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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Walton J. McLeod, IV, Circuit Court Judge

2025-CP-42-00366

Ta’Juan D. Garrett..... Appellant,
v.
The State, Respondent.

NOTICE OF APPEAL

Ta’Juan D. Garrett appeals the Honorable Walton J. McLeod, IV's Order of Dismissal with Prejudice filed July 29, 2026.

This 1st day of August, 2026.

s/Susannah Ross

Susannah Ross, Attorney at Law

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Attorney for Respondent

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Ta'Juan D. Garrett, #394837,

Applicant,

v.

State of South Carolina,

Respondent.

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

) CASE NO. 2025-CP-42-00336

**ORDER OF DISMISSAL
WITH PREJUDICE**

Presiding Judge: Hon. Walton J. McLeod, IV
Applicant's Attorney: Susannah C. Ross, Esq.
Respondent's Attorney: MacKinnon Westraad, Esq.
Plea Counsel: Christopher L. Allen, Esq.
Date of Hearing: March 3, 2026

This matter comes before this Court by way of Ta'Juan D. Garrett's (Applicant) application for Post-Conviction Relief (PCR) commenced January 27, 2025. Respondent, the State of South Carolina, filed its Return and Partial Motion to Dismiss on October 31, 2025, requesting an evidentiary hearing. Applicant, through counsel, provided Respondent with an unfiled amended application on February 27, 2026.

On March 3, 2026, an evidentiary hearing was held at the Spartanburg County Courthouse before the Honorable Walton J. McLeod, IV. Applicant was present at the hearing and represented by Susannah C. Ross, Esquire. Assistant Attorney General MacKinnon Westraad appeared on behalf of Respondent. Applicant proceeded on the allegations within his amended application, as well as various allegations raised at the evidentiary hearing. In support of these claims, Applicant testified on his own behalf. Respondent called Christopher L. Allen, Esquire (Plea Counsel) to testify.

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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 any form of relief. Accordingly, this Court denies relief and dismisses this action with prejudice.

PROCEDURAL HISTORY

During its April 2022 term, the Spartanburg County Grand Jury indicted Applicant for two counts of armed robbery (2022-GS-42-1587, -1588), possession of a weapon during a violent crime (2022-GS-42-1587B), two counts of kidnapping (2022-GS-42-1587A, -1588A), unlawful possession of a pistol (2022-GS-42-1589), possession of a stolen pistol (2022-GS-42-1590, -1591A), two counts of receiving stolen goods (2022-GS-42-1591), two counts of obtaining property by false pretenses (2022-GS-42-1592, -1592A). Applicant was represented by Christopher L. Allen and Charles W. Snyder, Esquires. Seventh Circuit Solicitor Barry J. Barnette and Assistant Solicitor Spenser H. Smith prosecuted the case.

On August 9, 2024, Applicant appeared before the Honorable Grace G. Knie and pled guilty to two counts of the lesser-included offense of attempted armed robbery (2022-GS-42-1587, -1588), and he pled straight-up as indicted on all other charges. Judge Knie sentenced Applicant to twenty years' imprisonment for each attempted armed robbery charge and kidnapping charges, five years imprisonment for possession of a weapon during a violent crime, five years imprisonment for possession of a stolen pistol, one year imprisonment for unlawful possession of a pistol, and time-served thirty-day sentences for obtaining property by false pretenses and receiving stolen goods, all to run concurrently. Applicant was given credit for 883 days' time served.

Applicant did not appeal his convictions or sentences.

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STATEMENT OF FACTS

The factual basis for the guilty plea was articulated by the solicitor as follows (summarized for brevity):

On February 20, 2022, at approximately midnight or shortly after at Wofford College, located at 429 North Church Street in the city of Spartanburg, the victims Ms. Barron and Mr. French were sitting alone in their vehicle when they were approached by two individuals. The two individuals were armed with “silver-type” guns or pistols when they approached the vehicle. The individuals kidnapped the victims at this point, ordering the victims to remain in the car while one individual got in the driver’s seat and the other remained in the backseat. Ms. Barron was in the front passenger seat of the vehicle while Mr. French was in the backseat with one of the armed individuals. They drove to an ATM machine at Bank of America on East Main Street and then drove to another ATM machine at Founders Credit Union on East Main Street. A \$303 withdrawal was made at the Founders Credit Union ATM using one of the victim’s bank cards. The two individuals also stole Ms. Barron’s jewelry and both victims’ phones. Following the crime, the two victims were dropped off at Greenville Street and Tryon Street, where they were able to contact the police. The individuals left with the stolen property and took the victims’ keys. Video surveillance from Founders Credit Union showed the two men wearing blue surgical-type gloves at the scene. Garrett was determined to be the individual wearing a Champion brand hoodie in the video footage. Through the investigation, officers found that Garrett sold both stolen phones and photos of his ID were taken for this sale, so this prompted officers to look for him. At Garrett’s residence, officers found a stolen Taurus nine-millimeter pistol in his vehicle located on the front driver’s seat. Through their search warrant for his vehicle and residence, officers found the Champion hoodie from the surveillance video, as well as Interceptor boots that matched the ones Garrett was seen wearing in the surveillance video and a balaclava. Blue surgical gloves were also found in the trash can. With consent, officers searched Garrett’s cell phone and found a Snapchat of a gun and blue surgical gloves. From the search of Garrett’s phone, a discussion with an Alita Foster was found in which she was advising Garrett on how to “handle SIM cards and get rid of those” to avoid being tracked. Ms. Barron’s stolen jewelry was discovered to be given to Foster.

(Plea Tr. pp. 14, ll. 10 – pp. 18, ll. 21).

CURRENT APPLICATION

In his PCR application filed on January 27, 2025, Applicant alleges he is being held in custody unlawfully for the following reasons (excerpts verbatim):

I. Ineffective Assistance of Counsel

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- a. - White Claim
 - i. Applicant did not know he could appeal his guilty plea.
 - b. Failure to Investigate
 - i. Plea Counsel failed to perform any type of investigation both factual and/or legal
 - c. Involuntary Guilty Plea
- II. Missing Great Seal Acts 184;7
- a. Missing Great Seal on 1993 Act No. 184; 1995 Act No. 7 which makes unconstitutional plea/conviction and sentence
- III. Fraud Upon the Court
- a. Fraud upon the court by officers of the court
 - b. Ex-post facto violation of S.C. Const. Art. 3 Sec. 18, U.S. Const. 14th Amendment Due Process
 - c. Unconstitutional laws
 - d. Lack of both personal and subject matter jurisdiction

On February 27, 2026, Applicant, through counsel, provided Respondent with an unfiled amended application alleging the following:

- I. Ineffective assistance of trial counsel for:
- 1. advising Applicant to plead guilty to kidnapping without requesting a finding on the record that the charge was not of a sexual nature, thereby allowing Applicant to be placed on the sex offender registry,
 - 2. advising Applicant that he could not get a split sentence for his charge and failing to ask the sentencing judge to consider a split sentence or home incarceration,
 - 3. failing to object to the State's exhibits, and
 - 4. failing to appeal the guilty plea.
- II. Violation of due process guaranteed in the Fifth, and Fourteenth Amendments of the Constitution of the United States & Art. I Sec.3 of the South Carolina Constitution due to an involuntary guilty plea.

At Applicant's PCR hearing, he raised the following additional allegations:

- I. "Defective Boykin colloquy"
- II. "Failure to object to lack of formal judgment"
- III. "Failure to present mitigation"
- IV. "Failure to challenge overcharging merge"
- V. "Counsel coached me to confess"

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As relief, Applicant requests, "New trial / Reverse the Plea / Conviction remand for new trial. Resentence to valid old law before 85% law 1993 Act No. 184; 1995 Act No. 7 is invalid and unconstitutional, fraud; get double county jail credits; vacate sentences and conviction release custody due to due process violation."

Before this Court are Applicant's records from the Spartanburg County Clerk of Court, Applicant's SCDC records, the plea transcript, and the current PCR application.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act¹ 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).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of

¹ S.C. Code Ann. §§ 17-27-10 to -160.

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such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

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

Regarding the deficiency prong of the Strickland analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. Butler, 286 S.C. at 442. When analyzing counsel's performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for rebutting that presumption "by proving that his attorney's representation was unreasonable under prevailing professional norms and that the challenged

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action was not sound strategy." Kimmelman v. Morrison, 477 U.S. 365, 384 (1986); cf. Cullen v. Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation).

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

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

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would have been different.").

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel." Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel's performance was deficient; and second, evidence that counsel's deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. Hill, 474 U.S. 52.

The analysis of counsel's performance under the first prong of Strickland remains unchanged—the applicant must show counsel's representation fell below the objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was 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.

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United States, 582 U.S. 357, 137 S. Ct. 1958, 1966, 198 L. Ed. 2d 476 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

Surmounting Strickland's high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." Lee, 582 U.S. at 368–69 (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 58 ("[R]equiring a showing of 'prejudice' from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.'"). Reviewing "[c]ourts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies. Lee, 582 U.S. at 369. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences." Id. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the plea and the evidence presented at the Evidentiary hearing. Harres v. State, 282 S.C. at 134, 318 S.E.2d at 361 (1984).

Finally, the Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90. Courts must be wary of second-guessing counsel's tactics, and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant's

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burden of proving both Strickland components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690.

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 this Court to evaluate and scrutinize their credibility. *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.”).

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*, 286 S.C. at 442 (“The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.”).

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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).

This Court makes the following findings from the record: 1. Applicant agreed he wished to enter a plea on eleven charges (Plea Tr. p. 9); 2. Applicant understood he was waiving his right to a trial by jury, to confront witnesses against him, and his right to remain silent (Plea Tr. p. 9); 3. Applicant indicated he was satisfied with the services of Plea Counsel (Plea Tr. pp. 10-11); 4. Applicant indicated he wished to waive his constitutional rights in exchange for the plea (Plea Tr. p. 10); 5. Applicant agreed the facts as recited by the Solicitor were substantially correct (Plea Tr. p. 19); 6. Applicant indicated no threats were made to him to plead guilty (Plea Tr. p. 10); 7. Applicant indicated he was not under the influence of substances that would impair his judgment (Plea Tr. p. 10); 8. Applicant indicated he understood all of his charges, the potential sentences for each, the classification of violent and most serious, and that the plea was open and without recommendation or negotiation (Plea Tr. p. 13); 9. Applicant stated he wished to plead guilty on all counts and that he was doing so freely, knowingly, and voluntarily (Plea Tr. p. 13).

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SUMMARY DISMISSAL OF ALLEGATIONS

Respondent made its return and partial motion to dismiss on October 31, 2025, requesting this Court dismiss the following allegations:

IV. Missing Great Seal Acts 184;7

- a. Missing Great Seal on 1993 Act No. 184; 1995 Act No. 7 which makes unconstitutional plea/conviction and sentence

V. Fraud Upon the Court

- a. Fraud upon the court by officers of the court
- b. Ex-post facto violation of S.C. Const. Art. 3 Sec. 18, U.S. Const. 14th Amendment Due Process
- c. Unconstitutional laws
- d. Lack of both personal and subject matter jurisdiction

An Applicant may commence a post-conviction relief action on the following grounds:

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 [was] 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.

Applicant alleges that his plea and conviction are unconstitutional due to fraud upon the court. Even if the facts alleged by Applicant are accurate, these facts do not support a cognizable claim for post-conviction relief under any statutory grounds. PCR relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). As this is not a cognizable claim for PCR, this Court summarily dismisses that allegation.

Applicant alleges his conviction is unconstitutionally invalid because the Great Seal was

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missing on some of the charges used to convict him. The South Carolina Supreme Court has held that absolute literal compliance is not essential to the validity of legislation, but substantial compliance is sufficient. Smith v. Jennings, 67 S.C. 324, 45 S.E. 821, 824 (1903); See, e.g., S.C. Op. Att'y Gen., 2017 WL 6189878 (S.C.A.G. December 1, 2017). Further, under the Enrolled Bill Rule, an act is deemed to be properly passed when it has been ratified by the presiding officers of the General Assembly, approved by the Governor, and enrolled in the Office of the Secretary of State. Medical Soc. of South Carolina v. Medical Univ. of South Carolina, 334 S.C. 270, 278, 513 S.E.2d 352, 356 (1999); Beaufort County v. Jasper County, 220 S.C. 469, 487, 68 S.E.2d 421, 430 (1951); State v. Town Council of Chester, 39 S.C. 307, 17 S.E. 752, 755 (1893) ("when the bill . . . is deposited in the department of state, according to law, its authentication as a bill that has passed congress is complete and unimpeachable).

Other jurisdictions have upheld acts challenged as invalid for failing to comply strictly with a constitutional provision. See Taylor v. Wilson, 22 N.W. 119 (Neb. 1885) (finding an act was not unconstitutional when the president of the senate did not sign it as required by the state's constitution); Commr's of Leavenworth Co. v. Higginbotham, 17 Kan. 62 (Kan. 1876) ("[T]he mere failure of the president of the senate to do his duty cannot have the effect to invalidate the law.").

Additionally, our Supreme Court has upheld the appointment of an officer whose commission lacked the Great Seal as required by law. State v. Toomer, 7 Rich. 216, 229, 41 S.C.L. 216, 229 (1854). In Toomer, the Court explained that if the State excused the officer's delinquency and cured the defects, the title related back to the time of the election. Id. Moreover, § 2-7-45 of the South Carolina Code states:

The Code of Laws of South Carolina, 1976, which contains the permanent laws of general application through the 1975 session of the General Assembly and which

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was presented to the members of the General Assembly during the 1977 session is hereby adopted as the Code of Laws of South Carolina, 1976, and is declared to be the only general statutory law of the State as of January 1, 1976.

Our Supreme Court has further held that codification of an act will cure a constitutional defect and is part of the general statutory law of the State. S.C. Tax Comm'n v. York Elec. Co-op., Inc., 275 S.C. 326, 333, 270 S.E.2d 626, 629-30 (1980). The acts Applicant currently challenges substantially comply with the requirements. Therefore, these laws are enforceable, and this Court summarily dismisses this allegation.

Applicant alleges lack of subject matter jurisdiction. This claim fails as a matter of law. See State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005) (“[S]ubject matter jurisdiction of the circuit court and the sufficiency of the indictment are two distinct concepts and the blending of these concepts serves only to confuse the issue. *Circuit courts obviously have subject matter jurisdiction to try criminal matters.*” (emphasis added)). Before the Court will hold an evidentiary hearing, a PCR applicant must make a prima facie showing he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has not made a prima facie showing that he is entitled to relief on this claim, and did not present any testimony on this issue at his evidentiary hearing. Thus, this Court summarily dismisses this allegation.

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS ON THE MERITS

Allegation: White Claim

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

“Following a trial, counsel must make certain the defendant is made fully aware of the right to appeal.” Simuel v. State, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010). “However, the standard

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for a guilty plea differs.” Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). “Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.” Id.; Roe, 528 U.S. 470, 120 (2000); Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995). (“bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief”).

PCR Evidentiary Hearing

At the evidentiary hearing on direct examination, Applicant testified that he and his mother asked Plea Counsel to file an appeal, but he never did. (PCR Tr. p. 8).

On cross-examination, Applicant testified that he said in his application that he did not know he could appeal because someone was helping him with it. (PCR Tr. p. 20). Applicant testified he wrote to Plea Counsel asking for an appeal and his mother emailed Plea Counsel asking for an appeal. (PCR Tr. p. 20).

On redirect examination, Applicant testified that he knew he had a right to appeal. (PCR Tr. p. 21).

On direct examination, Plea Counsel testified that he did not recall Applicant or Applicant's mother asking him to file an appeal. (PCR Tr. p. 25). Plea Counsel testified that he had many of Applicant's family members and friends attend the plea hearing, and when it was over, Plea Counsel spoke with them and told them that if they needed anything from him, including if they wanted to discuss an appeal, to just come to his office on the second floor. (PCR Tr. pp. 25-26). Plea Counsel testified that he never received any messages of someone trying to come to speak with him. (PCR Tr. p. 26). Plea Counsel testified that he did not see any basis for an appeal. (PCR Tr. p. 26).

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On cross-examination, Plea Counsel testified that he recalled telling family members after the plea hearing to tell him if they wanted an appeal, and did not hear anyone say they did. (PCR Tr. p. 30).

Findings

This Court finds from the combination of the record and Plea Counsel's testimony that 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, *supra*. This Court 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 he told Applicant's family members to let him know if they wanted him to file an appeal, but he was not aware of anyone asking him to file an appeal. Plea Counsel credibly testified he saw no basis for an appeal. This Court finds Applicant's testimony that he asked for an appeal to be not credible. While Applicant claimed he sent a letter and his mother emailed Plea Counsel, Applicant did not present this correspondence or his mother's testimony as evidence at his plea hearing to support his allegation.

Accordingly, this Court finds Applicant waived his right to a direct appeal. Thus, this allegation must be **DENIED** and **DISMISSED** with prejudice.

Allegation: **Failure to Investigate - Plea Counsel failed to perform any type of investigation both factual and/or legal**

Applicant alleges that Plea Counsel's representation was constitutionally ineffective for failing to perform any type of investigation, both factual and legal. This Court finds this allegation is without merit.

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

PCR Evidentiary Hearing

At the evidentiary hearing on direct examination, Applicant testified that Plea Counsel failed to investigate and review discovery because he was only on Applicant's case for a month before saying "We had a plea. We're going to trial two weeks." (PCR Tr. pp. 8-9). Applicant testified that Plea Counsel met with him "probably twice." (PCR Tr. p. 16).

On direct examination, Plea Counsel testified that he investigated the facts of the case. (PCR Tr. p. 23). Plea Counsel testified that he devoted a substantial amount of time when he was first appointed since he knew it was up for trial quickly. (PCR Tr. p. 23). Plea Counsel testified that he was appointed about six to eight weeks before Applicant's plea. (PCR Tr. p. 23). Plea Counsel testified that he met with Applicant maybe half a dozen times at the jail. (PCR Tr. p. 23). Plea Counsel testified that he went over all the evidence with Applicant. (PCR Tr. p. 24).

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Findings

This Court finds from the combination of the record and Plea Counsel's testimony that 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, *supra*. This Court 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*.

Applicant did not offer any argument or testimony for this allegation, except that Plea Counsel did not have his case for long. Plea Counsel credibly testified that he met with Applicant half a dozen times, investigated the case, and reviewed the evidence with Applicant. Thus, this Court finds Plea Counsel was not deficient for failing to investigate or review discovery.

Additionally, Applicant failed to show how the alleged failure to investigate or review discovery impacted his choice to plead guilty. Applicant did not testify that there was anything further to be investigated or reviewed.

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

Allegation: **Advising Applicant to plead guilty to kidnapping without requesting a finding on the record that the charge was not of a sexual nature, thereby allowing Applicant to be placed on the sex offender registry**

Applicant alleges Plea Counsel's representation was constitutionally ineffective for advising Applicant to plead guilty to kidnapping without requesting a finding on the record that the charge was not of a sexual nature, thereby allowing Applicant to be placed on the sex offender registry.

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This Court was informed by the parties that this allegation was addressed by having the General Sessions judge amend Applicant's sentencing sheets to reflect that the convictions were not of a sexual nature so that Applicant will not be required to register as a sex offender. Thus, this allegation is moot.

Allegation: **Advising Applicant that he could not get a split sentence for his charge and failing to ask the sentencing judge to consider a split sentence or home incarceration**

Applicant alleges Plea Counsel's representation was constitutionally ineffective for advising Applicant that he could not get a split sentence for his charge and failing to ask the sentencing judge to consider a split sentence or home incarceration. This Court finds this allegation is without merit.

PCR Evidentiary Hearing

On direct examination, Applicant testified that his co-defendant received a split sentence, which Plea Counsel told Applicant he was ineligible for. (PCR Tr. pp. 12-13). Applicant testified that his co-defendant received a lighter active sentence because he received a split sentence. (PCR Tr. p. 13).

On direct examination, Plea Counsel testified he spoke with Solicitor Barnette numerous times regarding this case, and Solicitor Barnette was unwilling to concede to anything up until a handful of days before the guilty plea. (PCR Tr. p. 25). Plea Counsel testified that the plea was going to be an open plea to everything, but Solicitor Barnette "finally and reluctantly agreed" to reduce the armed robbery charges to attempted armed robbery, which would allow for a potentially lower sentence. (PCR Tr. p. 25). Plea Counsel testified that he asked Solicitor Barnette if he would agree to a split sentence since Applicant

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was so young, but Solicitor Barnette would not agree because he had already conceded to reduce the armed robbery charges. (PCR Tr. p. 25). Plea Counsel testified that he felt it was in Applicant's best interest not to go to trial and to plead guilty given the number of years he was facing. (PCR Tr. p. 25). Plea Counsel testified that Applicant told Plea Counsel he wanted to plead guilty once the armed robbery charges were reduced to attempted armed robbery. (PCR Tr. p. 29).

Findings

This Court finds from the combination of the record and Plea Counsel's testimony that 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, *supra*. This Court 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 he asked Solicitor Barnette to agree to a split sentence, and given the time Applicant was facing, it was best for him to plead guilty. Plea Counsel credibly testified that Applicant wanted to plead guilty once the armed robbery charges were reduced. Both the record and his testimony at the PCR hearing reflect that Applicant knew the plea was straight-up with no negotiation or recommendation. Although Plea Counsel could have asked the sentencing judge to consider a split sentence, Applicant failed to show how Plea Counsel's advice or failure to request a split sentence impacted his decision to plead guilty.

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

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Allegation: Failing to object to the State's exhibits

Applicant alleges Plea Counsel's representation was constitutionally ineffective for failing to object to the State's exhibits. This Court finds this allegation is without merit.

"An ineffective assistance claim based on a failure to object is tied to the admissibility of the underlying evidence." Hough v. Anderson, 272 F.3d 878, 898 (7th Cir. 2001). "If evidence admitted without objection was admissible, then the complained of action fails both prongs of the Strickland test: failing to object to admissible evidence cannot be a professionally 'unreasonable' action, nor can it prejudice the defendant against whom the evidence was admitted." Id.; see Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence). Also, "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691.

The "use and timing of objections at trial is a quintessential matter of strategy and discretion on the part of the trial attorney and will very seldom constitute objectively deficient representation." United States v. Nguyen, 379 F. App'x 177, 181 (3d Cir. 2010); see Humphries v. Ozmint, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) ("[I]t is well established that failure to object to inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under Strickland."); cf. Bergmann v. McCaughtry, 65 F.3d 1372, 1380 (7th Cir. 1995) (noting that deciding when to object is a matter of trial strategy that a lawyer has to make on the spot.).

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When analyzing counsel's performance, the reviewing court will "strong[ly] presum[e]" that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than sheer neglect. Yarborough, 540 U.S. at 8 (internal quotation marks omitted); cf. Higgs v. United States, 711 F. Supp. 2d 479, 515 (D. Md. 2010) ("Defense counsel constantly must decide what questions to ask and how much time to spend on a particular witness. These are precisely the types of tactical decisions a court is not supposed to second guess.") (citing Byram v. Ozmint, 339 F.3d 203, 209 (4th Cir. 2003)); Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Strickland standard was not developed "to promote judicial second-guessing on questions of strategy as basic as the handling of a witness").

PCR Evidentiary Hearing

On direct examination, Applicant testified that the plea court was "overwhelmed by the exhibits and evidence." (PCR Tr. p. 10). Applicant testified that there were seven exhibits, including videos. (PCR Tr. p. 10). Applicant testified that he would never have taken the plea if he knew the State was going to show all that evidence, because it was "just too much." (PCR Tr. p. 10). Applicant testified that Plea Counsel failed to object to those exhibits, and in fact said there were no objections. (PCR Tr. p. 11). Applicant testified that he did not even know about the Snapchat videos, and Plea Counsel did not challenge them to see if it was inadmissible because they were violating Applicant's confrontation rights. (PCR Tr. p. 11). Applicant testified that Plea Counsel did not discuss all these exhibits with him. (PCR Tr. p. 11). Applicant testified that if he had known exhibits would be shown, he would not have taken the plea because it was a straight up plea without recommendation. (PCR Tr. p. 12).

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On cross-examination, Applicant testified that he agreed with the facts as presented by the State per the advice of Plea Counsel. (PCR Tr. p. 18). Applicant agreed that those exhibits were just reflections of the facts that the State presented. (PCR Tr. p. 18).

On direct examination, Plea Counsel testified that he was informed that those exhibits would be shown to the Court just prior to the plea occurring. (PCR Tr. p. 27). Plea Counsel testified that he was told the State would be admitting exhibits that were in discovery and which the State was certainly allowed to show at that point. (PCR Tr. p. 27). Plea Counsel testified that he did not see any basis to object to those exhibits. (PCR Tr. p. 27).

Findings

This Court finds from the combination of the record and Plea Counsel's testimony that 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, *supra*. This Court 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 he saw no basis to object to the exhibits admitted at Applicant's plea. This Court finds Applicant provided no basis for any objection, nor did he provide any basis for the claim that the Court was "overwhelmed" by the evidence. Furthermore, Plea Counsel's decision not to object was not deficient where the underlying evidence was certainly admissible for the purposes of the guilty plea.

Additionally, Applicant testified he would not have chosen to plead guilty if he knew the exhibits would be shown only because the plea was straight up. However, as Applicant agreed, the exhibits merely showed the facts that the State was already presenting to the Court. Thus, this

Court finds Applicant has failed to show that he would not have pleaded guilty if he knew the exhibits would be shown, where Applicant was seemingly aware when he chose to plead guilty that the State would be presenting its version of the evidence against Applicant.

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

Allegation: Defective Boykin Colloquy
Allegation: Failure to object to the lack of a formal judgment

Applicant alleges Plea Counsel's representation was constitutionally ineffective for failing to object to an inadequate Boykin² colloquy. This Court finds this allegation is without merit.

In Boykin, the Supreme Court held that there must be an affirmative showing on the record that a guilty plea is intelligent and voluntary. Boykin v. Alabama, 395 U.S. 238, 242, 89 S. Ct. 1709, 1711. The Court held that three rights cannot be presumed to have been waived unless they are clear on the record: the right to remain silent, the right to a jury trial, and the right to confront one's accusers. Boykin v. Alabama at 243, 1712 (citing Malloy v. Hogan, 378 U.S. 1, 84 S.Ct. 1489, 12 L.Ed.2d 653; Duncan v. Louisiana, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed.2d 491; Pointer v. Texas, 380 U.S. 400, 85 S.Ct. 1065, 13 L.Ed.2d 923):

"An ineffective assistance claim based on a failure to object is tied to the admissibility of the underlying evidence." Hough v. Anderson, 272 F.3d 878, 898 (7th Cir. 2001). "If evidence admitted without objection was admissible, then the complained of action fails both prongs of the Strickland test: failing to object to admissible evidence cannot be a professionally 'unreasonable'

² Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969).

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action, nor can it prejudice the defendant against whom the evidence was admitted." Id.; see Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence). Also, "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691.

The "use and timing of objections at trial is a quintessential matter of strategy and discretion on the part of the trial attorney and will very seldom constitute objectively deficient representation." United States v. Nguyen, 379 F. App'x 177, 181 (3d Cir. 2010); see Humphries v. Ozmint, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) ("[I]t is well established that failure to object to inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under Strickland."); cf. Bergmann v. McCaughtry, 65 F.3d 1372, 1380 (7th Cir. 1995) (noting that deciding when to object is a matter of trial strategy that a lawyer has to make on the spot.).

When analyzing counsel's performance, the reviewing court will "strong[ly] presum[e]" that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than sheer neglect. Yarborough, 540 U.S. at 8 (internal quotation marks omitted); cf. Higgs v. United States, 711 F. Supp. 2d 479, 515 (D. Md. 2010) ("Defense counsel constantly must decide what questions to ask and how much time to spend on a particular witness. These are precisely the types of tactical decisions a court is not supposed to second guess.") (citing Byram v. Ozmint, 339 F.3d 203, 209 (4th Cir. 2003)); Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Strickland

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standard was not developed "to promote judicial second-guessing on questions of strategy as basic as the handling of a witness").

Plea Hearing

At Applicant's plea hearing, the following colloquy occurred between Applicant and Judge Knie:

THE COURT: Sir, when you enter a plea, you waive very important Constitutional rights; not only are you waiving your right to a trial by jury but you also waive your right to confront witnesses against you and your right to remain silent. Do you understand?

MR. GARRETT: Yes, ma'am.

THE COURT: If you were to go forward and have a jury trial, the burden of proof would not be on you and Mr. Allen. The burden of proof is on the State, the attorney for the State to prove every element of every charge against you beyond a reasonable doubt. You are presumed to be innocent until proven guilty. Do you understand?

MR. GARRETT: Yes, ma'am, I do.

THE COURT: For you to be found guilty by a jury, every member of the jury would have to agree, all 12 would have to agree before you could be found guilty. Do you understand?

MR. GARRETT: Yes, ma'am.

THE COURT: And so, Mr. Garrett, understanding all of that, is it still your wish to go forward today waiving these very important Constitutional rights in exchange for a plea?

MR. GARRETT: Yes, ma'am, it is.

THE COURT: Sir, has anyone threatened you or coerced you in any way to get you to enter your pleas today?

MR. GARRETT: No, ma'am.

THE COURT: Sir, don't be offended. I ask everybody the next questions. Are you today under the influence of alcohol, drugs, or any intoxicant that would impair your judgment?

MR. GARRETT: No, ma'am.

THE COURT: Do you suffer from any mental or physical infirmity that would affect your ability in understanding what we're doing?

MR. GARRETT: No, ma'am.

THE COURT: Sir, do you take any type of prescribed medication?

MR. GARRETT: No, ma'am.

THE COURT: Are you satisfied with the services of your lawyer?

MR. GARRETT: Yes, ma'am, I am.

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THE COURT: Understanding everything that I've just said, sir, how do you wish to plea? Guilty or not guilty?

MR. GARRETT: Guilty on all counts.

THE COURT: Are you doing so freely, knowingly, and voluntarily?

MR. GARRETT: Yes, ma'am.

THE COURT: Please be advised that in the event that you wish to appeal any aspect of the plea hearing today, you only have ten days to do so in writing to This Court. Do you understand?

MR. GARRETT: Yes, ma'am.

THE COURT: Thank you, sir. You can be seated now. And direct your attention to the Solicitor first

(Plea Tr. pp. 9-14).

PCR Evidentiary Hearing

On direct examination, Applicant testified that the transcript from his guilty plea "briefly but not fully explained" his constitutional rights. (PCR Tr. p. 9). Applicant testified that he did not understand it and Plea Counsel "failed to object to the adequate [sic] plea colloquy." (PCR Tr. p. 9). Applicant testified that Plea Counsel also failed to make sure there was a finding on the record that the plea was knowingly and voluntarily made, although the judge did ask about his understanding. (PCR Tr. p. 9). Applicant testified that the court "proceeded directly to sentencing without rendering judgment." (PCR Tr. p. 10).

On cross-examination, Applicant testified that he recalled the court asking him about whether he waived his rights to a jury trial, to remain silent, and to confront witnesses against him, and that he responded that he understood. (PCR Tr. pp. 16-17). However, Applicant then testified that the court did not advise him of his rights to remain silent or to confront witnesses. (PCR Tr. p. 17).

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On redirect examination, Applicant testified that his argument was that there was no finding on the record by the judge that said, "I find this plea is knowingly and voluntarily made." (PCR Tr. p. 21).

On direct examination, Plea Counsel testified that, prior to the plea, he had certainly discussed all of Applicant's constitutional rights with him, a point Judge Knie asked about during the plea. (PCR Tr. p. 26).

Findings

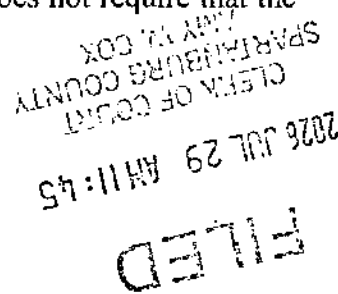
This Court finds from the combination of the record and Plea Counsel's testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court 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 he discussed Applicant's constitutional rights with him. This Court finds Applicant's testimony not credible. Applicant inconsistently testified regarding whether the plea court informed him of his rights to confront witnesses and remain silent, and it is clearly reflected on the record that the plea court did inform him of those rights.³ Applicant offered no argument as to what further colloquy or explanation should have been done to satisfy Boykin.

Additionally, while there was no formal acceptance of the plea or finding that the plea was voluntary and knowing, Applicant confirmed at his plea that he was pleading "guilty on all counts" and that he was doing so "freely, knowingly, and voluntarily."⁴ Boykin does not require that the

³ Plea Tr. p. 9.

⁴ Plea Tr. p. 13.



judge make a formal finding; rather, it requires that the record affirmatively reflect that the plea was knowing and voluntary.⁵ This Court finds that this record satisfies the requirements of Boykin, and Applicant has provided no argument or authority for the assertion that counsel should have objected to the lack of a formal acceptance of the plea. Applicant agreed with the State's facts and stated that he wished to plead guilty "on all counts."⁶ Judge Knie sentenced Applicant and signed the sentencing sheet. Thus, Plea Counsel is not deficient for failing to object on any of these grounds.

Further, this Court finds Applicant has failed to show that he wouldn't have taken the plea if not for these alleged deficiencies. Applicant did not provide any testimony about what he would have done differently based on the lack of these formal findings on the record.

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

Allegation: Failure to present mitigation

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

Counsel may be found deficient for failing to sufficiently investigate and present mitigating evidence. See Council v. State, 380 S.C. 159, 172, 670 S.E.2d 356, 363 (2008) (finding it unreasonable for counsel not to further investigate the defendant's background and present even minimal mitigating evidence obtained); Wiggins v. Smith, 539 U.S. 510, 521 (2003) (finding it unreasonable when counsel failed to investigate mitigating evidence beyond

⁵ Boykin v. Alabama at 242, 1711.

⁶ Plea Tr. pp. 13, 19.

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a couple retained records, including the presentence investigation report and social service records); Williams v. Taylor, 529 U.S. 362, 398 (2000) (finding that counsel was unreasonable for failing to evaluate the totality of available mitigation evidence). An applicant is prejudiced by this deficiency if there is a reasonable probability that a different sentence would have been imposed but for counsel's failure to investigate and present mitigating evidence. Council v. State, 380 S.C. 159, 171, 670 S.E.2d 356, 362 (2008).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Plea Counsel "didn't really build around [his] character." (PCR Tr. p. 13). Applicant testified, "He just basically let the State just paint a picture of me, and let the judge - let the judge decide. Like, he let my parents speak, and that's about it. He didn't really show the court who I really was." (PCR Tr. p. 13). Applicant testified that he had started college classes and had no adult criminal record, only juvenile history. (PCR Tr. p. 13).

On cross-examination, Applicant agreed that the character witnesses Plea Counsel presented painted a picture to the court of what they believed his character to be. (PCR Tr. p. 19).

Findings

This Court finds from the combination of the record and Plea Counsel's testimony that 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, *supra*. This Court 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*.

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It is clear from the guilty plea transcript that Plea Counsel presented adequate mitigation. Plea Counsel submitted the following to the plea court: Applicant was seventeen years old at the time of these offenses; Applicant was joined in court by his family, who spoke on his behalf about his character, as well as the pastor of the church he attended; Applicant had described this crime as the worst decision he's ever made, he was terribly sorry for it, and always admitted his guilt; and Applicant's co-defendant was three years older than him, which may have influenced Applicant since his dad went to prison when he was eleven or twelve years old.⁷ Plea Counsel repeatedly emphasized Applicant's young age at the time of the offenses and asked the plea court to impose a sentence that did not define his life by a horrific mistake at seventeen years old.⁸ Plea Counsel also presented a letter from a social worker employed with the Spartanburg School District.⁹

This Court finds Applicant's testimony that Plea Counsel did not build around his character to be not credible. The only testimony Applicant offered as to what mitigation should have been presented was that he attended college and had no adult criminal record. However, Plea Counsel did in fact present to the plea court that Applicant obtained a GED, took college classes, and saw a future for himself.¹⁰ Solicitor Barnette provided the plea court with Applicant's juvenile record, so the court was aware of the extent of his record.¹¹ This Court finds that all of the aforementioned mitigation, combined with the testimony of Applicant's family members, constitutes adequate performance by Plea Counsel. Additionally, this Court finds Applicant did not present any

⁷ Plea Tr. pp. 21-23.

⁸ Plea Tr. pp. 21-23, 26.

⁹ Plea Tr. p. 24.

¹⁰ Plea Tr. p. 26.

¹¹ Plea Tr. p. 19.

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evidence of a reasonable probability that a different sentence would have been imposed but for the alleged failure to present mitigating evidence.

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

Allegation: Failure to challenge overcharging merge

Applicant alleges Plea Counsel's representation was constitutionally ineffective for failing to challenge Applicant's charges of both receiving stolen goods and armed robbery as a double jeopardy issue. This Court finds this allegation is without merit.

The South Carolina Supreme Court has held that the Blockburger¹² "same elements" test is the only test for determining a double jeopardy violation in both multiple punishment and successive prosecution cases. Stevenson v. State, 335 S.C. 193, 198, 516 S.E.2d 434, 437 (1999). The court emphasized that the focus should be on the elements of the offenses, not their application to specific case facts. Id.

S.C. Code Ann. § 16-13-180(A) states, "It is unlawful for a person to buy, receive, or possess stolen goods, chattels, or other property if the person knows or has reason to believe the goods, chattels, or property is stolen. A person is guilty of this offense whether or not anyone is convicted of the property theft." S.C. Code Ann. § 16-11-330, the armed robbery and attempted armed robbery statutes, state the following:

(A) A person who commits robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, is guilty of a felony and, upon conviction, must be imprisoned for a mandatory minimum term of not less than

¹² Blockburger v. United States, 284 U.S. 299 (1932).

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ten years or more than thirty years, no part of which may be suspended or probation granted. A person convicted under this subsection is not eligible for parole until the person has served at least seven years of the sentence.

(B) A person who commits attempted robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, is guilty of a felony and, upon conviction, must be imprisoned not more than twenty years.

PCR Evidentiary Hearing

On direct examination, Applicant testified that he was charged with armed robbery and receiving stolen goods, but he could not receive something that he allegedly stole. (PCR Tr. p. 14). Applicant testified that Plea Counsel did not advise him not to plead guilty to that, and that Plea Counsel told him the other option was to go to trial. (PCR Tr. p. 14).

On direct examination, Plea Counsel testified that he did not remember these charges being an issue, but the "robbery" was the actual *taking* process of the objects, which were the basis for the "receiving stolen goods" charges. (PCR Tr. p. 28).

Findings

This Court finds from the combination of the record and Plea Counsel's testimony that 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, *supra*. This Court 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*.

Applicant did not provide any basis that Plea Counsel could have moved to have the solicitor pursue one of these charges over the other. See Ball v. United States, 470 U.S. 856, 859, 105 S. Ct. 1668, 1670, 84 L. Ed. 2d 740 (1985) (finding the Supreme Court has long acknowledged

the Government's broad discretion to conduct criminal prosecutions, including its power to select the charges to be brought in a particular case). Applying the Blockburger framework to armed robbery and receiving stolen goods, the offenses contain distinct elements. The statute for receiving stolen goods deems it unlawful to buy, receive, or possess stolen goods. S.C. Code Ann. § 16-13-180(A). The armed robbery statute contains completely different elements, requiring that a person is both armed with a weapon, and that the person present that weapon, during the commission of a robbery. S.C. Code Ann. § 16-11-330(A). The attempted armed robbery statute, similarly, requires that a person is either armed with a weapon or alleges he is armed with a weapon during a robbery, and presents something that a person present would reasonably believe to be a deadly weapon. S.C. Code Ann. § 16-11-330(B). This distinct element structure suggests the offenses would satisfy the Blockburger test for separate convictions.

This Court finds that Plea Counsel is not deficient for failing to challenge these charges where there was no legal basis to do so. Plea Counsel correctly testified that the armed robbery itself was a different criminal act from possessing stolen goods, and thus, he did not remember it being an issue. Further, Plea Counsel properly advised Applicant that he could go to trial on the charges and need not plead guilty, and Applicant chose to plead guilty.

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

Allegation: Counsel coached me to confess
Allegation: Involuntary Guilty Plea

Applicant alleges Plea Counsel's representation was constitutionally ineffective for coaching him to confess. Additionally, Applicant alleges his guilty plea was involuntary. This Court finds these allegations are without merit.

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

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

PCR Evidentiary Hearing

On direct examination, Applicant testified that the only plea offers were straight up for ten to thirty years. (PCR Tr. p. 9). Applicant testified that during the plea process, Plea

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Counsel advised him to make a self-incriminating statement on the record – that he was guilty. (PCR Tr. p. 14). Applicant testified that those statements were not legally required because he did not have to say something that is self-incriminating. (PCR Tr. p. 14). Applicant testified that he knew he had to admit guilt in order to plead guilty. (PCR Tr. p. 14).

On cross-examination, Applicant testified that he did not recall discussing the elements of his charges with Plea Counsel. (PCR Tr. p. 16). Applicant testified that he told the judge he was entering the plea knowingly and voluntarily and agreed with the State's facts, based on his lawyer's advice. (PCR Tr. p. 18). Applicant testified that he trusted Plea Counsel's advice at the time. (PCR Tr. p. 18). Applicant testified that Plea Counsel coached him to say what he said during his statement to the plea court. (PCR Tr. p. 19). Applicant testified that Plea Counsel told him to "keep it short and brief like that and apologize." (PCR Tr. p. 19).

On direct examination, Plea Counsel testified that he always tells his clients that the judge will ask them if they have anything to say, and he typically tells them "don't talk yourself into any unnecessary prison time." (PCR Tr. pp. 26-27). Plea Counsel testified that he said, "If you're going to speak, I would just advise you to say whatever you wish to say. If that is an apology, certainly, the judge might be receptive to that. But just don't say anything with regard to not wanting to take accountability, or trying to veer off course, or anything like that." (PCR Tr. p. 27). Plea Counsel testified that he never gave Applicant specific words to say, just told him not to talk himself into prison. (PCR Tr. p. 27). Plea Counsel testified that Applicant chose to plead guilty once Solicitor Barnette reduced the armed robbery charges to attempted armed robbery. (PCR Tr. p. 29). Plea Counsel testified that Applicant seemed to understand everything they discussed. (PCR Tr. p. 29).

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Findings

This Court finds the record refutes Applicant's allegations and reflects that Applicant's guilty plea was knowingly and voluntarily entered with a complete understanding of the charges and consequences of the plea. This Court further finds Applicant was fully aware of the minimum and maximum sentencing ranges on all charges that he pleaded guilty to. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir. 1985)).

This Court finds Applicant has failed to show that Plea Counsel's representation fell below an objective standard of reasonableness, and that but for Plea Counsel's alleged errors, Applicant would not have pled guilty and proceeded to trial. See Roscoe v. State, 345 S.C.16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362, 426 S.E.2d 795, 797 (1993). Notably, Applicant likely received a significantly lesser sentence than he would have faced had he proceeded to trial. Applicant reaped the benefit when he chose to plead.

Furthermore, 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 charges against him, the terms of the plea agreement and negotiated cap, 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). Moreover, the plea colloquy cured any alleged deficiency regarding Plea Counsel's advice. The plea transcript reflects that Applicant entered his plea knowingly and voluntarily.

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engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the plea court's questions. Applicant has presented no valid reason why he should be able to depart from the statements made during his guilty plea as provided *supra*. See Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975), overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir. 1985) (finding that the accuracy and truth of an accused's statements at a guilty plea proceeding are "conclusively" established unless he makes some reasonable allegation why this should not be so). Thus, based on the evidence presented at the plea proceeding and the evidentiary hearing, this Court finds Applicant freely, knowingly, and voluntarily pled guilty.

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

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

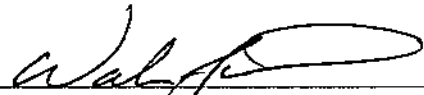
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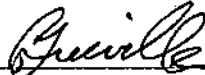
Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The 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

, South Carolina

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