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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
The Honorable David Caraker, PCR Action Judge
2024-CP-32-00749

SHEMAR PAYNE, #390241,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Shemar Payne appeals the denial of his post-conviction relief application. The post-conviction relief action was heard and denied by the Honorable David Caraker, circuit court judge, on August 29, 2024, and was denied by written order issued filed on July 13, 2026. Applicant received notice of the judgement on July 13, 2026.

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STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

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IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Shemar Payne, #390241, LISA COVER
Applicant OF COURT
LEXINGTON, SC

Case No.: 2024-CP-32-00749

v.

ORDER OF DISMISSAL

State of South Carolina,
Respondent.

This matter comes before this Court by way of Applicant's post-conviction relief application filed February 15, 2024. Respondent made its return on August 12, 2024, requesting an evidentiary hearing be convened. An evidentiary hearing was held on August 29, 2024, at Lexington County Courthouse. Chelsey F. Marto, Esquire, represented Applicant. Deputy Attorney General Donald J. Zelenka represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Counsel Bradley Kirkland testified at the hearing. The State subsequently offered the September 25, 2024 deposition of Assistant Solicitor Nelson Parker. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. In August 2021, the Lexington County Grand Jury indicted Applicant for armed robbery (2021-GS-32-2364), possession of a weapon during a violent crime (2021-GS-32-2371), and two counts of kidnapping (2021-GS-32-2372; 2021-GS-32-2373).

On February 10, 2023, Applicant appeared before the Honorable Debra R. McCaslin and pled guilty to all charges as indicted. Applicant was represented by Bradley M. Kirkland, Esquire. The State was represented by Assistant Solicitor Nelson Parker. The plea transcript reflects the State took “no position” on sentencing. Judge McCaslin sentenced Applicant to concurrent terms of fifteen (15) years on armed robbery, fifteen (15) years on each kidnapping, and five (5) years on the weapon charge. Applicant received 698 days of credit for time served.

A motion for reconsideration was filed on February 21, 2023, and denied April 10, 2023. Applicant did not file a direct appeal.

Summary of Relevant Facts

The factual basis of the plea was set forth by Solicitor Parker at the guilty plea before Judge McCaslin. This incident occurred on May 2nd of 2019 at a CVS Pharmacy on Sunset Boulevard in the Town of Lexington. Lexington Police Department responded to the CVS off Sunset Blvd. at approximately 3:00 a.m. in reference to an armed robbery that had just taken place. Law enforcement arrives, they make contact with three employees of CVS who informed law enforcement that an armed robbery had just taken place. They gave a description of the individual who committed this as a younger black male, wearing what appeared to be either a wig or having longer braids, a green hoodie, and carrying a backpack.

According to the employees which was corroborated by surveillance footage that an investigator was able to get from CVS, Mr. Payne enters the store at approximately 2:45 a.m., asks the location of the bathroom. He enters the bathroom and stays in there for several minutes. At approximately 2:53 a.m., he is seen on the surveillance video approaching the counter of the CVS with his face on video, and presenting to Ms. Linda Corley a demand note saying “give me the good stuff. It's the --- the controlled substance, Xanax, oxys, promethazine, codeine.” Tr.p.

10. Ms. Corley looks at it, pauses for a second. In the video, she is seen approaching the safe at which time Mr. Payne retrieves a pistol from his waistband and hops over the counter approaching the safe with Ms. Corley. They put items in the bag. Angela Cease hears the commotion or a noise that raises her concern. She looks over to check. The defendant is then seen running over to Ms. Cease, presenting a firearm and preventing her from calling 911, restricting her movements. He comes back. After Payne puts on the backpack, they walk to the rack where the promethazine, codeine, and other controlled substances are located. The defendant is seen grabbing them in his hand and the runs out of the store. While doing so, two bottles are dropped on the front right near the exit and on the sales floor. The Applicant's DNA is on both of those items. The Applicant is seen entering the front passenger seat of a stolen 2018 white Kia Optima, and the Applicant and his accomplice fled the scene. Tr.p. 10-11.

While putting items into the backpack during the commission of the armed robbery, Ms. Corley had the wherewithal to put a GPS tracker in the backpack. Using that GPS tracker, law enforcement was able to locate the vehicle which was abandoned in the Columbia at a riverfront park off Broad River Road in Richland County.

Law enforcement processed the vehicle and was able to find Mr. Payne's DNA on the front passenger seat, which is notable because it was consistent with the individual that fled the scene was in the front passenger seat of that vehicle. They also were able to find a behind-the-counter pill bottle off of North Lake Drive on the Lake Murray Dam which got an AFIS fingerprint hit for Mr. Payne from that bottle. Once aware of the AFIS hit, they were able to identify the fingerprint lifted from the bottle as belonging to Mr. Payne from a prior 2018 arrest booking prints.

An interview was conducted by Officer Grady Johnson and ATF agent Rosie Herberger

on June 7, 2019, at Lexington Police Department. After Miranda rights were given, the Applicant during the course of the interview stated that the gun used during the commission of the armed robbery wasn't real, it was a fake gun. When asked why he robbed a CVS, the Applicant stated: "I'm addicted to pills. I have a pill problem, essentially." At that point, he was arrested, booked, on June 7, 2019. Tr.p. 9-13.

Current Action Before this Court

In his current PCR application, Applicant alleged he was being held in custody unlawfully because of ineffective assistance of counsel in that:

1. Involuntary plea:
 - a. State reneged on plea agreement.
2. Ineffective assistance of counsel:
 - a. Denial of right to appeal.
 - b. Counsel conducted no pretrial investigation.

On August 23, 2024, counsel made an amended application, through PCR counsel Marto.

In that Amended Application, Payne raised the following allegations:

1. Counsel was constitutionally ineffective for:
 - a. Failure to file an appeal.
 - b. Failure to get the ten-year, strong-arm robbery plea deal reinstated.
 - c. Telling Applicant that if he entered the plea, Counsel would guarantee him a ten year sentence, despite it being an open plea.
 - d. Failure to get the plea continued so Applicant would have more time to think through the plea.
 - e. Failure to request the Court give him full credit for time served on house arrest.
 - f. Failure to get a better plea deal.
 - g. Erroneously telling Applicant to plead instead of going to trial when the State had a weak case.
 - h. Failure to properly mitigate the sentence.
2. Applicant's plea was not voluntarily, freely, knowingly, and intelligently entered because Applicant thought that by pleading he would get a ten-year sentence.

At the PCR hearing, Applicant proceeded forward on the following allegations:

1. Ineffective assistance of counsel for:

- a. failure to file an appeal;
 - b. failure to secure reinstatement of a prior plea offer;
 - c. erroneously guaranteeing Applicant a ten-year sentence;
 - d. failure to seek a continuance of the plea;
 - e. failure to obtain full credit for house arrest;
 - f. failure to obtain a better plea offer;
 - g. erroneously advising him to plead guilty;
 - h. failure to properly mitigate;
2. Applicant also alleges his plea was involuntary because he believed he would receive a ten-year sentence.

All other allegations raised in his initial application and amendments are deemed waived and abandoned and, accordingly, will not be addressed in this order.

Summary of the Testimony

Testimony of Applicant Shemar Payne

During his Payne claims that he and Attorney Kirkland had personal issues that would cause them to “always argue.” The Applicant complained that for counsel it was always just a job, but for him it was his life. This impacted on his ability to communicate with counsel. The Applicant stated that he had a ten (10) year offer out of the gate and was unaware if there were other offers taken off the table. He noted that offers were taken off the table when he was re-arrested in Richland County. He complained that he was told he would get ten years, but he got a fifteen year sentence. He claimed his lawyer told him exactly what to say in court if he testifies. He stated that he was also advised that he was facing a possibility of 90 years.

He stated that his initial plan was to go to trial. He stated that the initial guilty plea offer in 2019 was for a ten (10-year). At that time, he indicated Stephen Story was his counsel at that time. Payne stated that he was later arrested for another crime in Richland County. At that point he fired Brad Kirkland as his counsel.

– Payne alleges that his attorney told him it was a plea for ten (10) year max, while he was sentenced to 15 years in prison . He claimed he was intimidated by the charges against him and took the plea because he thought the max would be ten years. He claimed that his counsel and his family wanted him to plead.

He claims that he asked his counsel for a continuance for more time to get more offers. Payne also claimed that there were no violations while he was on house arrest and should have received credit for all the days. He claimed that he was shocked that he did not get credit for the time spend on house arrest.

In mitigation of sentence, the Applicant indicated that his counsel brought up his family's position. He asserted that he did not speak up for himself at the guilty plea. He thought that counsel brought up mitigating factors to help Payne's case. He thought these included maintaining the apartment(s) he owns/rents, his involvement in his child's life; and his cars that he owns.

The Applicant also testified that he wanted an appeal. The Applicant claimed that he was more mature now and with a different temper that he tries to control. He is seeking leniency since he was twenty-one at the time of the crime.

On cross-examination, the Applicant admitted that he was in fact guilty of the crime. He stated that he plead guilty "because if he didn't, he would go to trial next week" and face a possible 90-year sentence. The Applicant indicated that initially the evidence against him was not strong at first but then was stronger closer to trial date. He acknowledged that there was a surveillance video of him at the CVS after 3 am. He clarified that he initially had a 10 year deal, but when he was re-arrested for another crime, the State revoked the offer. He confirmed that the evidence against him at trial included: (a) video surveillance of CVS Pharmacy; (b) evidence on

pill bottles found in various locations (inside, right outside, on road after being thrown from vehicle). However, he also acknowledged that the witnesses on the scene could not identify him.

The Applicant described the victim impact evidence from the State and that one victim gave a horrific story. He also recalled his father's statement at the plea. He stated that his father stated he should have been involved in his life more. He felt he deserved more leniency than a ten year sentence relative to cases he has seen that get less. He thinks that because he was not from Lexington, he received more time. He claims that he apologized to the victim and her husband.

He claims that counsel Kirkland never asked about his guilt. He claimed counsel told him that they thought he could find a lesser offense, like attempted armed robbery. Payne also claimed that he never told Kirkland that the gun he used in the robbery was fake.

On re-direct, the Applicant claimed again that he "believed he was getting a 10-year deal" with credit for time served. The Applicant stated that victim impact statements were not favorable to the State, but more personal to the victim. As the Applicant stated: I mean, she got a gun shoved in her face.

The Applicant stated that he thought Kirkland was never on his side. He stated that he felt intimidated, and counsel once asserted to him that "I am going to make sure you do 30 years." The Applicant declared that he was just a kid at that time but was never disrespectful to counsel.

Testimony of Counsel Brad Kirkland

The Respondent called counsel Brad Kirkland. He indicated that he had practiced almost twenty-six (26) years as an attorney having been licensed in 1998. He stated that he was a public defender until 2002 and private practice after that primarily handling criminal cases. Kirkland

stated that he had been contacted by a judge to handle that matter because there was an issue between public defender Story and the Applicant.

Counsel stated he always obtains his discovery from the State when taking over a case that's been started by another attorney. He stated that he does this in case the other defense attorney missed something. Kirkland indicated that he wants to ensure he has all evidence available. He stated that he reviewed all discovery for Payne's case and determined that "there are plenty of defenses, but no winning defense strategy" These materials included the Applicant's statements and reviewed the transcriptions to make sure that they were accurate. He opined that he was fully prepared to go to trial and put forth any defense with a chance of mitigating the crime.

Counsel stated that when there is no winning defense. Counsel stated that he was willing to put up a defense if the Applicant wanted and was ready to try the case, he will memorize everything to impeach adverse witnesses. Counsel communicated with the prosecutor to try to keep the 10 to 15 offer open, but this was never a strong arm robbery. Kirkland thought under these facts that an offer of 18 to 22 years would have been normal.

Kirkland was provided in discovery a transcribed audio disc of the relevant portion from the audio clip at trial. Kirkland stated that it was very damaging to his case because there is a confession on the audio clip. Kirkland stated that his client stated that he was addicted to drugs and did it because he "loves pills." Kirkland stated that he learned the gun the Applicant used was fake. Kirkland stated that the security video footage from CVS Pharmacy was not very damaging due to the quality. However, he testified that the CVS video did show high aggression with use of the fake gun. Counsel also stated that there was DNA and fingerprints found at the scene. He described that someone helped Payne load the bag full of pills, however, it was never

zipped so bottles fell out on the floor inside and outside door of store. He stated that the pharmacist put a tracker in the bag of pills. Counsel stated that they were throwing pills out of car window as they fled in the vehicle. He stated that someone called the police when they found a pill bottle on the ground. In addition, there was a wig used as disguise, but no DNA was found. Kirkland described that a vehicle was used and drove from Lexington over the dam to Columbia, where it was abandoned. However, Kirkland stated that fingerprints of the perpetrators were found on car.

Concerning plea offers, Kirkland testified that there was an email from the solicitor's office that stated a range of 10 to 15 years. However, Kirkland stated that that offer was completely revoked after the Applicant was arrested again. Kirkland noted that the Applicant's assertion that he had no violations while on house arrest is not accurate because he committed the second crime while he was supposed to be on house arrest. Kirkland also declared that there was never any offer by the State to reduce this to strong arm robbery.

Kirkland stated that he had to explain to Payne the difference in robbing different locations (populated pharmacy vs. rural gas station, etc.) and its impact on sentencing.

Kirkland stated that he argued that the original plea offer should be re-extended due to his young age and no serious prior convictions on his record. He indicated that the Solicitor would not re-open the plea. Kirkland stated that prior to the plea Judge McCaslin would not commit to ten to fifteen years and let Applicant know that, but indicated to him and said, "if you get more than 15, you can PCR me." Kirkland indicated that the Applicant met with the Applicant's family prior to the entry of the plea before Applicant decided to plea. Kirkland stated that the Applicant initially spoke to his sisters for a long time and then with his father for a long time. Kirkland stated that he walked around during this time to allow them their privacy and to not

“contaminate” their conversation. Kirkland stated that after allowing him the time to speak with his family, Kirkland went to the Applicant goes to Payne and explains that he needs to be 100% sure before taking the plea and Payne indicated that he wanted to plead guilty. Counsel stated that he was concerned that if they had gone to trial and been convicted that he did not know how the sentence could be less and was worried about it being more.

On cross-examination, counsel Kirkland indicated that he believed that the Applicant understood his conversations, but that he had a very juvenile way of thinking. Counsel stated that the Applicant was surrounded by other adults feeding him erroneous information in the jail which counsel stated that he had to disabuse the Applicant. Counsel testified that he visited with Applicant at the Richland County jail. Counsel approached him about the possibility of a global plea, but the Applicant initially wanted a trial. He noted that the Applicant was upset with him. Counsel specifically declared that he did not tell the Applicant that he would make sure that he would get 25 or 30 years if he went to trial and that the judge would not give less. He stated that he told him if he went to trial, it was very likely that he would be given 30 years given the facts, evidence, etc. He stated that 5th Circuit Assistant Solicitor Melanie Darko had offered ten to fifteen years of the Richland charges. Counsel was also aware that the Applicant’s uncle had called the CVS after the crime and apologized on the Applicant’s behalf. Counsel further stated that the information was that the Applicant’s mother called a tipline and identified Payne, however, she later claimed that she never did this.

Counsel stated that before they took the plea, he asked Solicitor Russell Parker what his position on sentencing and wanted the solicitor in Lexington to promise not to ask for thirty years since it was an open plea. He stated that Russell told him that he would remain silent as to a sentence term at the plea. Counsel told him that he would be asking for ten to fifteen years.

Kirkland firmly stated that he did never told Applicant that his sentence would be ten years. He stated that he believed that Payne understood that this was a range of 10 to 15 years that he was requesting and talked with his father about it.

Counsel never told Payne that his charge could be reduced to strong arm robbery. Counsel never told Payne that the plea would be 10 years; always told him a range of 10 to 15. Counsel indicated that under the circumstances that 10 would be very unlikely and indicated that he was hoping for 12 years due to Payne's young age and no serious priors. Counsel stated that he heard none of the conversations between Payne and his family prior to his plea hearing.

Counsel noted that another lawyer (Ben Stitely) took over filing a motion for reconsideration. Counsel Kirkland indicated that he would not have been responsible for the appeal.

Deposition of Assistant Solicitor Nelson Parker

In his deposition, Assistant Solicitor Russell Parker indicated that he had been assigned to handle that Lexington prosecution of Shemar Payne. He stated the defense was initially handled by assistant public defender Stephen Story. During his deposition, he described the factual basis of the charges, consistent with the guilty plea factual basis set forth previously in this Order and described it as a very strong case. Depo. Tr.p. 8-9. Parker indicated that he initially made plea offers to counsel Story to allow him to plead guilty to armed robbery and dismiss the kidnapping charge with the plea straight up on April 20, 2020. Depo. Tr.p. 9-10. (State Exhibit One). Parker learned that Story had relayed the offer and indicated that he had and asked for the possibility of strong arm robbery. Depo. Tr.p. 9-10. Parker stated that he rejected that request, claiming the case was too serious. Depo. Tr.p. 11. Parker indicated that he also rejected a request to offer ten years. Depo. Tr. 11-12, 13. (State Exhibit Two). Counsel Parker

made clear to Story that the State was not offering strong armed robbery to the Applicant as of May 6, 2020. Depo. Tr.p. 13. Parker indicated that by March 15, 2022, the Applicant and his counsel had not accepted any plea offer. Depo. Tr.p. 12.

Parker stated that Applicant was subsequently arrested for attempted murders in Richland County. He indicated that when they learned that fact, he informed Story that the plea offer was revoked. Depo. Tr. 10. Also, State Exhibit One. State Exhibit 3. (Depo. Tr.p. 15) (June 7, 2022 email).

Parker indicated at some point the Applicant moved to relieve Story and Judge McCaslin replaced him with Brad Kirkland. Depo.Tr.p. 14. He indicated to Kirkland on June 14, 2022, that a Schmerber hearing had already been scheduled before Kirkland was appointed to develop with the profiles recovered from the pill bottles and the car. Depo. Tr.p. 14-15. (State Exhibit 4) Parker indicated that he gave Kirkland a crash course on the case before that hearing so that he could be prepared. Depo. Tr.p. 14.

Parker stated that at that point since the plea offer had been revoked there was no plea offer on the table when Kirkland was appointed. Depo. Tr.p. 16. Parker indicated that the Solicitor's office policy was that once an offer had been rejected and the case was identified as a trial case, the defendant can plead, but they must plead as charged, straight up. Depo. Tr.p. 16. Parker indicated that after they had learned that Applicant had been arrested in Richland County, his supervisor, Deputy Solicitor Suzanne Mayes indicated to him to make sure that there are no offers and for him to plead straight up if he wants to plead. Further, he indicated that when an offer is out and the person is on bond and commits another criminal act, the offers are automatically revoked. Depo. Tr.p. 17.

Parker indicated that on December 2, 2022, he sent Kirkland an email indicating that he had learned that Solicitor Darko on the Richland charges was going to plea to the Richland charges on January 7 and were recommending 10 to 15 years and advised Kirkland that the Lexington charges were straight up, but that he was good with them running concurrently. Depo.Tr.p. 18. (State Exhibit 5). Parker testified that he learned that the Richland plea ended up not happening.

He indicated that the case was placed upon the Lexington County trial roster. A status hearing was scheduled. A meeting was held with counsel and Judge McCaslin in her chambers. She was advised by them that the Richland case had an offer and that the State was good with sentences running concurrent, but that the Solicitor was not agreeing to what they considered was a low recommendation made in Richland for a 10 to 15 year range and that the office policy was that cases on the trial roster are straight up and no recommendations or negotiations, which counsel Kirkland was aware. Depo.Tr.p. 19-20.

Parker stated that the Applicant was allowed to speak with his family about the possible plea over the course of three to four hours. Parker indicated that counsel advised him that the Applicant was going to plead. Depo. Tr.p. 21. Parker indicated that no one, including the Applicant, would have thought the Applicant would receive a 10 year sentence, although Judge McCaslin had indicated that it was likely consistent with the Richland County range of 10 to 15 years which she thought was reasonable. Depo. Tr.p. 22. Parker noted that it was true that she could have gone above it with aggravation and that the victims were allowed to make their statements at the plea. He also indicated that the Applicant and his father made pleas in mitigation.

On cross-examination, Parker acknowledged that he was not present during conversations between the Applicant and his counsel.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. Before this Court are the Lexington County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the plea transcript, the deposition of Nelson Parker and this PCR action's records. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated Section 17-27-80 (2003).

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the

evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. *See also* Rule 71.1(e), SCRCP ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."). Reasonableness is determined by the "variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant," and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel's performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually "countless" ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel's deficient performance must have prejudiced the applicant so that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters "only in the rarest case" because "[t]he likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before

examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

In the context of a guilty plea, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Applicant's right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent solemnity and truthfulness included in the guilty plea process. *See Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

For a plea to be valid, the applicant must have been aware of the nature and crucial elements of the offense, the maximum and minimum penalties, and the rights he is waiving by accepting the plea. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Roddy v. State*, 339 S.C. 29 (2000). A plea is not knowing or voluntary if a defendant "lacks knowledge of material evidence in the prosecution's possession." *Gibson v. State*, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (1999).

A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." *Roddy v. State*, 339 S.C. at 34,

528 S.E.2d at 421 (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). “[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.” *Dalton*, 376 S.C. at 138, 654 S.E.2d at 874 (quoting *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)). Further, “guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including claims of a violation of a constitutional right prior to the plea.” *Whetsell v. State*, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981).

Guilty Plea was Knowingly and Voluntarily Entered

As an initial matter, Applicant’s plea was freely, knowingly, intelligently, and voluntarily entered. He stated he was not under the influence of drugs or alcohol and reported no current mental health condition affecting his ability to understand the proceedings; defense counsel affirmed there were no competency concerns (Plea Tr. 5-6). Mr. Payne indicated he understood the nature of the charges, the potential penalties, and the consequences of pleading guilty (Plea Tr. 4-7).

He affirmed that he understood all jury-trial rights, including the right to present a defense, call witnesses, cross-examine the State’s witnesses, testify or remain silent, and that he knowingly waived those rights to proceed with a guilty plea (Plea Tr. 7-8). He denied any promises, threats, or coercion and confirmed that his decision to plead guilty was made freely and voluntarily (Plea Tr. 7). He also stated he was satisfied with the representation and advice of counsel and that he had enough time to talk to his family and Counsel (Plea Tr. 4-8).

Based on the Court’s colloquy and Applicant’s responses, the Court finds that Applicant freely, knowingly, voluntarily, and intelligently waived his constitutional rights and entered his

guilty plea.

Ineffective Assistance of Counsel Claims

1. Failure to File an Appeal.

Applicant claims Counsel was ineffective for failing to file an appeal from the guilty plea. While trial counsel is required to make certain the defendant is made fully aware of the right to appeal, the standard for a guilty plea differs. *Turner v. State*, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). 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. *Id.* at 225, 670 S.E.2d at 374 (citing *Roe v. Flores-Ortega*, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000); *Weathers v. State*, 319 S.C. 59, 459 S.E.2d 838 (1995)). "Acts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver." *Bonnette v. State*, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981) (citing 92 C.J.S. Waiver, p. 1063 (1955)). The bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief.

This Court finds that the Applicant has failed in his burden of proof in showing extraordinary circumstances. A review of the guilty plea record reveals, as noted above, evidence that it was freely and voluntarily entered. The Applicant acknowledged his agreement with the factual basis supporting the crimes as stated by the prosecution. Plea Tr.p. 13. The Applicant affirmed his understanding of the punishment for armed robbery and its minimum and maximum (Plea Tr.p. 13) and that it would be an 85% crime and risk a future potential for life without parole due to the strikes. (Plea Tr.p. 14). He was advised of the range of sentences for kidnapping as well.

During the plea, Assistant Solicitor Parker indicated that it was taking no position as to sentencing, but a victim and law enforcement would be addressing the court. Plea Tr.p. 15, l. 22-24. In his plea in mitigation, counsel Kirkland, understanding the position of the State on sentencing, asserted that he thought an appropriate sentencing range was the similar range as Richland County had asserted and asked for a ten year minimum sentence:

Now, he has some charges in Richland, and we have tried --- we tried to do a global plea this morning. And Melanie (Darko), who, you know, is a very experienced solicitor, she was willing to recommend a 10 to 15-year sentencing range. And I felt and my --- because of my years of experience, that these facts would warrant a 10 to 15-year sentencing range.

And so what I would argue to you, Judge, is that is, I believe, Melanie with her experience, I think she set a range that was actually fair under the circumstances.

What happened here in Lexington was once he was re-arrested the deputy solicitor withdrew all offers which is not uncommon. That's --- we're in Lexington, Richland's a little bit different.

And but I do think that that 10 to 15-year range is --- is an appropriate range considering his age, considering the fact that he accepted responsibility. Not only at the time of the crime, but also here today.

I also think that because of his very young age and the influence that others had on him, that should be taken into account.

And so I --- what I would ask, Your Honor, is that you take everything that I've said into account and consider a 10 to 15-year life range. And we would ask of course that you give him the 10.

And I'm basing all this on the --- on the negotiations that we've been working on in Richland County. And we ask you to give him a --- a ten-year --- consider a ten-year sentence.

Plea Tr.p. 26-27.

The record shows that there was no objection made throughout the guilty plea proceedings before or at the acceptance of the guilty plea. The sentence the Applicant received was within the range of punishment for the particular crimes discussed by the Applicant's counsel and the limits by the statutes. No objection was raised. Extraordinary circumstances did not exist for counsel Kirkland to advise the Applicant to appeal.

This Court is also aware that another counsel, Ben Stitely made a motion for reconsideration

of the sentence based upon the Applicant's family and worklife. In denying the motion on April 10, 2023, Judge McCaslin asserted that these matters were considered by the sentencing court during its initial sentence. A review of counsel Kirkland's pleas in mitigation, the Applicant's father's statement and the Applicant's own statements at the plea support this conclusion. In addition, Judge McCaslin alternately found the motion was not timely.

This Court must find that the Applicant has failed to show extraordinary circumstances to have required either counsel Kirkland or counsel Stitely to advise the Applicant of his right to appeal the guilty plea under these discrete circumstances or for either counsel to file a notice of appeal. Further, counsel Kirkland credibly testified because another attorney had taken over representing Applicant on the motion to reconsider the sentence and it was incumbent on that attorney address whether a notice of appeal needed to be filed. This Court further concludes that the Applicant failed to prove that he asked either counsel to appeal to the appellate court on his behalf. This Court further finds for all these reasons; relief is denied on this ground.

2. Failure to Secure Reinstatement of a Prior Plea Offer; Failure to Obtain a Better Plea Offer; Failure to Ensure Applicant Received a Ten-Year Sentence; Erroneously advising Applicant to Plead Under the Guise that he would Receive a Ten-Year Sentence; Involuntary Plea Based on Presumption of Ten-Year Sentence.

Applicant alleges Counsel was constitutionally ineffective for failure to reinstate a prior plea offer, to obtain a better plea offer, to ensure Applicant received a ten-year sentence, for erroneously telling Applicant he would receive a ten-year sentence, and that his guilty plea was invalid as a result of being misled into believing that he would get a ten-year sentence. This Court finds, based upon counsel Kirkland's credible testimony that there was never a strong-armed robbery plea offer on the table from the State nor was there ever a guarantee of a ten-year sentence in return for a guilty plea. Prosecutor credibly testified that the only offer extended was that if Applicant pled straight up to armed robbery and kidnapping he would not oppose a

concurrent sentence with the Richland charges. This Court finds that the similar requests for strong arm robbery and a ten year sentence made on the Applicant's behalf were rejected by the prosecution. These rejections were made known to the Applicant prior to the entry of the guilty plea.

Counsel and Prosecutor credibly testified that based upon their conversations with the plea judge in chambers, the judge seemed to be leaning towards a ten- to fifteen-year sentence on the charges. Counsel credibly testified that he conveyed to Applicant that if he pled, he would likely receive a ten- to fifteen-year sentence. Applicant received fifteen years, an amount within the range the Applicant's counsel discussed. The credible testimony and record also reflects that Counsel attempted to get Applicant a better plea offer and efforts were fruitless.

Counsel is not deficient for failing to obtain the requested offer the Applicant sought. Counsel is also not deficient in his advice concerning what he would request when he requested the minimum sentence for armed robbery when counsel and the Applicant were aware it was an open straight up plea. Counsel was not deficient in advising Applicant of a range the sentencing judge though was reasonable prior to the plea, when they were aware that it did not bind Judge McCaslin when he got Applicant the best sentence possible and correctly advised Applicant about the sentencing range the Court was considering and then sentenced within. This Court finds that the issue the Applicant failed to grasp was the impact of his arrest on the Richland charges while on bond after an initial plea offer had been made.

Applicant has failed to show either deficient performance or prejudice as a result of the advice. Relief on this ground is denied.

3. Failure to seek a continuance of the plea.

Applicant claims counsel was ineffective for failure to seek continuance of the plea. The Applicant contended that it was his desire that the State may have changed its offer to his benefit. The Applicant failed to show deficient performance on that matter. The trial in the case was scheduled for the next week and counsel credibly indicated to this Court that he was prepared. He had fully reviewed the discovery, including the videos and interviews of the Applicant. As to potential future plea offers, the Applicant failed in his burden of proof. The Applicant's Richland County arrest removed as a matter of policy any different negotiation related to the Lexington charge. Assistant Solicitor Parker was credible in suggesting that it would have been in defiance on the office policy and possibly cost him his job if he re-opened negotiations under those circumstances after the new arrest and then the case being on the trial list.

Applicant has failed to show why a continuance should have been requested, reasonable probability that had it been requested it would have been granted by Judge McCaslin. This is additionally invalid because the Applicant admitted during the PCR proceeding that he was guilty of the crimes. The general rule is that guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including the claims of a violation of a constitutional right prior to the plea. *Rivers v. Strickland*, 264 S.C. 121, 213 S.E.2d 97 (1975); *State v. Fuller*, 254 S.C. 260, 174 S.E.2d 774 (1970), modified and vacated on other grounds, 408 U.S. 937, 92 S.Ct. 2863, 33 L.Ed.2d 755 (1972). This rule applies to the claim that counsel was ineffective. *Whetsell v. State*, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981) (review of a trial error is unnecessary where a defendant admits in open court after his conviction that he is guilty, citing *State v. Sroka*, 267 S.C. 664, 230 S.E.2d 816 (1976)).

Applicant has failed to establish either prong on the prejudice analysis and relief is denied accordingly.

4. Failure to obtain full credit for house arrest.

This Court finds counsel was not deficient in connection with any allegation regarding credit for time served. The plea transcript reflects that Counsel accurately advised Applicant that credit for time spent on house arrest is within the court's discretion and expressly requested that the Court consider the full 1,357 days, including the period Applicant spent on bond and house arrest. (Plea Tr. 23). Counsel also provided the Court with the precise breakdown of Applicant's custodial time, noting that Applicant had "698" days of actual incarceration and "1357" total days including house arrest. (Plea Tr. 23). Counsel argued before the plea court that Applicant should be afforded full credit acknowledging that it was in her discretion. See S.C. Code §24-13-40.¹ However, Judge McCaslin disagreed and only gave him 698 days in her discretion. (Plea Tr. 35). Counsel, without more, is not deficient for failure to procure a desired outcome.

Further, Applicant cannot establish prejudice. There has been no showing of what argument could have been made that would have led to a different outcome. This is especially true because Applicant was rearrested in Richland County during the pendency of the case,

¹ In its pertinent part at the time of the February 10, 2023 guilty plea, § 24-13040 read:

" . . . In every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing, and may be given for any time spent under monitored house arrest. Provided, however, that credit for time served prior to trial and sentencing shall not be given: (1) when the prisoner at the time he was imprisoned prior to trial was an escapee from another penal institution; or (2) when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense in which case he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense.

PRISONERS—COMPUTATION OF TIME, 2013 South Carolina Laws Act 34 (H.B. 3193). (emphasis added).

which Counsel disclosed to the Court. (Plea Tr. 23). There is no basis to conclude that Counsel's performance affected the sentence imposed, and Applicant's claim fails under *Strickland*. Relief is denied accordingly.

5. Failure to properly mitigate.

Applicant claims counsel was ineffective for failing to mitigate the sentence. The Applicant's counsel presented this case with capital case law that capital counsel may be found deficient for failing to sufficiently investigate and present mitigating evidence. *See Council v. State*, 380 S.C. 159, 172, 670 S.E.2d 356, 363 (2008) (finding it unreasonable for counsel not to further investigate the defendant's background and present even minimal mitigating evidence obtained); *Wiggins v. Smith*, 539 U.S. 510, 521 (2003) (finding it unreasonable when Counsel failed to investigate mitigating evidence beyond a couple retained records, including the presentence investigation report and social service records); *Williams v. Taylor*, 529 U.S. 362, 398 (2000) (finding that Counsel was unreasonable for failing to evaluate the totality of available mitigation evidence). An applicant is prejudiced by this deficiency if there is a reasonable probability that a different sentence would have been imposed but for Counsel's failure to investigate and present mitigating evidence. *Council v. State*, 380 S.C. 159, 171, 670 S.E.2d 356, 362 (2008).

This Court's assessment must be to whether counsel acted as a reasonable counsel in the presentation in mitigation of the Applicant's sentence in the circumstances that he faced under the demands of the guilty plea. This Court finds counsel's mitigation approach was reasonable for a non-capital guilty plea. Counsel emphasized that Applicant was "18 years old for three months" at the time of the offense (Plea Tr. 20), underscoring his youth and immaturity. Counsel also stated that Applicant was "heavily influenced by people around him" and identified that "the

people at the jail had his head so twisted up that he was seriously thinking about going to trial” – based on misinformation from other inmates (Plea Tr. 23–24). Counsel described Applicant as “heavily influenced throughout the period of time that we talked by other inmates in the facility” (Plea Tr. 24).

Counsel further represented that Applicant suffered from significant substance abuse at the time of the offense, stating that Applicant was “heavily addicted to drugs” and “was high as a kite during that interview” with law enforcement (Plea Tr. 24). Counsel noted that Applicant admitted his addiction during questioning, telling officers “I’m addicted to drugs” (Plea Tr. 20, 25). Counsel also explained that Applicant was highly cooperative with the police from day one and accepted responsibility for what he did. (Plea Tr. 21-25).

Counsel additionally described Applicant’s demeanor and development while incarcerated, stating that other attorneys had observed “a maturing process” over the four years Applicant spent in custody (Plea Tr. 22). Counsel represented that Applicant was “extremely remorseful” and “humble” during the plea proceedings (Plea Tr. 24-25). Applicant and his mother both gave statements in mitigation. (Plea Tr. 28-34). Counsel’s mitigation approach was reasonable and, thus, not deficient on this ground. Additionally, there has been no showing of what other evidence could have been presented in favor of mitigation that would have led to another outcome. Accordingly, prejudice has not been established. Relief is denied accordingly.

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 PCR application must be denied and dismissed with prejudice.

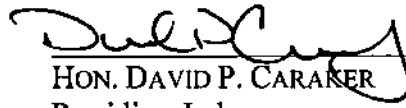
This Court notifies Applicant that he must file and serve a notice of appeal within thirty

days of receipt by counsel of the judgment entry's written notice to secure 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 the right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. The PCR application is denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 10th day of July, 2026.



HON. DAVID P. CARAKER
Presiding Judge
Eleventh Judicial Circuit

Lexington, South Carolina.