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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas
HONORABLE WALTON J. McLeod, IV
2024-CP-11-0205

Timmy L. Douglas, SCDC# 303818

APPELLANT,

vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

Timmy L. Douglas appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable Walton J. McLeod, IV, Circuit Judge on March 2, 2026 an Order issued on July 21, 2026 and filed on July 27, 2026. The Appellant received notice of the judgment on July 28, 2026.

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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), serving a twenty-year sentence. During its February 2022 term, the Cherokee Grand Jury indicted Applicant for Attempted Murder (2022-GS-11-00155 – Count I) and Possession of a Firearm During a Violent Crime (2022-GS-11-00155 – Count II).

On August 21, 2023, Applicant appeared before the Honorable J. Mark Hayes, II, and pled guilty as indicted to Attempted Murder and Possession of a Firearm During a Violent Crime. Applicant was represented by Christopher M. Bain, Esquire (Plea Counsel). Deputy Solicitor of the Seventh Circuit Solicitor's Office Kimberly L. Leskanic represented the State. Judge Hayes sentenced Applicant to a sentence of twenty years for Attempted Murder and five years for Possession of a Firearm During the Commission of a Violent Crime to run concurrently. Applicant was given credit for 728 days' time served.

A timely notice of appeal² was filed on Applicant's behalf by Plea Counsel on August 30, 2023. On October 11, 2023, the Court of Appeals dismissed Applicant's direct appeal for Applicant's failure to provide a sufficient explanation as required by SCACR 203(d)(1)(B)(iv). The remittitur was returned on November 6, 2023.

FACTS GIVING RISE TO CONVICTION

The following facts were articulated by the solicitor at Applicant's guilty plea hearing.

² The State v. Timmy L. Douglas, Appellate Case No. 2023-001393.

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This incident occurred on August 18, 2021, at 780 Shady Grove Road. That is located here in Cherokee County. That is the home of Betty Jo Moss. Ms. Moss has a child, at least one, with the defendant, Mr. Douglas. They had been living together at this residence. And based on what the defendant told police, he had been gone from the residence, and they had been broken up for about two-and-a-half to three months prior to this incident. Ms. Moss had begun a relationship with Robert Christopher, the victim in this case. She called him Chris, by his last name, because she works at Bar City Square, and he would order food from there and they would use part of his last name. She was one of the few people that called him Chris, which becomes important in just a moment. On this particular evening, it was about 9:45 at night. It was dark outside. The defendant is at the home of Betty Jo Moss. No one is aware of that. He has to come to that home on foot without a vehicle in the driveway. And Mr. Christopher pulls into the driveway to visit his girlfriend at 780 Shady Grove Road. When he does, he gets out of his white Durango. Betty Jo's van is parked in front of him. He is going to walk into the house like he has done before to visit with his girlfriend. The defendant is there, armed with a nine-millimeter handgun. He comes out of the darkness and essentially ambushes Mr. Christopher. He says: Hey, Chris, remember me. And he calls him Chris, which is what no one else does. He has learned his name from Betty Jo and from his daughter and the other kids in the house that's what they call him. He says: Chris, you remember me. And he fires off three rounds from the nine-millimeter handgun at close range. Mr. Christopher had no opportunity to defend himself. He pops out, immediately says, you remember me, and starts shooting him. There are three rounds that are found from a nine-millimeter handgun. After shooting the victim, the defendant runs off. Chris is able to make his way to the door of the residence, and he is screaming outside the door for someone to open up and help. Ms. Moss' daughter is inside the home. She hears three gunshots before she hears Chris at the door. And she calls 911 to report that there had been shots fired outside her home. And then she hears the victim outside screaming for help. She's afraid to open the door because she doesn't know what happened, whether a gunman is still out there. Judge, there are multiple children inside this home when the shooting took place. She gets her mom, Betty Jo. She had been in the shower. Betty Jo goes to the door. They are able to get Mr. Christopher inside to the couch. EMS and police are called. The victim immediately reported that it was the defendant who shot him. They had one prior encounter where they did not see each other but they had words. Mr. Christopher was actually at Betty Jo's house. The defendant came over when he was in the bathroom, had words with him between the bathroom door. Mr. Christopher told them he recognized his voice. He also got a good look at him because he has LED lights on his white Dodge Durango. He was able to see the shooter. I don't believe Mr. Douglas believed that he was going to be alive to

identify him. Thankfully he was. He immediately told Betty Jo, police, EMS, everyone who had shot him. He was taken to the hospital by helicopter. Police did respond to the scene. They called out, first of all, the bloodhounds. And the bloodhounds were able to track around the back of the house in the same direction which Mr. Christopher stated that the defendant fled after shooting him.

(Plea Tr. pp. 8 – 11).

CURRENT APPLICATION BEFORE THIS COURT

In his PCR application, Applicant alleged that he is being held in custody unlawfully on the following grounds:

- I. Ineffective Assistance of Counsel
 - a. Counsel failed to conduct an investigation into the facts of the case.
 - b. Counsel failed to inform me of the critical information regarding facts that should have been brought to my attention.
 - c. White³ Claim – Counsel failed to inform of right to direct appeal.⁴

Applicant subsequently amended his PCR application, through PCR Counsel, to include the following allegations:

- I. Ineffective Assistance of Counsel
 - a. Failing to explain plea deal with cap of 20 years versus 0 – 30 years.
 - b. Failing to inform of person with gun in jail.
 - c. Erroneously informing applicant that he was eligible for a life sentence.

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

³ White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

⁴ Respondent moved to dismiss this claim in the Return and Partial Motion to Dismiss, as Applicant did pursue a direct appeal that was ultimately dismissed by the South Carolina Court of Appeals on October 11, 2023.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act⁵ (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).

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

⁵ S.C. Code Ann. §§ 17-27-10 to -160.

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, 531 S.E.2d 294, 296 (2000).

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 decision making" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. 357, 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 through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility.

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

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

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

INITIAL FINDINGS

This Court finds applicable the strong presumption that at all stages of Plea Counsel's representation of Applicant, he rendered adequate assistance and exercised reasonable professional judgment in his representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689; *see* Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992); *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, 766 (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 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: Applicant stated it was his intent to enter guilty pleas to the charges of attempted murder and possession of a weapon during a violent crime (Plea Tr. p. 4); Applicant indicated that he had not consumed any type of substance in the last 24 hours that would adversely or negatively affect his ability to understand the process

of his hearing (Plea Tr. p. 6); Applicant indicated that he was previously treated for substance abuse issues, and indicated he thought it was for the drug charge he previously had acquired (Plea Tr. p. 6); Applicant indicated that he was satisfied with counsel's representation (Plea Tr. p. 6); Applicant indicated that nobody had threatened him or promised him anything in exchange for his guilty plea (Plea Tr. p. 7); Applicant indicated that his decision to enter the pleas to the charges was a free and voluntary decision on his part (Plea Tr. p. 7); Applicant indicated that he understood his right to a jury trial and the burden of proof being on the State to prove guilt beyond a reasonable doubt, and then Applicant stated he did not wish to have a jury trial (Plea Tr. p. 7); Applicant indicated he understood that pleading guilty would waive his rights to confront and cross-examine witnesses, to present a defense, subpoena, and remain silent. Applicant stated that he wished to give up all these rights and go forward with both of his pleas (Plea Tr. p. 8). Applicant agreed that the solicitor was substantially correct in her recitation of the facts of the case (Plea Tr. p. 14). Applicant indicated that he understood that he could be sentenced to zero to thirty years on the attempted murder charge and that the judge could not suspend the sentence or give probation. (Plea Tr. p. 14). Applicant indicated he understood the charges against him were both violent and most serious classifications of charges and indicated that he had spoken to his lawyer as to the consequences of those classifications. (Plea Tr. p. 15). Applicant indicated that even with understanding the classifications, he intended to plead guilty to attempted murder and the weapon charge. (Plea Tr. p. 15). Applicant stated to the court that he was in fact guilty of both charges and indicated that all of his answers to the court had been truthful and honest. (Plea Tr. p. 16).

ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

Allegation:	Failure to Conduct Investigation into Facts of Case
Allegation:	Failure to Inform Applicant of Critical Information Regarding Facts
Allegation:	Failure to Inform of Person with Gun in Jail

Applicant alleges that his Plea Counsel was ineffective for failing to investigate the facts of his case and inform him of critical information regarding the facts of his case. Specifically, this claim surrounds Applicant's belief that an unidentified incarcerated person had ties to the weapon in Applicant's case. This Court finds this allegation to be 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 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)).

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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

During mitigation at Applicant's guilty plea hearing, Plea Counsel informed the Court, "Mr. Douglas is an ideal client during my entire representation. He's met with me several times. Stayed in communication. He's able to assist me in his defense, going through the evidence. In fact, when me and him kind of went through it again on Friday, he said: Hey, there's that video. I want to see it. I actually took it over there today and watched together, just to make sure that he had all the information and all the evidence against him." (Plea Tr. pp. 18 – 19). Plea Counsel highlighted the fact that evidence of cell tower data was taking a while to complete, and that he wanted to make sure everything was received and reviewed with Applicant prior to moving forward with a plea, because he did not feel Applicant could adequately enter a plea without all information. (Plea tr. p. 20).

Plea Counsel also informed the plea court regarding the gun when discussing the triable issues in this case, stating, "There's other things in this case that create triable issues. I think Ms. Leskanic would agree that we had this scheduled before Judge Kelly. Both of us agreed not to call it for trial. This would be a very complex case involving the FBI and possibly different phone carriers. It would involve people from SLED. Your Honor, there was a gun recovered that could've been tied to this crime that was found on a totally different person, who's currently incarcerated in April. And all these witnesses would've had to come and be a several week trial." (Plea Tr. p 20, ll. 12 - 21).

PCR Evidentiary Hearing

On direct examination at his evidentiary hearing, Applicant testified that Plea Counsel informed him the detective in the case spoke to two college students about their interactions with and knowledge of the Applicant. Applicant testified he was informed that these college students told the detective they did not know Applicant. Applicant testified that Plea Counsel came to him with this information three to four months prior to his set trial date. Applicant then testified that he was unaware of the information surrounding the incarcerated individual with a gun until the day of his plea hearing.

On direct examination, Plea Counsel testified that the case had bad facts, considering they could not explain away the gunshot residue nor the cell tower data evidence against Applicant. Plea Counsel further testified that the FBI cell tower data analyst had very good testimony, and that he would have been unsure how to unravel that portion of the case on cross-examination. Plea Counsel testified that his strategy would have been surrounding the photo lineup considering the victim stated he only knew the Applicant's voice. Regarding the gun, Plea Counsel testified that he discovered this information surrounding an incarcerated individual potentially being linked to the gun months prior to Applicant's plea hearing and discussed it with him, stating that it could have been used at trial along with the photo-lineup issue.

Findings

This Court finds Applicant has 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). This Court additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that

alleged deficiency. See Butler, supra. Based upon the record before this Court, it is clear that Plea Counsel was prepared and provided representation that satisfies the Strickland deferential standard. See Mazzell v. Evatt, 88 F.3d 263, 269 (4th Cir. 1996) (declining "to allow an ineffective assistance of counsel claim to create a situation where post-conviction attorneys stroll in with the full benefit of hindsight to second-guess trial lawyers who professionally discharge their duties to their clients under the manifold pressures of a state trial").

Plea Counsel credibly testified that he investigated the facts in Applicant's case and pursued leads provided to him to craft a defense for trial. Plea Counsel further credibly testified that he and Applicant had extensive discussions regarding discovery and the facts of Applicant's case throughout his representation. The record shows Plea Counsel elaborated at the plea hearing on the complexity of Applicant's case should it have gone to trial with the ample evidence involved including evidence from the FBI and SLED, cell tower data, and gunshot residue evidence.

Plea Counsel stated that he was waiting for discovery to be available to review with Applicant before entering a plea, as he wanted his client to be adequately informed to make that decision. Plea Counsel highlighted how often he and Applicant would meet to review the facts of his case, and how Applicant assisted him in his defense. At the PCR hearing, Plea Counsel testified that the evidence against Applicant was strong and that the case had bad facts, including the inability to explain away the gunshot residue evidence and the cell tower evidence. Plea Counsel's testimony shows that he adequately investigated Applicant's case and had crafted a defense to attempt to rebut the strong evidence against Applicant by highlighting the fact that the victim only knew Applicant's voice, should they have proceeded with trial.

Regarding the issue of the gun, Plea Counsel's credible testimony establishes that Applicant was informed of this being a potential trial defense months before entering his guilty

plea. Further, Plea Counsel's statement to the plea court regarding the gun was placed on the record directly in front of Applicant, and Applicant was given the opportunity to inform the plea court of anything else he would want the court to consider. Applicant did not reference any issue surrounding the person in jail with the gun, but rather expressed his remorse and apologized to the victim. A combination of the record and Plea Counsel's testimony tends to show that Applicant was aware of the details surrounding the gun prior to the day of his plea. Even if Applicant was not aware of the information prior to the acceptance of his plea, Plea Counsel highlighted it on the record at Applicant's guilty plea, where Applicant had the opportunity to further speak with Plea Counsel and also could have decided to move forward with trial. Therefore, Applicant cannot establish that Plea Counsel was constitutionally ineffective in his representation for failing to conduct an adequate investigation and inform him of the facts of his case, nor can he establish that he would have proceeded with trial but for this alleged deficiency.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

This Court finds through the combination of the record and Plea Counsel's 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: Failure to Explain Plea Deal with 20 Year Cap Versus 0 – 30

Allegation: Erroneously Informed Applicant that he was eligible for a life sentence

Applicant alleges that Plea Counsel was constitutionally ineffective for failing to explain the specifics and consequences of his plea offer. Specifically, Applicant alleges that Plea Counsel failed to explain the difference in a plea offer with a twenty-year cap versus a sentencing range of zero to thirty years and erroneously informed the Applicant that he was eligible for a life sentence. This Court finds this allegation to be without merit.

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 conclusive 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)). To establish that a guilty plea is voluntarily and knowingly entered into, the record must demonstrate that the applicant had a full understanding of the consequences of their plea and the charges against them. See Boykin v. Alabama, 395 U.S. 238, 243 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). (Courts must make sure defendants have “a full understanding of what the plea connotes and of its consequences. When the judge discharges that function, he leaves a record adequate for any review that may be later sought ... and forestalls the spin-off of collateral proceedings that seek to probe murky memories.”)

When determining guilty plea issues, it is proper to consider both the guilty plea transcript and the evidence presented at the PCR hearing. See Harres v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984). 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. 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).

A defendant has the right to effective assistance of counsel during the plea-bargaining process. Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018)). "The United States Supreme Court has held that 'defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused.'" Collins v. State, 422 S.C. 250, 261, 810 S.E.2d 871, 876 (2018) (quoting Missouri v. Frye, 566 U.S. 134, 145 (2012)); see also Lafler v. Cooper, 566 U.S. 156, 169–70 (2012) (rejecting proposition that a fair trial wipes clean any deficient performance by defense counsel during plea bargaining). Generally, defense counsel provides deficient performance when he or she does not communicate such an offer to the defendant. Frye, 566 U.S. at 145.

To show prejudice, an applicant for post-conviction relief "must demonstrate a reasonable probability that: (1) he [or she] 'would have accepted the earlier plea offer had [he or she] been afforded effective assistance of counsel;' (2) 'the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it;' and (3) 'the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time.'" Collins, 422 S.C. at 262, 810 S.E.2d at 877 (quoting Frye, 566 U.S. at 147; citing Lafler, 566 U.S. at 164). An applicant must show actual prejudice, but depending on the facts of the case, an applicant's self-serving statement *may* be sufficient to establish actual prejudice. Davie, 381 S.C. at 613, 675 S.E.2d at 422.

Guilty Plea Hearing

During Applicant's plea hearing, the plea court asked him, "Sir, do you understand that, on the attempted murder charge, I can sentence you between zero to 30 years on this charge and that I cannot suspend any sentence and I cannot give probation?", to which Applicant answered affirmatively. (Plea Tr. p. 14).

During mitigation, Plea Counsel explained the timeline of his discussions with Applicant regarding plea offers and whether to proceed with trial, stating, "Your Honor, he is here today accepting responsibility. At the appropriate time he is going to issue an apology to the victim through The Court, Your Honor. That's something he's been wanting to do for a while. In fact, Mr. Douglas and I have been discussing a plea since my early representation once he got out on house arrest." (Plea Tr. pp. 19 – 20, ll. 25 – 5). Plea Counsel stated that the case took so long to enter a guilty plea because Plea Counsel was waiting for the FBI cell phone records to be completed and received, and for Plea Counsel to have time to speak with the FBI agent following receipt of those records. Plea Counsel elaborated that he didn't feel Applicant could adequately enter a plea without all the information and evidence before him. Plea Counsel stated that the cell tower data and gunshot residue evidence were strong evidence for the State. (Plea Tr. p. 20).

Plea Counsel stated that he and the solicitor agreed at that point that Applicant could either accept or reject the State's offer of a twenty-year term, and Applicant rejected that plea offer. He stated that Applicant understood that he must be sentenced to at least five years due to the weapon charge and that he understood his maximum sentence he faced was thirty years. Plea Counsel told the plea court that Applicant was requesting a ten-year sentence, and that they certainly wanted a sentence under twenty years. (Plea Tr. pp. 20 - 21).

PCR Evidentiary Hearing

On direct examination at his evidentiary hearing, Applicant testified that he believed the maximum sentence he was facing was thirty years for attempted murder and five years for the weapons charge. Applicant testified that Plea Counsel discussed the possibility of a twenty-year sentence cap with him, and that Plea Counsel told him he was surprised the solicitor did not serve him with notice of life in prison without the possibility of parole. Applicant informed Plea Counsel that he did not want to serve twenty years, and that Plea Counsel went again to meet with the solicitor to try to obtain a more favorable plea offer. Applicant testified that he was released on bond for a period of time and then ended up returning to jail. Applicant testified that at this point, the offer was an open plea of zero to thirty years, and that Plea Counsel informed him he would ask the judge for ten years because Plea Counsel knew the judge. Applicant testified that Plea Counsel informed him if he went to trial, the solicitor would be pushing for a life sentence even though he didn't have two strikes against him. Applicant stated that Plea Counsel did in fact ask the Court for a ten-year sentence, but he was ultimately sentenced to twenty years.

On cross-examination, Applicant testified that he informed Plea Counsel that he wanted to plead guilty because he couldn't serve a life sentence. When asked about telling the plea court that he was satisfied with his attorney, Applicant stated that he was being told to answer "yes" to certain questions.

On direct examination, Plea Counsel testified that one plea offer was extended to Applicant in June of 2023. Plea Counsel testified that he recalls the offer being a twenty-year negotiated sentence or recommendation, but he does not recall it being a twenty-year cap. Plea Counsel testified that he presented the offer to Applicant. Plea Counsel testified that Applicant rejected this

offer and then counteroffered for a 12-year sentence. Plea Counsel testified that the solicitor would not accept a plea offer of less than 20 years.

Findings

This Court finds Applicant has 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). This Court additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, supra. Based upon the record before this Court, it is undoubtedly clear that Plea Counsel provided representation that satisfies the Strickland deferential standard. See Mazzell v. Evatt, 88 F.3d 263, 269 (4th Cir. 1996) (declining "to allow an ineffective assistance of counsel claim to create a situation where post-conviction attorneys stroll in with the full benefit of hindsight to second-guess trial lawyers who professionally discharge their duties to their clients under the manifold pressures of a state trial").

The record shows that Applicant had expressed his desire to enter a guilty plea to these charges since the early stages of Plea Counsel's representation, and that Applicant was actively engaged in discussions with Plea Counsel regarding the plea offers he would potentially accept. At the PCR hearing, Applicant testified that he was aware of the potential sentence range he faced and that the only reason he pleaded guilty was that he couldn't serve a life sentence. Plea Counsel credibly testified that he recalled discussing a twenty-year negotiation or recommendation with Applicant, and that Applicant refused to accept the offer. The record and Plea Counsel's testimony at the PCR hearing establish that he and Applicant had discussions regarding extended plea offers, including the offer of a twenty-year recommendation or negotiation, that Applicant ultimately

refused because he wanted to receive less time. There is no evidence of Plea Counsel erroneously informing Applicant of the potential sentences he was facing nor the plea offers extended to him, and there is nothing to show that Plea Counsel erroneously informed Applicant that he would be facing a life sentence. Following Applicant's refusal of the extended offer, Applicant decided to enter an open guilty plea under the range of zero to thirty years because he did not want to face a potential life sentence by proceeding with a trial. Therefore, Applicant cannot establish that Plea Counsel was constitutionally ineffective for failing to explain the sentencing range to Applicant. Applicant also cannot establish that, but for this alleged deficiency, he would have proceeded to trial, as he testified to the court that he took the plea to avoid a life sentence.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

This Court finds through the combination of the record and Plea Counsel's 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**.

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

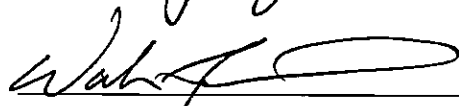
application. Therefore, this application for post-conviction relief must be **DENIED and DISMISSED WITH PREJUDICE.**

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), SCRCP, 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 21 day of July, 2026.



WALTON J. MCLEOD, IV
Presiding Judge
Seventh Judicial Circuit

Cherokee, South Carolina.

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
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BRANDY W. MCBEE