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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT
APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
The Honorable Jane Merrill, PCR Action Judge
2024-CP-21-00665

MICHAEL GAMBLE, #217971,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Michael Gamble appeals the denial of his post-conviction relief application. The post-conviction relief action was heard and denied by the Honorable Jane Merrill, circuit court judge, on May 20, 2026, and was denied by written order issued filed on July 27, 2026. Applicant received notice of the judgement on July 27, 2026.

/s Chelsey F. Marto
Chelsey F. Marto, Esquire
Attorney for the Applicant
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STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Michael O. Gamble, #217971,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

Case No. 2024-CP-21-00665

ORDER OF DISMISSAL
WITH PREJUDICE

Presiding Judge:	Hon. Jane H. Merrill
Applicant's Attorney:	Chesley F. Marto, Esq.
Respondent's Attorney:	O. McConnell Harison, Esq.
Plea Counsel:	Karen Parrott, Esq.
Date of Hearing:	May 20, 2026

This matter comes before the Court by way of Michael O. Gamble's (Applicant) application for post-conviction relief (PCR) filed on March 18, 2024. On December 5, 2024, Respondent filed its Return requesting an evidentiary hearing. Applicant subsequently amended his PCR application to include additional claims of ineffective assistance of counsel.

On May 20, 2026, an evidentiary hearing was held at the Florence County Courthouse before the Honorable Jane H. Merrill. Applicant was present and represented by Chelsey F. Marto, Esq. Assistant Attorney General O. McConnell Harison represented Respondent. Applicant proceeded on the claims in his amended application. In support of these claims, Applicant testified on his own behalf. Respondent presented testimony from Karen E. Parrott, Esquire (Plea Counsel).

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

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constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of the Florence County Clerk of Court. During its June 2022 term, the Florence County Grand Jury indicted Applicant for five counts of distribution of cocaine base (2022-GS-21-01115; -01116; -01117; -01118; 01119), habitual traffic offender – DUS (2021-GS-21-03237), unlawful carrying of pistol (2021-GS-21-03239), and possession of less than one gram of meth or cocaine base (2023-GS-21-00808). Applicant was represented by Karen E. Parrott, Esquire (Plea Counsel). Twelfth Circuit Deputy Solicitor John C. Jepertinger prosecuted the case.

On July 17, 2023, Applicant appeared before the Honorable Daniel D. Hall for a status conference and the State's final plea offer. Solicitor Jepertinger advised Judge Hall they intended to call Applicant's case to trial the following day on distribution of cocaine base, 3rd offense. Additionally, Solicitor Jepertinger advised Judge Hall of the State's final plea offer: distribution of cocaine base, 3rd offense, with a cap of ten years and dismissal of all other charges in exchange for the plea. After the State presented its offer, Judge Hall advised Applicant of his rights. Applicant indicated to Judge Hall that he did not agree with Plea Counsel and did not feel comfortable with her representing him. Judge Hall interpreted this as Applicant requesting to relieve Plea Counsel, and Judge Hall denied Applicant's request. Judge Hall then advised Applicant of his right to counsel and right to represent himself. Applicant did not indicate that he desired to represent himself and advised Judge Hall that he would not accept the State's plea offer.

On July 18, 2023, Applicant appeared before Judge Hall and pled under Alford[1] to one count of distribution of cocaine base, 3rd offense (2022-GS-21-01115). The State *nolle prossed* the remaining charges in exchange for Applicant's plea. Judge Hall sentenced Applicant to a negotiated sentence of ten years' imprisonment.

Applicant filed a timely notice of appeal. On September 26, 2023, the South Carolina Court of Appeals dismissed the appeal by order for failure to provide a sufficient guilty plea explanation as required by Rule 203(d)(1)(B)(iv), SCACR. The remittitur was returned to the lower court on October 13, 2023.

FACTS SUPPORTING GUILTY PLEA

The following was put into the record by the solicitor at Applicant's guilty plea hearing:

> Your Honor, on August the 29th, 2021, Investigator Chamberlain, who works for the Florence County Sheriff's Office, met – along with an Investigator Huggins met with a confidential informant of Florence County Sheriff's Office, rigged him with audiovisual equipment, sent him out with $40 worth of state funds, sent him over to the – a Scott Street address over in Lake City, South Carolina, which is in Florence County, where a crack transaction was consummated between this defendant and the confidential informant. There was video where Mr. Gamble walked up to the car, leaned into the car, and said it was 40, here's 40, and the confidential informant returned with the drugs purchased to law enforcement. The – as he placed them in a BEST pack, the BEST pack was turned over to the evidence custodian and eventually was analyzed by the chemist, Mitch Hanson, who is present in the courtroom here today, and it turned out to be .10 grams of cocaine base.

(Plea Tr. pp. 18 – 19).

CURRENT APPLICATION

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

I. Ineffective Assistance of Counsel
    a. Indictment issues

[1] North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

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i. "The grand jury only looks at the heading of an indictment when handing down an indictment. Not the face or the body of the indictment. It's a faulty indictment. The original indictment was 44-53-375(B)(1) first offense. Proper process was not followed to supersede this indictment, and the statute overrides the CDR code. This sentence violates the 14th Amendment and also the 8th."
ii. "The indictment was also obtained outside of the 90 limit after the warrant was obtained."
iii. "Failure to question indictment."

b. "Trial counsel was clearly ineffective for allowing his/her client to make an Alford Plea to a more serious offense instead a lesser included offense."
c. "Proper chain of custody is also in question, and individual was not prepared for trial".

II. Involuntary Guilty Plea
a. "This was also a coerced plea and unintelligent. This violates the 6th Amendment."
b. Faretta v. California
i. "The defendant was also forced to go *pro se* if he didn't take the plea".
ii. "A verbal statement was not in writing for a previous plea."

Applicant subsequently amended his PCR application through counsel to include the following claims:

I. Ineffective Assistance of Counsel
a. Failure to communicate.
b. Failure to get a plea offer to a lesser charge, failure to get the second offense plea offer reinstated, and failure to fully explain the second offense plea offer.
c. Failure to challenge indictments.
d. Failure to argue that the habitual traffic offender and unlawful carrying of a pistol charges were dismissed unrelated to the plea.
e. Failure to move to reconsider the sentence.
f. Failure to explain that a third offense charge is 85%, no parole.
g. Failure to stress to the Court that Applicant was a drug addict, not a serious drug dealer.

II. Involuntary Guilty Plea

a. Applicant was threatened into pleading because he would have been forced to proceed forward *pro se* if he did not plead.
b. Applicant was afraid that if he did not plead he would spend the rest of his life in prison.

Before this Court are the Florence County Clerk of Court records regarding the subject conviction and sentence, Applicant's records from the South Carolina Department of Corrections, the transcript from Applicant's status conference and plea proceeding, Applicant's direct appeal records, and the records of the current PCR action.

STANDARD OF REVIEW

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

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

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[2] S.C. Code Ann. §§ 17-27-10 to -160.

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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 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

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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

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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 further 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

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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.").

ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF PLEA COUNSEL

Allegation I(a): Failure to Communicate.

Applicant alleges that Plea Counsel's representation was constitutionally ineffective for failing to communicate with him. This Court finds this allegation to be without merit.

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

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

PCR Evidentiary Hearing

On direct examination, Applicant testified that he felt Plea Counsel did not represent him well. He testified that Plea Counsel did not investigate multiple issues he tried to explain to her, and that discussions with Plea Counsel did not help when she could not understand his point of view. Applicant testified that his communication with Plea Counsel was broken from day one. Applicant testified that he met with Plea Counsel less than five times during a three-year time span in preparation for his case and testified that Plea Counsel lied at the plea hearing when she noted fourteen or fifteen meetings between them. Applicant testified that the first time he met Plea Counsel was at his initial appearance, where he first heard his plea offer to plead to distribution second offense. Applicant testified that this plea offer should be in his paperwork. Applicant testified that he never went to Plea Counsel's office for any meetings and that she never set up any appointments for him to speak with her. Applicant testified that the few times they spoke were at his initial appearance, at a general sessions docket appearance, and when Plea Counsel came to see him after Applicant was arrested on a bench warrant. Applicant testified that she checked into Effingham to speak with him, but they never spoke. Applicant testified that Plea Counsel sent her investigators to speak with him instead. (PCR Tr. pp. 8 – 10). Applicant testified that he attempted

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to speak with Plea Counsel multiple times with no success. Applicant testified that Plea Counsel would send her two investigators, Mr. Goodman and Mr. McKenzie, to communicate with him when Plea Counsel was unable to. (PCR Tr. p. 20).

On direct examination, Plea Counsel testified that Applicant was already a client of hers before the charges at hand were filed, and that Applicant incurred another charge while she was representing him. Plea Counsel testified that Applicant's initial appearance for the charges at hand was February 3, 2022, following Applicant's arrest on November 15, 2021. Plea Counsel testified that the client file for Applicant's case was opened on December 8, 2021. Plea Counsel testified that she notated where she and her investigators spoke to Applicant and his wife at least 14 times on the phone and at least 11 times in person, and that they actually met even more frequently than her notes reflect. (PCR Tr. pp. 26 – 27).

On cross-examination, Plea Counsel testified that Applicant's case was a drug deal caught on video. Plea Counsel testified that, due to prior crimes involving confidential informants, only she was permitted to watch the video and receive still photos to review with Applicant. Plea Counsel testified that she showed Applicant the photos taken from the video evidence. Plea Counsel testified that the video shows Applicant walking up to a Mercedes, making the drug deal, and then turning around and walking away. Plea Counsel testified that when she discussed this with Applicant, he had no questions about who was in the video or what the video depicted. Plea Counsel testified that Applicant knew the confidential informant and told Plea Counsel this. Plea Counsel testified that it was never a question of whether Applicant committed the crime. Plea Counsel testified that she reviewed all of Applicant's discovery and provided him copies of his

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discovery. Plea Counsel testified that Applicant came to her office to pick up his copies and signed the discovery acknowledgment receipt.[3] (PCR Tr. pp. 36 – 37).

Plea Counsel testified that she had adequate time to prepare Applicant's case. Plea Counsel testified that she explained to Applicant the elements of the charges against him and what the State must prove to convict him. When asked if she explained the strengths and weaknesses of the State's case to Applicant, Plea Counsel testified that there weren't many weaknesses considering it was a drug distribution case with very good video evidence with Applicant's face in the middle of the photo-still. (PCR pp. 36 – 38). Plea Counsel testified that she investigated a potential chain of custody issue in Applicant's case regarding the transfer of the drugs seized in Applicant's case and stated that her questions surrounding that were absolved after speaking to the narcotics officers involved. (PCR Tr. pp. 38 – 39).

When asked if Applicant was helpful in assisting to establish a defense for his case, Plea Counsel testified that Applicant kept reiterating that the deals were only for ten dollars and that he had serious health issues. Plea Counsel testified that Applicant and his brother discussed how they knew the confidential informant in Applicant's case, and Applicant told Plea Counsel that the informant was pressuring him into making the drug deals. Plea Counsel testified that she had discussions with Applicant informing him that if he does a drug deal when somebody asks him to, that is not entrapment and he's not being pressured. Plea Counsel testified that she told Applicant he has free will to make the sale and does not have to receive any money in exchange for the distributions for them to be considered as such. Plea Counsel testified that following these discussions with Applicant, she attempted to give the solicitor reasons to have sympathy for Applicant, but the solicitor did not care. (PCR Tr. pp. 39 - 40).

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[3] Respondent's Ex. No. 1.

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Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland). This Court additionally finds that Applicant has failed to overcome his burden in proving Plea 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 was prepared and provided representation that satisfies the Strickland deferential standard.

Plea Counsel **credibly** testified that she met with Applicant numerous times in preparation for his case, and that his family members and investigators also met with them. Plea Counsel testified that she reviewed all of the discovery with Applicant and provided him with a copy. Plea Counsel **credibly** testified that she discussed the State's evidence with Applicant, and that there were not many, if any, weaknesses with the State's case against Applicant. Plea Counsel testified that she informed Applicant of the elements of the distribution charge, and that the fact that he received only $10 per drug sale does not negate that it was a distribution. The record and Plea Counsel's testimony establish that Plea Counsel was adequately prepared, communicated with Applicant sufficiently, and had a clear understanding of Applicant's case at hand. Therefore, Applicant cannot establish that Plea Counsel was constitutionally ineffective in her representation for failing to communicate with him.

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

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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 I(b): Failure to get a plea offer to a lesser charge, failure to get the second offense plea offer reinstated, and failure to fully explain the second plea offer.
Allegation I(f): Failure to explain that a third offense charge is 85%, no parole.

Applicant alleges that Plea Counsel's representation was constitutionally ineffective for failing to get a plea offer for a lesser charge, failing to get the plea offer for second offense reinstated, failing to fully explain the second plea offer to Applicant, and failing to explain that Applicant would have to serve 85% of his sentence on a third offense without parole. This Court finds these allegations to be without merit.

A defendant has no constitutional right to a plea bargain. State v. Chisolm, 312 S.C. 235, 237, 439 S.E.2d 850, 852 (1994) (citing Weatherford v. Bursey, 429 U.S. 545 (1977)).

Parole eligibility has been held to be a collateral consequence of sentencing, of which a defendant need not be specifically advised before entering a guilty plea. Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983). However, if the defendant's attorney undertakes to advise the defendant about parole eligibility and gives erroneous advice, then the plea may be collaterally attacked. See Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989). Likewise, if the judge misinforms the defendant about parole eligibility, then the defendant is entitled to a new trial. See

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Brown v. State, 306 S.C. 381, 412 S.E.2d 399 (1991). In reaching its holding in Brown, the Court stated, "The imposition of a sentence may have a number of collateral consequences, however, and a plea of guilty is not rendered involuntary in a constitutional sense if the defendant is *not* informed of the collateral consequences. Parole eligibility typically is a collateral consequence of sentencing about which a defendant need not be specifically advised before entering a guilty plea. This is because parole eligibility is not a matter within the jurisdiction of the trial court, but falls within the province of the Board of Probation, Parole, and Pardon Services. Brown, 306 S.C. at 382-83, 412 S.E.2d at 400-01 (emphasis in original) (internal citations omitted).

Plea Hearing

At Applicant's status conference the day prior to his plea, the following colloquy occurred:

SOLICITOR:	The – the offer, Your Honor, even though these are third offenses, I'm offering the minimum 10 years on this one case. If he accepts it, I will be dismissing everything else. He is – he's in a posture right now that this is the last offer I'm making. I understand it is a serious offense. I understand it's a no-parole offense. It is a non-violent offense, but –
PLEA COUNSEL:	But it's still 85 percent.
SOLICITOR:	Sure. It's no parole, yes. And, Your Honor, I – it's my last offer.

(Plea Tr. pp. 4 – 5).

At Applicant's plea hearing, the following colloquy occurred:

THE COURT:	And in exchange for his plea under North Carolina v. Alford, the State is dismissing four other distribution changes where he would be facing up to 30 years on each of those charges as well, that's part of the benefit.
PLEA COUNSEL:	Or life.
THE COURT:	I'm sorry?
PLEA COUNSEL:	Or life, Your Honor, for the strikes.
THE COURT:	That's right. Or life because each of those are classified as a serious offense and are strikes under our three strikes law.

(Plea Tr. p. 24).

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PCR Evidentiary Hearing

On direct examination, Applicant testified that he did not know he was pleading guilty to an 85% non-parole offense. Applicant testified that it was "a totally unintelligent plea of my arrest warrants, which were in November of 2021. My arrest warrants had distribution, first offense. I didn't go back to court for three years – two or three years later. All of a sudden, it's second offense. That's when we first had our disagreements. I don't understand why. Then, all of a sudden, when I came back – but after I was arrested for a bench warrant, which I have proper documentation – I was hospitalized with a heart attack that I couldn't even get to court, But I – but when they arrested me for a bench warrant, and I went back to court, it was third offense." (PCR Tr. pp. 10 – 23).

Applicant testified that this was the reason his plea offer for second offense was taken off the table. Applicant testified that he has his medical records from MUSC, and that he was admitted to MUSC on December 5, 2022. Applicant testified that he believes his case was scheduled for court on December 6th or 7th of 2022. Applicant testified that his wife presented the paperwork to the public defender's office while he was hospitalized, and that the paperwork seemed to stand for nothing and was not recorded or taken into account. Applicant's PCR Counsel admitted Applicant's medical records to the Court, and Applicant testified that the documentation reflects when he was admitted to MUSC on December 5, 2022, and that a bench warrant was still issued for his arrest when he failed to appear days later. Applicant testified that his family called the public defender's office the day after he was admitted to the hospital, but that it had no bearing in his case. Applicant testified that he would have taken the second-offense plea offer with a five-year sentence. Applicant testified that he wasn't given due process and was not allowed time to accept the plea offer while he was in the hospital. (PCR Tr. pp. 11 – 13).

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Applicant testified that he wanted Plea Counsel to use his medical records in order to get the second-offense plea offer reinstated. Applicant testified that the solicitor in his case coerced and threatened him, telling Applicant that he would die in prison if he did not accept the plea offer. (PCR Tr. pp. 12 – 13). Applicant testified that he did not understand the second offense plea offer. Applicant testified that he did not know what "second offense" meant until he had access to the prison law library. Applicant testified that Plea Counsel was aware that he had a heart attack, was unemployed, he lost his house, and this was during the COVID-19 pandemic. Applicant testified that Plea Counsel spoke to Applicant's wife regarding getting evicted and was allowing them time to get their affairs in order. Applicant testified that during this time he had to call the public defender hotline to check whether his case was scheduled. Applicant testified that his name was not on a court docket from December 2022 to "way past the time [he] got arrested." Applicant testified that he was aware of the bench warrant and that the bondsman was aware of his health conditions and tried to assist Applicant, but the bondsman is deceased. (PCR Tr. pp. 13 – 14).

Applicant testified that he and Plea Counsel were not communicating when Applicant signed his trial warning sheet, and that Applicant would never have signed this sheet. Applicant testified that the two investigators signed the trial warning sheet even though neither is an attorney. Applicant testified that this was Plea Counsel's way of saying she got the job done, and that he should have been involved in the negotiations. Applicant testified that he never signed anything stating his plea was negotiated or that he had a plea agreement, and that if he did, he does not recall doing so. (PCR Tr. pp. 20 – 21).

Applicant testified that the letter from Plea Counsel clearly shows he was offered a second-offense plea deal. Applicant testified that Plea Counsel informed him that the plea offer for the second offense was off the table because Applicant did not accept it by the deadline set by Judge DeBerry. Applicant testified, "How can I meet a deadline in a hospital?" (PCR Tr. p. 24).

On direct examination, Plea Counsel testified that the solicitor's original offer was two counts of distribution for a twelve-year sentence. Plea Counsel testified that this offer was given to her prior to Applicant's initial appearance. Plea Counsel testified that Applicant did not appear at his initial appearance and that she had to make phone calls to locate him for court. Plea Counsel testified that she called the phone number Applicant provided as his contact and also called Applicant's mother. Plea Counsel testified that she informed them that Applicant had to be in court the next morning at 9:00 am, and that Applicant showed up at 9:55 am, when Plea Counsel was leaving the courthouse. Plea Counsel testified that Applicant appeared late again for a hearing and warned him that his charges were third offenses and probation is not an option. Plea Counsel testified that Applicant was aware of all these factors from March of 2022 through the day of his plea hearing on July 18, 2023. (PCR Tr. pp. 27).

Plea Counsel testified that the plea offer was for distribution second at this time because Applicant had five different drug charges going back to November of 2021, and the solicitor stated that he would allow Applicant to plead guilty to two counts of distribution for a cap of twelve years. Plea Counsel testified that the offers went back and forth regarding whether it was a first-, second-, or third-offense offer, and the offer was for a second offense until Applicant refused to take the offer by the deadline provided by the solicitor. Plea Counsel testified that this was put on the record during a hearing on September 8, 2022, before Judge Brown. Plea Counsel testified that Applicant was informed on the record that this offer would expire September 16, 2022. (PCR Tr. p. 28).

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Plea Counsel testified that Applicant was brought before Judge DeBerry on September 16, 2022, and that she was discussing with the solicitor the possibility of Applicant pleading at a later date due to Applicant's ongoing personal health and financial issues. Plea Counsel testified that if Applicant would have signed the sheet then, he would have been allowed to plead in October, but Applicant again refused to accept the plea offer for distribution second. Following this, the solicitor revoked the offer on the record. Plea Counsel testified that the only available offer for Applicant as of December of 2022 was for a third-offense distribution, and the solicitor was unwilling to extend any other offers. (PCR Tr. p. 29).

When asked if Applicant seemed confused by the plea offer, Plea Counsel testified that Applicant did not want to understand the offer. Plea Counsel testified that Applicant always asked her to get him probation, and that she explained to Applicant that the only way he could get probation was by accepting the offer for a second offense and seeing if the judge would grant it. Plea Counsel testified that she explained to Applicant that a second offense would carry a sentence of five to thirty years, which could be suspended, and that Applicant could receive probation. Plea Counsel testified that Applicant would not accept the offer unless it was put in writing that he would receive probation. Plea Counsel testified that, by this time, it was September 16, 2022, and the offer for a second offense had expired, and the offer had become a third offense with a minimum of ten years. Plea Counsel testified that Applicant was warned of this prior to the expiration of the second offense offer, and that she explained all of this to Applicant as well. Plea Counsel testified that there was nothing she could have done at that point to get the solicitor to re-extend the plea offer for second offense. (PCR Tr. p. 30).

Plea Counsel testified that she informed Applicant that he was pleading guilty to a charge that requires him to serve a minimum of 85% of his sentence and stated that this was in the record

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during his plea hearing. Plea Counsel testified that she additionally informed Applicant that he was pleading guilty to a non-parole offense. (PCR Tr. p. 35).

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland). This Court additionally finds that Applicant has failed to overcome his burden in proving Plea 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 was prepared and provided representation that satisfies the Strickland deferential standard.

Even though the State is not required to make a plea offer, it did so in this matter. Plea Counsel communicated to Applicant the offer, a guilty plea to two counts of distribution of cocaine base, second offense, with a twelve-year sentence. The offer remained open for several months, and Applicant declined to accept it. Thereafter, the State revoked the initial offer and instead offered the minimum ten-year sentence for one count of distribution of cocaine base, third offense. Applicant testified that he did not understand the offers because Plea Counsel did not fully explain them. Plea Counsel **credibly** testified that she fully explained each plea offer to Applicant. Plea Counsel testified that she met with Applicant and his family at least eleven times and spoke to them at least fourteen times. Further, Respondent's Exhibit No. 2 is a copy of a letter that Plea Counsel provided to Applicant that detailed the potential penalties, that the offense was not parole eligible, and it would be a strike on his record. Applicant signed the letter acknowledging receipt and added a note that he is thinking about pleading "to anything nonviolent". During the status conference the day before Applicant's plea, the solicitor stated the offense for which the offer was made was nonviolent, and Plea Counsel immediately interjected, "[b]ut it's still 85 percent." While this Court finds Plea Counsel not deficient, any alleged deficiency was addressed by these comments at Applicant's guilty plea, so Applicant failed to show he was prejudiced.

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 I(c): Failure to challenge indictments

Applicant alleges that Plea Counsel's representation was constitutionally ineffective for failing to challenge the indictments in his case. This Court finds this allegation to be without merit.

"The primary purposes of an indictment are to put the defendant on notice of what he is called upon to answer, i.e., to apprise him of the elements of the offense and to allow him to decide whether to plead guilty or stand trial, and to enable the circuit court to know what judgment to pronounce if the defendant is convicted." State v. Means, 367 S.C. 374, 383, 626 S.E.2d 348, 353 (2006) (quoting Evans v. State, 363 S.C. 495, 508, 611 S.E.2d 510, 517 (2005)). "An indictment is sufficient if the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon." State v. Scriven, 339 S.C. 333, 337, 529 S.E.2d 71, 73 (Ct. App. 2000) (quoting Carter v. State, 329 S.C. 355, 363, 495 S.E.2d 773, 777 (1998)).

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PCR Evidentiary Hearing

On direct examination, Applicant testified that the indictment he received was just a sheet of paper with no charges on the outside of it. Applicant testified that the document stated his name, "this and that, this and that", but it was missing the code and had no details on the indictment. Applicant testified that he felt it was a faulty indictment. Applicant testified that he felt the indictment contained insufficient information. Applicant testified that the grand jury need not look at the body of the indictment but only at the heading. Applicant testified that nothing was on the heading of his indictment. Applicant testified that the grand jury in his case actually had to read his indictment in order to indict him. (PCR Tr. p. 15).

On direct examination, Plea Counsel testified that she did not see anything wrong with the indictments in Applicant's case. Plea Counsel testified that the indictment is sufficient to apprise the person of the charges of which they are accused. Plea Counsel testified that Applicant's indictment had a heading, as a normal indictment would, and read the language of Applicant's indictment to the Court. (PCR Tr. pp. 30 - 31).

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland). This Court additionally finds that Applicant has failed to overcome his burden in proving Plea 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 was prepared and provided representation that satisfies the Strickland deferential standard.

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Applicant was indicted for distribution of cocaine base. "A person who manufactures, distributes, dispenses, delivers, purchases, or otherwise aids, abets, attempts, or conspires to manufacture, distribute, dispense, deliver, or purchase, or possess with intent to distribute, dispense, or deliver methamphetamine or cocaine base, in violation of the provisions of Section 44-53-370, is guilty of a felony and, upon conviction: … for a third or subsequent offense, the offender must be imprisoned for not less than ten years nor more than thirty years, or fined not more than fifty thousand dollars, or both." S.C. Code Ann. §44-53-375(B)(3) (1976, as amended).

The body of the indictment states: "[t]hat Michael O. Gamble did in Florence County, on or about August 29, 2021, distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense, or deliver to a Confidential Informant of the Florence County Sheriff's Office, a quantity of cocaine base, a controlled substance under provisions of Section 44-52-110, et. seq. Code of Laws of South Carolina, 1976, as amended, such distribution not having been authorized by law, and being in violation of Section 44-53-375(b)(3), S.C. Code of Laws, 1976, as amended." The indictment cites the proper code section for a third offense.

The indictment was true-billed on June 9, 2022, and signed by the grand jury foreperson. The body of the indictment charges the crime in substantially the same language as the statute and correctly cites the statute for a third offense, though citing it so specifically is not required. Using an objective standard, this Court finds that this is a proper indictment and that it properly put Applicant on notice of the crime of which he was accused, so he could decide whether to stand trial or plead.

In the top-right portion of the sentencing sheet (the caption), the CDR code is 3014, and the cited statute is Section 44-53-375(B)(1), which corresponds to a distribution of cocaine base, first offense, matching the initial arrest warrant. However, the correct CDR code 3039 and statute

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section 44-53-375(B)(3) are listed in the body of the sentencing sheet as the offense to which the defendant is pleading guilty, which is distribution of cocaine base, third offense, and this statute is the same statute cited in the indictment. The transcript makes clear that Applicant had two or more prior drug offense convictions to support this being a third offense. This Court finds Plea Counsel's testimony **credible** that she had no basis for challenging the indictment. Though the caption had the wrong CDR code and statute, the body of the indictment and sentencing sheet are correct, and the record demonstrates it is a proper third offense drug conviction. This Court finds the indictment sufficiently put Applicant on notice of the accusations against him and apprised him of the elements of the offense. Further, Applicant cannot show prejudice, because the remedy for an error in the caption would simply be to amend the indictment and proceed with the case.

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 I(d): Failure to argue that the habitual traffic offender and unlawful carrying of pistol charges were dismissed unrelated to the plea.

Applicant alleges that Plea Counsel's representation was constitutionally ineffective for failing to argue that the habitual traffic offender charge and unlawful carry of a pistol charge were dismissed unrelated to his plea. This Court finds this allegation to be without merit.

Plea Hearing

The solicitor stated at the plea hearing, "He [Applicant] has another distribution of cocaine base. Two – three – four – four distributions of cocaine base, a possession of cocaine base, an

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unlawful pistol, and an HTO." (Plea Tr. p. 4). "The – the offer, Your Honor, even though these are third offenses, I'm offering the minimum 10 years on this one case. If he accepts it, I will be dismissing everything else." (Plea Tr. p. 4). Following mitigation, the solicitor again stated that he would dismiss four distribution charges against Applicant in exchange for his plea. (Plea Tr. p. 23).

PCR Evidentiary Hearing

On direct examination, Applicant testified that he wanted Plea Counsel to argue that some of his charges were dismissed unrelated to his guilty plea. Applicant testified that two of his charges were dismissed in Lake City two years earlier, and that he informed Plea Counsel of this. Applicant testified that the habitual traffic offender charge and possession of a firearm charge were *nolle prossed* in Lake City by Judge Gloria Washington. Applicant testified that when he proceeded to court for distribution of cocaine, the prosecutors stood on the stand and read out the dismissed charges from Lake City in order to make Applicant look bad. Applicant testified that it looked like he had "a boat load" of charges, and that he informed Plea Counsel of this but got no response. Applicant testified that he asked the judge to look into the matter, and the judge responded that Applicant should speak with his lawyer. (PCR Tr. pp. 14 – 15).

On direct examination, Plea Counsel testified that the habitual traffic offender and unlawful carrying of pistol charges were dismissed as part of the plea agreement. Plea Counsel testified that the HTO offense was from June 29, 2021, and was transmitted and received in the Florence County Clerk of Court's Office on July 9, 2021. Plea Counsel testified that the disposition date of the HTO charge, where it was *nolle prossed*, is July 18, 2023, the same date as Applicant's plea. (PCR Tr. pp. 35 - 36).

On cross-examination, Plea Counsel testified that the accepted plea deal was beneficial to Applicant, as he had multiple charges dismissed in exchange for the plea. Plea Counsel testified that, because he accepted the plea, they have not pursued a life notice against Applicant or pursued the remaining charges against him, as the remaining distribution charges, the HTO charge, a possession of cocaine base charge, and the weapons charge were all dismissed. (PCR Tr. p. 42).

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland). This Court additionally finds that Applicant has failed to overcome his burden in proving Plea 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 was prepared and provided representation that satisfies the Strickland deferential standard.

Plea Counsel **credibly** testified the dismissal of all charges was part of the plea deal when Applicant accepted it. During the status conference on July 17, 2023, the day before Applicant's plea, the solicitor clearly notified Applicant multiple times that the habitual traffic offender and unlawful carrying of a pistol charges would be dismissed if Applicant accepted the State's offer. Plea Counsel and the transcript make clear that dismissal of all other charges, including the unlawful possession of a pistol and habitual traffic offender charges, was related to the plea.

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**.

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Allegation I(e): Failure to Move to Reconsider Sentence.

Applicant alleges that Plea Counsel's representation was constitutionally ineffective for failing to move to reconsider his sentence following his guilty plea. This Court finds this allegation to be without merit.

PCR Evidentiary Hearing

On direct examination, Applicant testified that he asked Plea Counsel to file a motion to reconsider his sentence. Applicant testified that he wrote Plea Counsel a letter asking her for reconsideration, and Plea Counsel responded by letter[4] stating that there were no proper grounds for it. Applicant testified that he then filed an appeal. Applicant testified that he was in the Department of Corrections for six days and had another heart attack in August. Applicant testified that he was arrested on July 18^{th} and was in Prisma Hospital for ten days starting on July 29^{th}. Applicant testified that he filed an appeal during this time, and the court wrote back to him saying it was untimely. (PCR Tr. pp. 23 – 24).

On direct examination, Plea Counsel testified that Applicant did ask her to move to reconsider his sentence. Plea Counsel testified that there were no grounds to do so considering it was distribution of cocaine base, third offense, and Applicant received ten years, which is the minimum possible sentence he could have received. (PCR Tr. p. 31).

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland). This Court additionally finds that Applicant has failed to overcome his burden

[4] Applicant's Exhibit No. 2.

in proving Plea 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 was prepared and provided representation that satisfies the Strickland deferential standard.

Applicant testified that he filed his own motion to reconsider the sentence because Plea Counsel refused to. Plea Counsel **credibly** testified that there was no basis in law to file such motion. Plea Counsel's letter in response to Applicant's request to file a motion for reconsideration clearly and cogently states the legal reasons to support Plea Counsel's position.

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. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation I(g): Failure to stress to the Court that Applicant was a drug addict, not a serious drug dealer.

Applicant alleges that Plea Counsel was constitutionally ineffective for failing to stress to the Court during mitigation that Applicant was a drug addict and not a serious drug dealer. This Court finds this allegation to be without merit.

Plea Hearing

At Applicant's plea hearing, the following colloquy occurred between the court and Applicant following the solicitor's recitation of the facts:

THE COURT: Do you believe that?
APPLICANT: Well, he gave me the amount, he said 10. You can't even see it.

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THE COURT:	I'm sorry?
APPLICANT:	He said .10.
THE COURT:	Well, it's $40, $40 worth of crack or cocaine.
APPLICANT:	I hear you, but I – that's, like, a piece of grass like [*indicating*].
THE COURT:	We're not here to debate that. You're charged with distribution and that there is – that's what they would present to the jury.

(Plea Tr. p. 20).

During mitigation at Applicant's plea hearing, Plea Counsel informed the plea court that Applicant has ongoing health problems, and that she has been discussing this with Applicant's wife during the course of representing Applicant. Plea Counsel stated that Applicant has had two heart attacks, has vision issues, and other recent health issues. (Plea Tr. p. 22).

PCR Evidentiary Hearing

On direct examination, Applicant testified that he has had a drug problem for a number of years, and that his last conviction was 22 years ago. Applicant testified that Lake City is a small town where his family lived, went to church, and where he attended high school. Applicant testified that Lake City is a drug town with nothing for young children or young black men, and that he got "caught up in the mix" and was using cocaine. (PCR Tr. p. 19).

On direct examination, Plea Counsel testified that she did not highlight Applicant's addictions during mitigation due to Applicant's criminal history. Plea Counsel testified that she contacted narcotics officers on Applicant's behalf because he wanted to work for them, and that the narcotics officers informed Plea Counsel that they knew Applicant as a drug dealer and did not want to work with him. Plea Counsel testified that she thinks Applicant may have contacted the narcotics officers on his own, and when she contacted the captain of the Narcotics Division, she was informed that Applicant was requesting to work in Williamsburg County, not Florence County, and that neither were interested in working with Applicant. Plea Counsel testified that she has no

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doubt that Applicant is a drug user, but he was charged with multiple distributions. Plea Counsel testified that Applicant admitted to distribution on the record during a hearing on September 8, 2022, in which he stated he received only $10 per deal. Plea Counsel testified that Applicant told the court on September 16, 2022, that he knows what he did was wrong. (PCR Tr. pp. 33 – 35).

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland). This Court additionally finds that Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*.

Plea Counsel **credibly** testified that she did not doubt that Applicant was a drug user, but she did not emphasize this during mitigation because he was pleading to a distribution charge. Further, Applicant addressed the plea court directly when the opportunity arose, and he did not mention being a drug user. This Court finds Plea Counsel not deficient as she strategically chose not to focus on this for the reasons stated. Moreover, in an accepted negotiated plea, the court would issue the sentence the parties negotiated regardless of mitigation evidence.

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**.

RESPONSE TO ALLEGATION OF INVOLUNTARY GUILTY PLEA

Allegation II(a): **Applicant was threatened into pleading because he would have been forced to go *pro se* if he did not plead.**

Allegation II(b): **Applicant was afraid that if he did not plead he would spend the rest of his life in prison.**

Applicant alleges that his guilty plea was involuntarily entered due to being threatened into pleading, being forced to go *pro se* if he did not plead, and due to him being threatened with life in prison. This Court finds these allegations to be without merit.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a complete understanding of the consequences of the plea and the charges against him or her. Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991); see also Boykin v. Alabama, 395 U.S. 238, 244 (1969) (Courts must make sure defendants have "a full understanding of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought and forestalls the spin-off of collateral proceedings that seek to probe murky memories."). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984) (finding the voluntariness of a guilty plea "is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.").

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to

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trial instead. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001); Richardson v. State, 310 S.C. 360, 363, 362 426 S.E.2d 795, 797 (1993).

The United States Supreme Court held in Alford that an accused may consent voluntarily, knowingly, and understandingly to the imposition of a prison sentence, although unwilling to admit culpability, or even if the guilty plea contains a protestation of innocence, when the accused intelligently concludes that his interests require a guilty plea and the evidence strongly supports his guilt of the offense charged. Id. at 25. Ordinarily, a judgment of conviction resting on a plea of guilty is justified by the defendant's admission that he committed the crime charged against him and his consent that judgment be entered without a trial of any kind. The plea usually subsumes both elements, and justifiably so, even though there is no separate, express admission by the defendant that he committed the particular acts claimed to constitute the crime charged in the indictment. See Brady, 397 U.S. at 748.

The court in Brady v. United States, 397 U.S. 742, 90 S.Ct 1463 (1970) held that a plea of guilty which would not have been entered except for the defendant's desire to avoid a possible death penalty and to limit the maximum penalty to life imprisonment or a term of years was not for that reason compelled within the meaning of the Fifth Amendment. Jackson[5] established no new test for determining the validity of guilty pleas. The standard was and remains whether the plea represents a voluntary and intelligent choice among the alternative choices of action open to the defendant. See Boykin v. Alabama, 395 U.S. 238, 242, 89 S.Ct. 1709, 1711 (1969).

Plea Hearing

At the status conference the day before Applicant's plea, Applicant testified that he and Plea Counsel do not see eye to eye. Applicant stated that he doesn't feel comfortable with her

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[5] United States v. Jackson, 390 U.S. 570, 88 S.Ct. 1209 (1968).

representing him because he asked her to secure a more favorable plea deal for him and she was unable to. In response, the Court said to Applicant, "Here's the thing. Listen to me. That's what my – that's why I'm trying to be sure that you understand. You might think that she can get you a better plea. The solicitor makes the decision about what to offer in a plea. They're not even required to offer a plea. They're not required to listen to – necessarily listen to her, and if she asks for a better offer, they're not required to take it. The solicitor is telling us today is that's where we are today is that they've made you an offer and that you've rejected that offer. You don't want the 10 years. That's what he said the offer is." (Plea Tr. pp. 8 – 9).

Following this, Applicant told the court that he was still unhappy with Plea Counsel's representation, but he did not want to proceed *pro se* to trial. The court informed Applicant of his constitutional right to an attorney, and that he did not have to proceed with that attorney if he didn't wish to. The court informed Applicant that he would not be appointed another attorney and would represent himself should he move to relieve Plea Counsel. The court told Applicant that he is in a tough situation and that it's ultimately up to him whether to accept the ten-year deal or go to trial. When the court asked whether Applicant wanted to accept the offer, Applicant declined. (Plea Tr. pp. 9 – 10).

At Applicant's plea hearing, Applicant informed the court that Plea Counsel explained everything to him regarding his plea offer, explained the law to him, and acknowledged that Plea Counsel stated she was ready to proceed with trial if Applicant desired. Applicant also told the court that he was satisfied with Plea Counsel's representation. (Plea Tr. pp. 16 – 17).

When Applicant was asked if he was pleading voluntarily, the following colloquy occurred between the court and Applicant:

> THE COURT: Are you pleading to this charge of your own free will? This is your decision?

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APPLICANT:	I don't want to.
THE COURT:	Well, that –
APPLICANT:	I –
THE COURT:	I don't know that I've ever had hardly anybody ever said they wanted to. The question is this – nobody can threaten you or promise you anything other than this – it's a negotiated sentence for 10 years. Are you pleading to this charge today? This is your decision.
APPLICANT:	(No response).
THE COURT:	All right. Do you want me to call the jury in or is this your decision to enter your plea?
APPLICANT:	Yes, sir.
THE COURT:	All right. I find the decision of this defendant to enter his plea to be freely, voluntarily, and intelligently made with the advice of a competent attorney with whom he says he is satisfied.

(Plea Tr. pp. 17 – 18).

PCR Evidentiary Hearing

On direct examination, Applicant testified that he felt he would be forced to proceed *pro se* if he did not accept the plea offer. Applicant testified that when he went to court for the status conference on July 17, 2023, he told the judge that he did not feel comfortable with Plea Counsel representing him. Applicant testified that the judge informed Applicant that he was on the trial list and if he didn't keep Plea Counsel, he would have to proceed *pro se*. Applicant testified that he knows nothing about the law, that he could not have prepared his case alone in 24 hours, and that this was one of the main reasons he took the plea. Applicant testified that he was rushed, felt threatened, and didn't know anything. Applicant testified that when the judge asked him whether he wanted to represent himself, Applicant stated no and that he was not prepared to represent himself in a court of law. Applicant testified that he was under so much duress that he took the plea the next day. (PCR Tr. pp. 21 - 22).

Applicant testified that he ultimately pled guilty because he was threatened with life in prison. When asked if he understood that he would potentially be facing a life sentence again upon

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a grant of PCR, Applicant responded, "No, ma'am. I don't understand. Why would I be facing life? Why would I be facing life in prison? That was a threat from a prosecutor. Like I said, I'm quite sure if I – if I was to win today, I could get – get an attorney and get something else worked out. Because, hopefully, mercy – I would love to have some mercy, some understanding of what was going on with my health and also some empathy." (PCR Tr. pp. 15 – 16).

Applicant testified about all of his health problems, and further that the Department of Corrections is a "cesspool" with no rehabilitation. Applicant testified that he is holding himself accountable for his actions and is sorry for them. Applicant testified that he asked for drug court but was not given it. Applicant testified that the confidential informant knew of Applicant's drug addiction and set him up. Applicant testified that he is serving ten years for .10 grams of cocaine worth $10. Applicant testified that he is not arguing his conviction and wants to be accountable for his actions, but that he feels he could have been provided with more help from the State and Plea Counsel for his addictions. Applicant testified that he wants some type of relief considering this is "supposed to be post-conviction relief." Applicant testified that he is now aware of the difference between second and third offense convictions, and that he could and should have gotten second offense. Applicant testified, "Why would I not take the second offense and plead to third? If I'm pleading to third, I'm pleading for a lesser charge. If I'm going to plead guilty to a third offense, I would like to at least get it dropped to second offense. And they didn't. They failed to do that." (PCR Tr. pp. 17 – 18).

On direct examination, Plea Counsel testified that Applicant was LWOP eligible in this case, with this charge being his second strike. Plea Counsel testified that she sent her investigators to Applicant with a trial warning sheet because it would potentially set Applicant up for a third strike. Plea Counsel testified that she discussed this with the solicitor, who informed her that he

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would serve Applicant with a life notice if he did not accept the plea. When Plea Counsel was asked if Applicant was threatened with life if he did not plead, Plea Counsel testified that Applicant was threatened with reality. (PCR Tr. p. 32)

Plea Counsel testified that Applicant tried to retain a private attorney during his case. Plea Counsel testified that her office was contacted by Robert Lee and by Kevin Etheridge, whom Applicant ultimately retained to attempt to have his bench warrant lifted. Plea Counsel testified that Kevin Etheridge called her with Applicant's mother on the phone on July 14th. Plea Counsel testified that Applicant also told her he planned to hire Rose Mary Parham and Lawton Matthews, but she was unsure if they were ever actually contacted. Plea Counsel testified that she never takes it as an insult if a client wants to hire private counsel. Plea Counsel testified that Applicant repeatedly told her he would hire a private attorney, but they did not discuss Applicant's desire to proceed *pro se*. (PCR Tr. pp. 33).

On cross-examination, Plea Counsel testified that Applicant was inclined to accept a plea deal rather than proceed to trial. Plea Counsel testified that Applicant put his intention to plead on the record at his status conference before Judge Hall on July 17, 2023. Plea Counsel testified that she met with Applicant on July 10, 2023, and again with an investigator present on July 11, 2023. Plea Counsel testified that she sent her investigators to speak to Applicant on July 13, 2023, and have him sign a trial warning sheet[6]. Plea Counsel testified that Applicant signed the warning sheet with investigators witnessing, and wrote on the trial warning sheet, "I am thinking about pleading. I would plead to anything non-violent." (PCR Tr. p. 40).

Plea Counsel testified that Applicant hired private counsel to have his bench warrants lifted on June 23, 2023, but it was too late, as Applicant had already been placed on the trial list.

[6] Respondent's Exhibit No. 2.

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Plea Counsel testified that Applicant was arrested for his bench warrants on June 10, 2023, and was immediately placed on the next trial list. Plea Counsel testified that Applicant was already on the December 2022 trial list when he failed to appear, as he had gone to the hospital. (PCR Tr. p. 40).

Plea Counsel testified that she explained to Applicant his rights to a jury trial, to confront witnesses, and to remain silent. Plea Counsel testified that Judge Hall also informed Applicant of these rights during the plea colloquy. Plea Counsel testified that she would have proceeded to trial if Applicant desired because it is always the client's choice, and that it was ultimately Applicant's decision to plead guilty. Plea Counsel testified that this plea deal was beneficial to Applicant, as he had multiple charges dismissed and life without parole taken off the table. Plea Counsel testified that she never forced or pressured the Applicant to plead guilty, and that she stands by her representation of Applicant. (PCR Tr. pp. 42 – 43).

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland). This Court additionally finds that Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his

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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)).

The plea transcript reflects that Applicant entered his plea knowingly and voluntarily, engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the plea court's questions. This Court finds the combination of the record and Plea Counsel's **credible** testimony at the evidentiary hearing provides Applicant knew the nature of the charge against him, the terms of the plea, and the consequences of pleading guilty pursuant to the requirements of Boykin v. Alabama, 395 U.S. 238 (1969) and Roddy v. State, 339 S.C. 29 (2000). Plea Counsel correctly and properly notified Applicant about the strike law in South Carolina, including advising him the State could try each charge separately such that it could seek a LWOP sentence if it convicted him on the first distribution charge, and then subsequently notified him that it was seeking LWOP based on the two serious strikes that would then exist on his record. This Court finds that Plea Counsel properly explained the law to Applicant. Thus, based on the evidence presented at the plea proceeding and the evidentiary hearing, this Court finds Applicant freely, knowingly, and voluntarily pled guilty.

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 AND SIGNATURE PAGE FOLLOWS]

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CONCLUSION

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

This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), 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 21st **day of** July **, 2026.**

Jane H Merrill

JANE H. MERRILL
Presiding Judge
Twelfth Judicial Circuit

Greenwood, South Carolina.

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