was telling them. They did find a burn pile with some clothing, but they did not find any firearms. When they interviewed -- when the police interviewed Ms. Foster they got the bigger picture and they realized that [Applicant] himself was involved. Investigators went to question him about the actual murder. He initially denied involvement. Throughout a one-and-a-half-hour interview he gradually told a little bit more as the police kept pressing him, kept telling him he was going to be real with them, this is what happened. I've redacted portions of that video that I was going to introduce in court. It's basically boiled it down to about a 27-minute compilation of his stories. I counted them. He started about six times and added a little bit more each time. And it did admit to there being weapons involved. He -- he named three different types of weapons -- a .23, a baby nine and a .45. And I believe if my recollection -- it's not clear actually who held what gun at what time, but I think he does finally wind up saying that Mr. Jackie -- excuse me -- that Mr. Jacory Foster had the .45, which is consistent with what Ms. Foster thought was the weapon used to kill [Victim]. The police did not find the weapon that was to be disposed of. They were told that it was in a drain in the Duncan Park area. They could not find it. They went to the drain they thought it was in. It was gone. The police believe that there might have been somebody else that went back and took that gun away before the police got there. But [Applicant] eventually admitted that he was involved. He was involved in the setting it up, and it was only supposed to be a robbery. He admits that money was taken, around \$3,000. He said that a weapon also was taken off of [Victim], and that weapon was the weapon that he himself kept, and he was caught in Union County, Jonesville, with that weapon. We would have introduced that in trial as well. So he reaped benefits from the crime. Your Honor, he's the one that fled. He took Ms. Foster with him. They went to Jonesville to, we believe, elude the police. Regina's Foster's sister is Reyna Jefferies. Ms. Jefferies went to Jonesville also with [Applicant]. Ms. Jefferies was charged with accessory after the fact because she also is the one that helped dispose of some of the

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evidence. If we were to call witnesses to show his demeanor and actions after the crime, to show how he remained with Ms. Foster and they fled to Pineview, Ellen C. Watson area together, spent the night together, and then they separated the next morning. They split up the monies and he took the weapon. So he was clearly involved in this case. We believe he was actually the instigator because he knew [Victim]. Jacory Foster was only known to [Applicant] for a few months, we're told. Mr. Foster was a little bit older. We believe [Applicant] is the one that recruited Ms. Foster to participate in this -- in this scheme. Ms. Foster tells us she was buying marijuana from [Victim] on a regular basis. [Applicant], in fact, in his interview said that he bought some marijuana from [Victim] just earlier that day. Mr. Foster or Jacory Foster just lost his job and said he wanted to do a lick. [Applicant], we believe, is the one that chose the victim. There wasn't supposed to be a murder. We believe that. It was supposed to be a setup for a robbery, but what most likely happened -- and [Applicant] alludes to that in his interview -- is that [Victim], realizing something was up when he couldn't find Mr. Foster when he went into the house -- he was calling her name. The house was pretty dark. There was only a single light in the kitchen area. But he probably was drawing his own weapon and that caused the reaction of gunshots and that cost [Victim] his life. So a fairly simple plan that went awry. Most drug dealers carry weapons, and we submit that [Applicant] knew that and armed himself, as well as his codefendant. And I don't want -- the judge doesn't have to listen to this, but we would like to introduce the statement into the record, especially based on [Applicant] claiming that one of his defenses would be that he didn't do it. He clearly admitted to doing it in his interview. I would like that made part of the record.

(D.V.D. marked State's Exhibit No. 1.)

THE COURT: Tell me, if you will -- just summarize it. What is it that [Applicant] did admit to that's reflected on that that you just introduced?

D.S. BULSA: Yes, sir, Your Honor. He admits to being with Jacory Foster, going to Pineview Hills to Fisher Avenue. Jacory Foster has relatives that actually lived in that neighborhood. So we believe Jacory Foster actually told of the location and [Applicant] said let's get [Victim]. He talks about the purchase of marijuana earlier that day. He talks about a third person being involved, third male being involved, and himself giving that third person a weapon. But then says, no, I -- I finally admit that he did go in the house. So in

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summary, Your Honor, after the sixth time he admits going in the house and participating in the supposed robbery, that when the victim drew his gun he says that he had his gun out and was going to put it up to his head basically to stop him from doing anything and Mr. Foster comes out of the side bedroom and starts firing several times hitting [Victim]. He then fled with Mr. Jacory Foster from the scene. They actually left the female, Regina Foster, in the -- in the house. They had to go back and pick her up. He admits -- I think he admitted in the statement going to Union but he does -- he did admit that the weapon he was caught in Union -- Jonesville area -- was the weapon that was taken from [Victim]. He also admits that \$3,000 was taken from [Victim]. So he readily admitted to the -- to the robbery and the -- the theft of money and guns. He admits to being armed when shots were fired that led to the death of [Victim].

(Plea Tr. pp. 29–36).

CURRENT ACTION BEFORE THIS COURT

In his application for post-conviction relief, Applicant alleged he was being held in custody unlawfully for the following reasons (excerpts verbatim):

1. Ineffective assistance of counsel:
 - a. "My lawyer lied when I asked was there evidence on me it was only hearsay, she say. The Court violated my 6th amendment."
2. Involuntary Guilty Plea
 - a. "My guilty plea was not entered into knowingly due to this court violating the terms of the 'cap' sentence of (30) years."

On November 14, 2025, Applicant, through PCR Counsel, amended his application for post-conviction relief to include the following allegations:

1. Ineffective Assistance of Counsel:
 - b. "Counsel was ineffective for not communicating with Applicant prior to his guilty plea."
 - c. "Counsel was ineffective for failing to investigate possible defenses prior to having Applicant's guilty plea."
 - d. "Counsel was ineffective for not counseling Applicant about the defense of merely being present at the crime scene."
 - e. "Counsel was ineffective for not counseling the Applicant about the defense of self-defense."

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Before this Court is the Spartanburg County Clerk of Court records regarding the subject convictions and sentences, Applicant's records from the South Carolina Department of Corrections, Applicant's guilty plea transcript, and the records of the current PCR action.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act² (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;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

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

² S.C. Code Ann. §§ 17-27-10 to -160.

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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 to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. Strickland v. Washington, 466 U.S. 668 at 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687–88; Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[without 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)).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart, 474 U.S. 52 (1985), extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel. See Padilla v. Kentucky, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). The analysis of counsel's performance under the first prong of Strickland remains unchanged, the applicant must show that counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59; accord Thompson v. State, 340 S.C. 112, 115, 533 S.E.2d 294, 296 (2000).

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An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the range of competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56. 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, 367 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999) (emphasis added).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel and a claim of involuntary guilty plea 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.

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

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

INITIAL FINDINGS

This Court further finds applicable the strong presumption that at all stages of Plea Counsel's representation of Applicant, she 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). See, e.g., State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) ("In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment."); Clemons v. Mississippi, 494 U.S. 738, 766³ (1990) (Blackmun, J., concurring in part and dissenting in part) ("The trial judge who hears the witnesses live, observes their demeanor and in general smells the smoke of the battle is by his very position

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far better equipped to make findings of fact which will have the reliability that we need and desire.").

This Court makes the following findings from the record: 1. Applicant indicated that he had plenty of time to discuss his case with Plea Counsel (Plea Tr. p. 6); 2. Applicant understood that by pleading guilty, he was giving up his right to assert any defense that he might have (Plea Tr. p. 14); 3. Applicant indicated that it was his decision to plead guilty (Plea Tr. pp. 15–16); 4. Applicant understood his right to remain silent, his right to confront and examine each witness, and his right to a jury trial; and Applicant indicated that he wished to give up those rights in order to plead guilty (Plea Tr. pp. 17–20); 5. Applicant indicated that no one told him or offered him advice as to whether he would be eligible for any type of parole or early release (Plea Tr. p. 20); 6. Applicant understood the potential sentences his charges carried (Plea Tr. p. 21); 7. Applicant understood that he could not rely upon any representation about parole eligibility or what the possibilities are in making his decision to plead guilty and that for murder he would have to serve his sentence day for day (Plea Tr. pp. 22–23); 8. Applicant understood the classifications of his charges and the consequences of those classifications (Plea Tr. p. 23); 9. Applicant indicated that he had never been treated for any type of substance abuse or addiction and that he had never suffered from any type of addiction (Plea Tr. pp. 27, 29); 10. Applicant indicated that he had been evaluated for depression and that he was taking medication to treat it (Plea Tr. pp. 26–27); 11. Applicant indicated that he understood all of his conversations with Plea Counsel (Plea Tr. p. 28); 12. Applicant indicated that he understood all of the questions that the plea court asked him and that he understood fully what he was doing (Plea Tr. pp. 28–29); 13. Applicant indicated that no one led him to believe what kind of sentence he would receive if he pled guilty (Plea Tr. p. 20); 14. Applicant indicated that nobody promised or offered him anything that resulted in his decision

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to plead guilty (Plea Tr. p. 20); 15. Applicant indicated that no one forced or coerced him into pleading guilty, that no one threatened him in any fashion, and that no one put any kind of pressure on him that caused him to make his decision to plead guilty that he otherwise would not have made (Plea Tr. p. 24); 16. Applicant indicated that he was pleading guilty freely and voluntarily (Plea Tr. p. 24); 17. Applicant indicated that he made the decision to plead guilty and that he was satisfied with it (Plea Tr. p. 24); 18. Applicant's guilty plea was accepted by the plea court (Plea Tr. p. 40).

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS

- Allegation 1a: Failure to Correctly Advise Applicant of the State's Evidence.**
- Allegation 1b: Failure to Communicate with Applicant Prior to His Guilty Plea.**

Applicant alleges Plea Counsel was constitutionally ineffective for failing to correctly advise him of the State's evidence and for failing to communicate with him prior to his guilty plea. Specifically, Applicant avers that Plea Counsel did not go over all of the witnesses with him. This Court finds this allegation is without merit.

Federal case law holds that there is no constitutional minimum number of meetings between attorneys and their clients to satisfy competency. Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) (no constitutional minimum number of meetings to satisfy competency); United States v. Olson, 846 F.2d 1103, 1108 (7th Cir. 1988) (reciting that there is no constitutional minimum number of meetings between attorney and client and observing that an experienced attorney may get more out of a single meeting than a neophyte). "Brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980) (holding it is not enough to merely show that counsel only met with his client twice before trial as long as counsel devoted sufficient time to ensure an adequate defense

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and to become thoroughly familiar with the facts of the case and the law applicable to the case, and holding the record revealed that counsel was so prepared).

South Carolina case law has established that even if Trial Counsel only met with his client very briefly, that alone does not establish that he was unprepared or ineffective at trial. See Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing Easter) ("First, there is no question that counsel met with [Applicant] on several occasions prior to the first trial. Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation."). An applicant must present evidence to show how additional time spent in consultation would have resulted in a different outcome; mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Smith v. State, 404 S.C. 493, 500–01, 745 S.E.2d 378, 382 (Ct. App. 2012) (citing Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998); Skeen v. State, 325 S.C. 210, 214–15, 481 S.E.2d 129, 132 (1997)).

Guilty Plea Hearing

At the guilty plea hearing, the following colloquies occurred between the plea court and Applicant:

THE COURT: So my question, again, you've told me that [Plea Counsel] went over the indictments and explained to you the charges.

APPLICANT: Yes, sir.

THE COURT: So you know what the state claims that you did.

APPLICANT: Yes, sir.

THE COURT: Did she also share with you the evidence that the state has provided to her that they would offer at the trial in order to prove you guilty?

APPLICANT: No, sir.

THE COURT: You and [Plea Counsel] didn't talk about the evidence in the case?

APPLICANT: We did but she didn't -- she didn't show me, like, what's going on, what evidence they got on me. She just told me the evidence they got on me is hearsay.

THE COURT: Well, I mean, she might not have shown you the actual item to be introduced, but what I'm saying is she -- did she discuss

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with you what the state intends to introduce at the trial which would tend to prove you guilty of these crimes?

APPLICANT: Yes, sir.

THE COURT: And did she also tell you what witnesses the state would call?

APPLICANT: No.

THE COURT: She didn't tell you what witnesses the state has that they would call to trial to testify?

APPLICANT: No, sir.

THE COURT: Okay. Well, do you know who they are?

APPLICANT: No, sir.

THE COURT: You don't know? So you and [Plea Counsel] -- at least your recollection is y'all have not talked about the state's witnesses. In other words, who would be presenting evidence against you.

APPLICANT: No.

THE COURT: And you don't know who they are.

APPLICANT: No, sir.

THE COURT: All right. Well, y'all take a few minutes and talk about it.

(Pause.)

THE COURT: That didn't take very long. Did she -- did she -- I guess you could say, did she say something that caused your memory to come back?

APPLICANT: Yes, sir.

THE COURT: Okay. So you do know who the witnesses are --

APPLICANT: Yes, sir.

THE COURT: -- who would testify on behalf of the state?

APPLICANT: Yes, sir.

THE COURT: And do you know what they would say when they testified?

APPLICANT: Yes, sir.

THE COURT: And did you tell [Plea Counsel] while y'all were discussing that, did you tell her what you know about these allegations?

APPLICANT: Yes, sir.

THE COURT: And after y'all discussed it did you and she talk about potential or possible defenses that you might have if your case went to trial?

APPLICANT: Yes, sir.

....

THE COURT: So did you and [Plea Counsel] discuss potential defenses in your case?

APPLICANT: Yes, sir.

(Plea Tr. pp. 8-10, 12).

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PCR Evidentiary Hearing

On direct examination, Plea Counsel testified that she spent enough time in Applicant's case communicating with him and helping him understand the case. (PCR Tr. p. 8). Plea Counsel testified that she talked with Applicant about any defenses he would have. (PCR Tr. p. 5). Plea Counsel testified that she talked about the defense of self-defense with Applicant "extensively." (PCR Tr. p. 8). Plea Counsel also testified to discussing other aspects of Applicant's case: Plea Counsel talked with Applicant about Applicant's video-recorded statement to police wherein he admitted to setting up the robbery, about there being "numerous witnesses" who were going to testify that Applicant was the one who planned and set up the robbery, and about there being one witness who was going to testify that Applicant was the one calling the shots that night as they drove to the crime scene. (PCR Tr. p. 6).

Plea Counsel testified that she and Applicant were in a "very unique position" in Applicant's case: Plea Counsel was appointed before Applicant's co-defendant, Jacory Foster (Foster), was tried; because she was a new lawyer, Plea Counsel was given a continuance on Applicant's case, and the State proceeded with trying Foster's case. (PCR Tr. pp. 8-9). Plea Counsel testified that, because of this unique position, she and Applicant had a preview of how the State was going to try Applicant, and she was able to attend Foster's trial and watch the lay witnesses testify. (PCR Tr. p. 9). Plea Counsel testified that Applicant was "very involved" in reviewing the evidence: Plea Counsel and Applicant read through Foster's transcript together and reviewed her notes about the witnesses' demeanors, they watched all of the lay witnesses' videotaped statements at the Spartanburg County Detention Center, and Applicant added information as to what he believed would rattle the witnesses. (PCR Tr. p. 9). Plea Counsel

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testified that she and Applicant probably spent fifteen to eighteen hours reviewing the evidence and planning trial strategy together. (PCR Tr. p. 9).

On cross-examination, Plea Counsel testified that she had practiced law for twenty-four years, almost all of which was in criminal law. (PCR Tr. p. 11). Plea Counsel testified that, in the course of her representation, she filed requests for discovery pursuant to Rule 5 and Brady³ and that the State provided materials in response to her request, which she reviewed. (PCR Tr. pp. 12–13). When asked to provide a brief overview of the State's evidence in Applicant's case, Plea Counsel testified to the following, which she described as "the majority of the evidence in the case": There were several lay witnesses who were going to testify as to the facts of the case; there was Applicant's statement that she believed was going to be admissible and going to come in, which she discussed "extensively" with Applicant; there was physical evidence; and there was a murder weapon that the State never located. (PCR Tr. p. 13). Plea Counsel testified that "[i]t was all going to come down to basically lay witness statements." (PCR Tr. p. 13).

When questioned on how many times she met with Applicant, Plea Counsel testified as to numerous dates on which she met with Applicant: Plea Counsel was appointed on July 16, 2019; Plea Counsel believed that she first met with Applicant on August 12, 2019; Plea Counsel met with Applicant again on September 10, 2019, September 19, 2019, October 17, 2019, October 24, 2019, November 5, 2019, and November 20, 2019; Plea Counsel and Applicant were waiting for the transcript from Foster's trial and met again on February 26, 2020; Plea Counsel met with Applicant on March 12, 2020; Plea Counsel spoke with Applicant over the phone "a couple of times" after COVID occurred when she could not go to the jail to meet with Applicant in person; Plea Counsel met with Applicant via video on August 20, 2020, during the bond hearing, that they

³ Brady v. Maryland, 373 U.S. 83 (1963).

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requested and that was held on video because court shut down and because it was not known when trials would start again; Plea Counsel met with Applicant sometime around the end of August and beginning of September in 2020, October 14, 2020, October 19, 2020, and October 23, 2020; Plea Counsel and Applicant selected the jury on October 26, 2020; and Applicant was sentenced on October 27, 2020. (PCR Tr. pp. 13–14).

Plea Counsel testified that Applicant's case was a murder case and that the average amount of time she would spend speaking with a client in such a case would be higher. (PCR Tr. p. 14). Plea Counsel testified that Applicant's case was the "high end of that average" in terms of time spent speaking with clients because they had the transcript of the testimony and every witness had a video tape that was at least forty-five minutes in length that she and Applicant watched together. (PCR Tr. p. 14). Plea Counsel testified that the discovery in Applicant's case was "voluminous" and that she and Applicant spent a "very long time" reviewing discovery compared to most cases. (PCR Tr. p. 14). Plea Counsel testified that murder cases take a long time and that Applicant's case was "definitely on the high end even for a murder case." (PCR Tr. pp. 14–15). Plea Counsel testified that she spoke for so long with Applicant about trial strategy and defenses because (1) the discovery was voluminous and (2) it was "very important to [Applicant] to be very involved in the strategy of the trial." (PCR Tr. p. 15). Plea Counsel testified that Applicant took a more active role than some clients, which was "really important" as she and Applicant were preparing for trial. (PCR Tr. p. 15). Plea Counsel testified that Applicant knew the witnesses personally and that she would ask Applicant to tell her about their personalities and how he thought that they would react on cross-examination. (PCR Tr. p. 15). Plea Counsel testified that she and Applicant spent a long time on trial strategy and that after the last time Applicant decided not to plead guilty, they were

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preparing for trial. (PCR Tr. p. 15). Plea Counsel testified that she stood by her representation of Applicant. (PCR Tr. pp. 16–17).

On direct examination, Applicant testified that his lawyer was changed five times during the three years of his case. (PCR Tr. p. 19). Applicant testified that Plea Counsel did not meet with him more than over an hour. (PCR Tr. pp. 18–19). Applicant testified that Plea Counsel's testimony of the number of meetings she had with Applicant was not accurate and that the actual number was less than that. (PCR Tr. p. 19). Applicant testified that he saw Plea Counsel at least three times and that the most time that he saw Plea Counsel for was a week before Foster's trial. (PCR Tr. p. 19). Applicant testified that when he talked with Plea Counsel, they talked about his case, including the defense and how Plea Counsel could help him beat his charges. (PCR Tr. p. 19). Applicant testified that Plea Counsel did not go over all the witnesses with him. (PCR Tr. p. 24). Applicant testified that Plea Counsel reviewed the video with him, but she did not meet with him all the times that she listed during her testimony at the evidentiary hearing. (PCR Tr. pp. 24–25). Applicant testified that he barely got to see Plea Counsel and that he only met with her at least four times before going it was time for trial, which was half of the meetings to which Plea Counsel testified. (PCR Tr. p. 25). Applicant testified that when Plea Counsel met with him, she showed him the video. (PCR Tr. p. 25). When questioned whether Plea Counsel's purpose in meeting with him was either to talk with him about the case or show him the video, Applicant testified that her purpose was to show him the video. (PCR Tr. p. 25). Applicant testified that he was not involved in assessing the witnesses with Plea Counsel. (PCR Tr. pp. 25–26). Applicant testified that Plea Counsel's testimony that Applicant was actively involved in preparing his case with her was false and that he did not do anything that she testified that he did. (PCR Tr. p. 26). Applicant testified that Plea Counsel could have done more to help him by going over his evidence.

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(PCR Tr. p. 24). Applicant testified that he believed that he was entitled to a new trial because she did not communicate with Applicant at all. (PCR Tr. p. 26).

When questioned why he did not take his case to trial, Applicant testified that it was because Plea Counsel told him that he had another case pending and that "they was looking at me." (PCR Tr. p. 23). Applicant testified that the other case was not dismissed and was never brought up again. (PCR Tr. p. 23). Applicant testified that his plea was in exchange for that case never being brought up again. (PCR Tr. p. 23). Applicant testified that he was aware that Foster went to trial and received life imprisonment, which made Applicant not want to risk going to trial and receiving a life sentence. (PCR Tr. p. 24).

On cross-examination, Applicant testified that had Plea Counsel gone over the evidence with him more, then he would have gone to trial and would have gone "all the way." (PCR Tr. p. 29).

When questioned various times on whether he recalled his answers and Plea Counsel's statements to the plea court, Applicant mostly testified that he did not recall. (PCR Tr. pp. 27–34). In response to this Court's *sua sponte* questioning, Applicant testified that he had a chance to look at his guilty plea transcript and that he thought the transcript was "way incorrect." (PCR Tr. pp. 34–35).

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland). Plea Counsel **credibly** testified that she talked with Applicant about his case, which included defenses, Applicant's video-recorded statement to police, Foster's trial transcript

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and numerous witnesses and their testimonies. Contrary to Applicant's testimony about his few brief meetings with Plea Counsel, Plea Counsel credibly testified that she had over a dozen meetings with Applicant, that Applicant was "very involved" in his case, that Applicant reviewed the "voluminous" evidence with her, and that they spent around fifteen to eighteen hours together reviewing and planning trial strategy. Plea Counsel credibly testified that she and Applicant spent a "very long time" reviewing the discovery compared to most cases and that the amount of time she spent with Applicant was more than she would usually spend on a murder case because of the materials available to them.

Contrary to Applicant's testimony that Plea Counsel did not go over all the witnesses with him, Plea Counsel credibly testified that she discussed the witnesses, their testimonies, and their statements with Applicant, who was involved in trial strategy concerning those witnesses. Furthermore, after a brief exchange with Plea Counsel at the guilty plea hearing, Applicant indicated to the plea court that he did in fact know who the witnesses were who would testify against him and what they would testify to.

This Court finds that Plea Counsel did review the State's evidence with Applicant and was not deficient in the amount of time spent with Applicant discussing his case and the evidence. Additionally, this Court finds that Plea Counsel did go over the witnesses and their testimonies with Applicant and that Applicant was involved in that review. Therefore, this Court finds that Plea Counsel was not deficient for the time spent in consultation, for her communications with Applicant, and for her advisement of the State's evidence.

Furthermore, Applicant failed to state specifically how further time spent in consultation could have affected the outcome of his case. This Court does not find credible Applicant's testimony that he would not have pled had Plea Counsel gone over the evidence more.

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Counsel's credible testimony reveals that she did go over the evidence with Applicant in depth during multiple meetings that lasted many hours in total. Notably, this Court finds that Applicant's reason for pleading guilty instead of going to trial stemmed from the benefit of having pending charges dropped by him pleading and from Applicant not wanting to risk receiving a life sentence after learning that Foster received one at trial. This Court finds that no prejudice resulted from any alleged deficiency.

This Court finds through the combination of the record, and Plea Counsel's credible testimony that Applicant has failed to meet the burden of showing Plea Counsel was constitutionally ineffective. 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**.

- Allegation 1c: Failure to Investigate Possible Defenses Prior to Applicant's Guilty Plea.**
- Allegation 1d: Failure to Counsel Applicant on the Defense of Merely Being Present at the Crime Scene.**
- Allegation 1e: Failure to Counsel Applicant on the Defense of Self-Defense.**

Applicant alleges Plea Counsel was constitutionally ineffective for failing to investigate and counsel Applicant on possible defenses. Specifically, Applicant avers that Plea Counsel failed to counsel Applicant on the defense of merely being present at the crime scene and the defense of self-defense. This Court finds this allegation is without merit.

"[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 690–91. "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular

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investigations unnecessary." Id. at 691. "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Id. "The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Id. "Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant." Id. "In particular, what investigation decisions are reasonable depends critically on such information." Id.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Guilty Plea Hearing

At the guilty plea hearing, the following colloquy occurred between the plea court and

Applicant:

THE COURT: And did you and [Plea Counsel] discuss whether or not you have any defenses to any of these charges?
APPLICANT: Yes, sir.
THE COURT: And are you aware of any defense that you have?

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APPLICANT: Yes, sir.

THE COURT:
And did you tell [Plea Counsel] while y'all were discussing that, did you tell her what you know about these allegations?

APPLICANT: Yes, sir.

THE COURT: And after y'all discussed it did you and she talk about potential or possible defenses that you might have if your case went to trial?

APPLICANT: Yes, sir.

THE COURT: Do you know what a defense is?

APPLICANT: It's like -- no. I really don't know, sir.

THE COURT: All right. Well, a defense is some reason, whether it be based on the facts or whether it be based on the law or whether it be based on both, but a defense would be some reason why you should not actually be convicted or found guilty of a crime for which you stand charged. In other words, for instance, you're charged with murder and armed robbery and possession of a handgun during each. You could be guilty of murder; you could be guilty of armed robbery but you didn't actually have a handgun, and so you couldn't be guilty of possessing a handgun because you didn't have one. So that would be a defense to the charge of possession of a handgun during the commission of a violent crime.

APPLICANT: Yes, sir.

THE COURT: Because, you know, you could be convicted of murder and/or armed robbery if you act with others even though you don't actually have a weapon. Do you see?

APPLICANT: Yes, sir.

THE COURT: All right. So those are defenses. Another defense might be that on November the 27th of 2017 when these crimes are alleged to have been committed here in Spartanburg County that you could show that you were in a federal penitentiary in Kingstree, South Carolina, and therefore you couldn't possibly have committed these crimes because you weren't even here when they claim they happened. That would be the defense of alibi.

APPLICANT: Yes, sir.

THE COURT: So a defense is some reason why you should not be convicted, you should not be found guilty.

APPLICANT: Yes, sir.

THE COURT: So did you and [Plea Counsel] discuss potential defenses in your case?

APPLICANT: Yes, sir.

THE COURT: And are you aware of any potential defense that you might have if your case did go to trial?

APPLICANT: Yes, sir.

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THE COURT: And what defense do you have if your case went to trial?
APPLICANT: My strategy was going, proving that -- proving that the witness is telling a lie and that she keeps changing up her story.
THE COURT: All right. So your strategy would be to try to convince the jury that those people claiming you committed the crime are lying about it?
APPLICANT: Yes, sir.

(Plea Tr. pp. 7, 10-12).

The following colloquy also occurred between the plea court and Applicant:

THE COURT: Okay. Tell me right now what it is that you admit to having done.
APPLICANT: Armed robbery.
THE COURT: Armed robbery.
APPLICANT: Yes, sir.
THE COURT: All right. So you admit to having committed the armed robbery --
APPLICANT: Yes, sir.
THE COURT: All right. So you admit to having committed the armed robbery --
APPLICANT: Yes, sir.
THE COURT: -- or participating in an armed robbery.
APPLICANT: Yes, sir.
THE COURT: And you admit to possessing a gun during the commission of that armed robbery.
APPLICANT: Yes, sir.
THE COURT: And you admit to having taken money that belonged to [Victim] as a result of the robbery.
APPLICANT: Yes, sir.
THE COURT: You just deny that you actually fired the weapon that killed [Victim]?
APPLICANT: Yes, sir.
THE COURT: And you say [Foster] is the one that committed the act.
APPLICANT: Yes, sir.
THE COURT: And did [Plea Counsel] talk to you and explain to you and discuss with you the legal theory of accomplice liability --
APPLICANT: Yes, sir.
THE COURT: -- and how a person can be guilty of the crime of murder if committed perhaps during the course of an armed robbery even if they're not the one that pulled the trigger?
APPLICANT: Yes, sir.
THE COURT: So you understand how you can be guilty of murder during the commission of an armed robbery even though you didn't actually fire a weapon.

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APPLICANT: Yes, sir.

(Plea Tr. pp. 38–39).

PCR Evidentiary Hearing

On direct examination, Plea Counsel testified that the facts of this case involved a man being shot and killed in a vacant house during an alleged botched robbery. (PCR Tr. p. 5). Plea Counsel testified that there were two defendants in Applicant's case, with Foster being Applicant's co-defendant. (PCR Tr. p. 6). Plea Counsel testified that her and Applicant's position was that Foster was the shooter, which Foster disputed. (PCR Tr. p. 6). Plea Counsel testified that there was a third person, but that she did not remember what that person pled to. (PCR Tr. p. 6). Plea Counsel testified that there was a woman in the car with them who was present at the crime scene and that she was charged with murder but believed that she pled down to a different charge. (PCR Tr. pp. 6–7). Plea Counsel testified that she believed that the woman who was with Applicant at the crime scene was the one who suggested Victim. (PCR Tr. p. 7). Plea Counsel testified that her understanding of the facts based on what the evidence showed and "the way that this went down" was the following: Foster had financial troubles and asked Applicant if he could help him set up a robbery, and Applicant, according to the voluntary statement he gave to police, assisted in setting up the robbery. (PCR Tr. p. 7). Plea Counsel testified that she believed that the woman provided the name of Victim, who was someone whom the woman bought drugs from, which is why they believed Victim would have cash on him. (PCR Tr. p. 7).

Plea Counsel testified that Applicant indicated to her that he wanted a jury trial. (PCR Tr. p. 9). Plea Counsel testified that the argument that she and Applicant would have presented at trial was that Applicant was present at the crime scene and that Foster shot Victim. (PCR Tr. p. 7). Plea Counsel testified that both Applicant and Foster were armed and that the hardest obstacle to

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overcome would be Applicant's initial statement to police that he pulled his gun out at one point, which she discussed with Applicant. (PCR Tr. pp. 7–8).

Plea Counsel testified that she talked with Applicant about any defenses he would have. (PCR Tr. p. 5). Plea Counsel testified that she did not remember if she talked with Applicant about the defense of merely being present at the crime scene. (PCR Tr. pp. 5–6). Plea Counsel testified that she talked with Applicant about him having given a video-recorded statement to police wherein he admitted to setting up the robbery. (PCR Tr. p. 6). Plea Counsel testified that she also discussed with Applicant that there were "numerous witnesses" who were going to testify that Applicant was the one who planned and set up the robbery and that there was one witness who was going to testify that Applicant was the one calling the shots that night as they drove to the crime scene. (PCR Tr. p. 6). Plea Counsel testified that the evidence was "pretty stacked against" the defense of merely being present at the crime scene and that she did not discuss that defense at length because they would not be able to successfully present it. (PCR Tr. p. 6).

Plea Counsel testified that she talked with Applicant about the defense of self-defense "extensively" and that she explained to him the problem with that defense. (PCR Tr. p. 8). Plea Counsel testified that she told Applicant that she was "extremely worried" that for the defense of self-defense one must not be at fault in bringing on the difficulty. (PCR Tr. p. 8). Plea Counsel testified that the testimony that was going to come in at trial—that Applicant was the individual who set up the robbery—was "probably going to cut pretty hard against us in getting that charge before the jury." (PCR Tr. p. 8). Plea Counsel testified that she and Applicant were going to try to argue self-defense had they proceeded to trial and that she "certainly was happy to try and make the argument and try and argue that we have that charge presented to the jury." (PCR Tr. p. 8).

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On cross-examination, Plea Counsel testified that, in the course of her representation, she filed requests for discovery pursuant to Rule 5 and Brady and that the State provided materials in response to her request. (PCR Tr. p. 12). Plea Counsel testified that she reviewed what the State provided her. (PCR Tr. pp. 12–13). When asked to provide a brief overview of the State's evidence in Applicant's case, Plea Counsel testified to the following, which she described as "the majority of the evidence in the case": There were several lay witnesses who were going to testify as to the facts of the case; there was Applicant's statement that she believed was going to be admissible and going to come in, which she discussed "extensively" with Applicant; there was physical evidence; and there was a murder weapon that the State never located. (PCR Tr. p. 13). Plea Counsel testified that "[i]t was all going to come down to basically lay witness statements." (PCR Tr. p. 13).

Plea Counsel testified that she and Applicant spent a long time talking about the defense of self-defense and that they were "kind of falling at the first hurdle." (PCR Tr. p. 15). Plea Counsel testified that one of the tenets of self-defense is that one must not be at fault in bringing about the difficulty and that the State was going to have a "very strong argument" because a number of lay witnesses and Applicant's own statement acknowledged Applicant as being "heavily involved," if not the person who set up the robbery. (PCR TR. pp. 15–16). Plea Counsel testified that that was going to be difficult for her and Applicant to overcome and that they were going to try to do so; Plea Counsel testified that "sometimes you don't have a lot to work with, you have to try to do what you can." (PCR Tr. p. 16). Plea Counsel testified that she did not think that the defense of self-defense would have been successful at trial. (PCR Tr. p. 16).

Plea Counsel testified that a large part of the case was that Victim had gone to the house next door to the crime scene and had to be waved into the house where the crime occurred, which

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was a vacant house. (PCR Tr. p. 16). Plea Counsel testified that she did not remember how the defendants knew that the house was vacant, but the house was not Applicant's but was a vacant, empty house that did not have any furniture. (PCR Tr. p. 16). Plea Counsel testified that she stood by her representation of Applicant. (PCR Tr. pp. 16–17).

On direct examination, Applicant testified that there were three people supposedly involved in the crime—with the female accomplice being the one who set up the robbery—and that Applicant did not participate in setting it up. (PCR Tr. p. 20). Applicant testified that he was not involved in the setup of the crime but also testified that he gave a statement saying that he was involved. (PCR Tr. p. 20). When questioned on what happened once Applicant arrived at the house, Applicant testified as to his version of events: Applicant and the other two accomplices were supposed to buy marijuana from Victim; when Victim entered the house, the female accomplice ran into the bathroom and hid; Victim went back downstairs and called out Regina Foster's name several times but received no answer; Victim walked down the hallway a third time, which is when they heard the shot. (PCR Tr. p. 21). Applicant testified that he did not shoot anything the entire time. (PCR Tr. p. 21). Applicant testified that he was not there to rob Victim or anyone and was only there to buy marijuana, which he talked to Plea Counsel about. (PCR Tr. pp. 21–22). Applicant testified that Plea Counsel did not discuss with him any defenses based on Applicant not being at the crime scene to rob Victim. (PCR Tr. p. 21). Applicant testified that, when he told Plea Counsel his version of events that he testified to at the evidentiary hearing, Plea Counsel told him that the State had three or four witnesses or more who were going to testify against him. (PCR Tr. p. 21). Applicant testified that the witnesses' testimonies against him would be that he was the main perpetrator. (PCR Tr. p. 22). Applicant testified that the witnesses included two women, one of whom was his ex-girlfriend's sister who set up the robbery. (PCR Tr.

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p. 22). Applicant testified that Plea Counsel told him that he had no way of fighting or beating his charges and that he had no chance of winning. (PCR Tr. pp. 21–22). Applicant testified that, when he discussed with Plea Counsel the defense of merely being present at the crime scene, his position was that he was just there to buy marijuana and was not there to commit robbery. (PCR Tr. pp. 22–23). Applicant testified that Plea Counsel did not investigate his case at all and did not investigate him being present at the crime scene solely to buy marijuana and not to rob Victim. (PCR Tr. p. 26).

When questioned why he did not take his case to trial, Applicant testified that it was because Plea Counsel told him that he had another case pending and that "they was looking at me." (PCR Tr. p. 23). Applicant testified that the other case was not dismissed and was never brought up again. (PCR Tr. p. 23). Applicant testified that his plea was in exchange for that case never being brought up again. (PCR Tr. p. 23). Applicant testified that he was aware that Foster went to trial and received life imprisonment, which made Applicant not want to risk going to trial and receiving a life sentence. (PCR Tr. p. 24).

On cross-examination, when questioned what were all of the defenses that he thought Plea Counsel could have discovered by investigating possible defenses, Applicant testified to the following:

Evidence. Main exculpatory evidence at that. My rule. What else? I never really -- I never really got -- I never got fingerprinted. I never got GSR. None of that, sir, when I got locked up. I didn't get none of that, sir.

(PCR Tr. p. 31).

Applicant testified that if Plea Counsel had gone over all the defenses with him and Applicant learned that those defenses would not have been successful at trial, then Applicant would still have gone to trial instead of pleading. (PCR Tr. p. 29).

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When questioned various times on whether he recalled his answers and Plea Counsel's statements to the plea court, Applicant mostly testified that he did not recall. (PCR Tr. pp. 27–34). In response to this Court's *sua sponte* questioning, Applicant testified that he had a chance to look at his guilty plea transcript and that he thought the transcript was "way incorrect." (PCR Tr. pp. 34–35). When questioned by this Court about whether he informed the plea court that he admitted to having committed armed robbery, Applicant testified that he told the plea court that he admitted to having a gun and not to armed robbery. (PCR Tr. p. 35).

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland). Regarding Applicant's allegation that Plea Counsel failed to investigate possible defenses prior to Applicant's guilty plea, this Court finds that this allegation is without merit. Plea Counsel credibly testified that she talked with Applicant about any defenses he would have. Even though Applicant initially informed the plea court that he did not understand what a defense was, the plea court explained to him what a defense was and even provided examples. Furthermore, Applicant informed the plea court that he and Plea Counsel discussed potential defenses and that he was aware of any defense that he would have. Notably, Applicant specifically indicated to the plea court what his defense would be at trial.

Regarding Applicant's allegation that Plea Counsel did not counsel him on the defense of mere presence, this Court finds that this allegation is without merit. This Court is not persuaded by Applicant's testimony that Plea Counsel did not discuss any defenses based on him not being at the crime scene to rob Victim. Although Plea Counsel testified that she did not remember if she

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discussed with Applicant the defense of mere presence, Plea Counsel credibly testified that she did not discuss the defense at length because the evidence was stacked against it and that they would not have been able to successfully present the defense. Applicant even testified that he and Plea Counsel discussed him being merely present at the crime scene.

Although Applicant testified that he did not participate in setting up the robbery and was only present to buy marijuana, Plea Counsel credibly testified that she talked with Applicant about there being numerous witnesses ready to testify that Applicant was "calling the shots" that night and about a recorded statement he gave to police where he admitted setting up the robbery. As Plea Counsel credibly testified, Applicant and Foster were both armed, and Applicant admitted to law enforcement that he pulled his gun out at one point. Applicant even testified that when he told Plea Counsel his version of events, she told him that the State had three or four witnesses to testify that he was the main perpetrator. Furthermore, although Applicant denied firing the gun that killed Victim, Applicant admitted to the plea court that he had participated in the armed robbery, had possessed a gun during its commission, and had taken money that belonged to Victim as a result of that armed robbery. Furthermore, Applicant indicated to the plea court that he understood that accomplice liability could make him guilty of murder despite him not actually firing his gun during the commission of the armed robbery. Therefore, this Court finds that Plea Counsel was not deficient in advising Applicant on the defense of merely being present at the crime scene.

Regarding Applicant's allegation that Plea Counsel did not counsel him on the defense of self-defense, this Court finds that this allegation is without merit. Plea Counsel credibly testified that she discussed with Applicant the defense of self-defense "extensively." Plea Counsel credibly testified that the problem with this defense, which she discussed with Applicant, was the requirement of not being at fault in bringing about the difficulty. See State v. Bryant, 336 S.C.

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340, 344, 520 S.E.2d 319, 321 (1999) (asserting that an element of establishing self-defense is that "the defendant must be without fault in bringing on the difficulty"). Plea Counsel credibly testified that there would be testimony at trial that Applicant set up the robbery, which would "cut pretty hard against" a self-defense jury charge. Despite Applicant's testimony that he was not involved in setting up the robbery, the State, as noted *infra*, had several witnesses who would testify that Applicant was the main perpetrator. Plea Counsel credibly testified that she did not think that the defense would have been successful at trial; however, Plea Counsel credibly testified that she would have argued self-defense and tried to get that charge presented to the jury had the case gone to trial. Therefore, this Court finds that Plea Counsel was not deficient in advising Applicant on the defense of self-defense.

This Court finds that Plea Counsel was not deficient in discussing possible defenses with Applicant, including the defense of self-defense and mere presence.

As for the defenses that Applicant testified that Plea Counsel could have discovered—namely, exculpatory evidence and the lack of fingerprinting and GSR testing—Applicant has not demonstrated how further investigating this lack of evidence would have affected his decision to plead guilty. Additionally, had this case gone to trial, the State was planning to proceed on a theory of accomplice liability. Therefore, the lack of fingerprinting and GSR testing is not exonerating evidence which had Counsel further investigated and discussed with Applicant would have reasonably affected his decision to plead guilty, especially because Applicant himself indicated to the plea court that he understood that he could be found guilty despite not being the one who shot Victim. Therefore, this Court finds Applicant has failed to prove prejudice and that no prejudice resulted from any alleged deficiency.

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Additionally, this Court does not find credible Applicant's testimony that he would not have pled had Plea Counsel reviewed all of the defenses with him. As discussed *supra*, Applicant's reason for pleading guilty instead of going to trial stemmed from the benefit of having pending charges dropped by him pleading and from Applicant not wanting to risk receiving a life sentence after learning that Foster received one at trial. This Court finds that no prejudice resulted from any alleged deficiency.

This Court finds through the combination of the record, and Plea Counsel's **credible** testimony that Applicant has failed to meet the burden of showing Plea Counsel was constitutionally ineffective. 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**.

INVOLUNTARY GUILTY PLEA ALLEGATION

Allegation 2: Involuntary Guilty Plea
Allegation 2a: Applicant's Guilty Plea was not Knowingly Entered into Because the Plea Court Violated the Terms of the "Cap" Sentence of Thirty (30) Years.

Applicant alleges Plea Counsel was constitutionally ineffective and that his guilty plea was involuntary. Specifically, Applicant avers that the plea court violated the terms of the sentence cap of thirty years. This Court finds these allegations are without merit.

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

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

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

Guilty Plea Hearing

At the guilty plea hearing, the following colloquy occurred between the plea court and

Applicant:

THE COURT: And what defense do you have?
APPLICANT: I just want -- to be honest with you, I just want to take -- take the charge and plead guilty before I catch a life sentence at trial.

(Plea Tr. pp. 7-8, 15-16).

The following colloquy also occurred between the plea court and Applicant:

THE COURT: Have you ever been treated for any type of substance abuse or addiction?
APPLICANT: No, sir.

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THE COURT: Have you ever been treated for any type of mental illness or emotional disturbance?

APPLICANT: Yes, sir. I just got evaluated like six months ago.

THE COURT: What were you evaluated for?

APPLICANT: Depression.

THE COURT: And who -- who conducted the evaluation?

APPLICANT: Ms. Marget.

THE COURT: Where?

APPLICANT: At the Spartanburg County Jail.

THE COURT: Does she work at the Spartanburg Mental Health?

APPLICANT: Yes, sir.

THE COURT: And so what's your condition now?

APPLICANT: I'm good. I take my medicine now.

THE COURT: What are you taking?

APPLICANT: Zyprexa, and I forgot the other thing. It's a long name.

THE COURT: Is that medication for the purpose of treating depression?

APPLICANT: Yes, sir.

THE COURT: Is that all it treats?

APPLICANT: Yes, sir. And it help me sleep.

THE COURT: Okay. And does it also help you function and focus mentally better than you would without it?

APPLICANT: Yes, sir.

....

THE COURT: And you understand fully what you're doing now.

APPLICANT: Yes, sir.

THE COURT: Have you ever suffered from any type of an addiction?

APPLICANT: No, sir.

(PCR Tr. pp. 27-29).

The following colloquy also occurred between the plea court and Applicant:

THE COURT: Has anybody led you to believe what kind of sentence you would receive if you did plead guilty?

APPLICANT: No, sir.

....

THE COURT: And, in fact, were you told by [Plea Counsel] that as to the crime of murder whatever sentence you receive you have to do the entire sentence day for day?

APPLICANT: Yes, sir.

THE COURT: In other words, there's no parole; there's no credits. Whatever the number you receive is what you'll have to do.

APPLICANT: Yes, sir.

THE COURT: Thirty years means 30 years; life means until you're dead.

APPLICANT: Yes, sir.

THE COURT: Do you understand that?

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APPLICANT: Yes, sir.
THE COURT: All right. Now, and armed robbery, do you understand it carries up to 30?
APPLICANT: Yes, sir.
THE COURT: But it requires a mandatory minimum of ten.
APPLICANT: Yes, sir.
THE COURT: Okay. So you understand, or do you understand, that when you make a decision to plead guilty you have to make that decision with the understanding that whatever number of years *you might get* you have to do every single one of them?
APPLICANT: Yes, sir.

(Plea Tr. pp. 20–22) (emphasis added).

PCR Evidentiary Hearing

On direct examination, Plea Counsel testified that Applicant indicated to her that he wanted a jury trial. (PCR Tr. p. 9). Plea Counsel testified that what Applicant would most often say to her—which really stuck with her—was that he wanted somebody to fight for him, and Applicant kept asking her to fight for him; Plea Counsel testified that Applicant felt that nobody had ever fought for him. (PCR Tr. p. 9). Plea Counsel testified that she did not remember the exact time that she and Applicant received the plea offer of thirty years but that it may have been on the table when she began representing Applicant. (PCR Tr. p. 9). Plea Counsel testified that after Foster went to trial and received a life sentence, Applicant became "very nervous" about the possibility of a life sentence if he went to trial and was convicted. (PCR Tr. pp. 9–10). Plea Counsel testified that the plea process in Applicant's case had been a "back-and-forth situation": After Foster was sentenced, Applicant would go back and forth on whether he wanted to go to trial or take the plea deal. (PCR Tr. p. 10). Plea Counsel testified that she believed that prior to Applicant's guilty plea, which was right after jury qualifications, she and Applicant had tried to plead guilty before Judge Cole twice, but Applicant decided not to both times. (PCR Tr. p. 10).

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When questioned whether she recalled a cap of thirty years in Applicant's case, Plea Counsel testified as to the following:

That was the offer prior to -- and I don't remember the exact date. We had -- it was basically our last chance to plea guilty before it was going to be scheduled for the trial docket. And we -- the last time he stood down, I actually had him sign a document that I believe the Attorney General has saying that, basically, that he was refusing the plea offer of 30 years, that we would proceed to trial and he could be sentenced anywhere from 30 to life or something to that effect. After that date, then we were on the trial docket. And he was well aware that, basically, the plea offer had ended, had evaporated, I would say.

(PCR Tr. p. 10).

When questioned whether the possibility of a life sentence induced Applicant to plead, Plea Counsel testified that Foster had gone to trial and received a life sentence and that she was sure that the possibility of a life sentence weighed on Applicant's mind. (PCR Tr. pp. 10–11). Plea Counsel testified that she could not say that Applicant did not think about a life sentence after seeing Foster receive one. (PCR Tr. p. 11). Plea Counsel testified that she "certainly" did not tell Applicant that he would receive a life sentence if he pled guilty or did not plead guilty. (PCR Tr. p. 11).

On cross-examination, Plea Counsel testified that she recognized the plea offer refusal as well as Applicant's signature on the document in which Applicant stated that he was giving up the plea deal. (PCR Tr. pp. 11–12; Resp. Exh. 1). Plea Counsel testified that she stood by her representation of Applicant. (PCR Tr. pp. 16–17).

On direct examination, when questioned why he did not take his case to trial, Applicant testified that it was because Plea Counsel told him that he had another case pending and that "they was looking at me." (PCR Tr. p. 23). Applicant testified that the other case was not dismissed and was never brought up again. (PCR Tr. p. 23). Applicant testified that his plea was in exchange for that case never being brought up again. (PCR Tr. p. 23).

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Applicant testified that he believed that he was going to get no more than thirty years. (PCR Tr. p. 23). Applicant testified that on the morning of October 27, 2020, the day he was sentenced, Plea Counsel told him that she received a plea deal from the solicitor offering him a mandatory thirty years; Applicant testified that he told her that he would take the plea deal and that if she could not get him twenty-five years, then he would take the thirty years right then. (PCR Tr. p. 23). Applicant testified that on that same day, he was asking her for a trial and that Plea Counsel told him that she had no way of beating his case, could not fight it, and could not win. (PCR Tr. p. 24). Applicant testified that there was no need to fight his case if he had nobody helping him or fighting for him. (PCR Tr. p. 24).

Applicant testified that he was aware that Foster went to trial and received life imprisonment, which made Applicant not want to risk going to trial and receiving a life sentence. (PCR Tr. p. 24).

On cross-examination, Applicant testified to this Court that he was on mental health medications at the time of his guilty plea that included Trazodone for depression, Seroquel for sleep and nightmares, and one more medication for anxiety, but he did not remember its name. (PCR pp. 30–31). When cross-examination continued, Applicant testified that he was prescribed his medications before the guilty plea hearing and that he was taking his medications during the time of his guilty plea hearing. (PCR Tr. p. 31).

When questioned various times on whether he recalled his answers and Plea Counsel's statements to the plea court, Applicant mostly testified that he did not recall. (PCR Tr. pp. 27–34). In response to this Court's *sua sponte* questioning, Applicant testified that he had a chance to look at his guilty plea transcript and that he thought the transcript was "way incorrect." (PCR Tr. pp. 34–35).

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Findings

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

This Court finds Applicant has failed to show that Plea Counsel's representation fell below an objective standard of reasonableness, and that but for Plea Counsel's alleged errors, Applicant would not have pled guilty and proceeded to trial. See Roscoe v. State, 345 S.C.16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362 426 S.E.2d 795, 797 (1993). Before this Court was Applicant's plea offer refusal, which Plea Counsel recognized along with Applicant's signature contained in it. (Resp. Exh. 1). Applicant testified that Plea Counsel told him on the morning of his sentencing that she had received a plea deal of a mandatory thirty years, which he told her he would take. Although Plea Counsel credibly testified that she did not remember when they received the plea deal of thirty years, Plea Counsel also credibly testified that after the last time that Applicant stepped down from pleading guilty, she had him sign a plea offer refusal that stated that he was refusing the plea offer of thirty years and that they would proceed to trial where he could be sentenced from thirty years to life. (Resp. Exh. 1). Most

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notably, Plea Counsel credibly testified that Applicant was "well aware" that the plea offer of thirty years had ended before he pled guilty. Therefore, this Court finds that Plea Counsel was not deficient in advising Applicant of what sentence he could receive by pleading guilty. Additionally, this Court finds Counsel properly conveyed the 30-year plea offer to Applicant who voluntarily rejected it.

Furthermore, Applicant affirmed to the plea court that he understood that by pleading guilty he could be sentenced anywhere from thirty years to life in prison. Thus, any alleged misadvice was cured by the plea court's colloquy. See Wolfe v. State, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997) (finding that any possible misconceptions regarding sentencing were cured by the colloquy during the actual guilty plea hearing). Applicant's colloquies with the plea court support Applicant knowing that there was no sentence cap of thirty years when he pled guilty. The plea court informed Applicant of the sentencing ranges, and Applicant indicated to the plea court that nobody led him to believe what sentence he would receive if he pled guilty. Applicant also indicated to the plea court that Plea Counsel told him that whatever sentence he received on the murder charge would be day-for-day. Applicant even indicated to the plea court that he understood that the decision to plead guilty had to be made with the understanding that whatever sentence he "might get" would be day-for-day. This Court further finds that Applicant was aware that the thirty-year plea deal had expired by the time that he pled guilty.

Additionally, Plea Counsel credibly testified that Applicant became "very nervous" about receiving a life sentence and went back and forth on whether to take the plea deal or go to trial after seeing Foster receive a life sentence. Applicant himself testified that he was aware that Foster received a life sentence at trial and did not want to risk receiving a life sentence, which is reflected in his *sua sponte* statement to the plea court that he wanted to plead guilty before he received a life

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sentence at trial. As discussed *supra*, Applicant's reason for pleading guilty instead of going to trial stemmed from the benefit of having pending charges dropped by him pleading and from Applicant not wanting to risk receiving a life sentence after learning that Foster received one at trial. This Court finds that Applicant's decision to plead guilty was not influenced by a belief that he would receive a sentence capped at thirty years but instead by having a pending charge dropped and by avoiding a life sentence at trial.

To the extent that Applicant is alleging his medication affected his ability to understand the proceedings, this Court finds this to be without merit. Applicant indicated to the plea court that he fully understood what he was doing at the plea hearing. Applicant also indicated to the plea court that his medication helped him to better function and focus mentally than without it. Furthermore, Applicant has failed to present "objective data about the nature and effect of the medication [Applicant] had taken" and to show whether the medication "had the capability to produce a sufficient effect on his mental faculties to render him incompetent to enter a guilty plea." Garren v. State, 423 S.C. 1, 15, 813 S.E.2d 704, 712 (2018) (quotations omitted).

Thus, based on the evidence presented at the plea proceeding and the evidentiary hearing, this Court finds Applicant freely, knowingly, and voluntarily pled guilty.

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**.

[CONCLUSION PAGE FOLLOWS]

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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 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), SCRPC, provides that PCR counsel must serve and file a Notice of Appeal on Applicant's behalf if Applicant wishes to seek appellate review. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

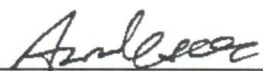
IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 26th day of May, 2026.



J. C. MADDUX, JR.
Presiding Judge
Seventh Judicial Circuit

, South Carolina

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