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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

Walton J. McLeod, IV, Circuit Court Judge

2025-CP-11-00854

Joshua L. Shoemaker, Appellant,
v.
The State, Respondent.

NOTICE OF APPEAL

Joshua L. Shoemaker appeals the Honorable Walton J. McLeod, IV's Order of Dismissal with Prejudice filed July 27, 2026.

This 31 day of July, 2026.

s/ Susannah Ross
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHEROKEE	)	FOR THE SEVENTH JUDICIAL CIRCUIT
	)	
Joshua L. Shoemaker, #394050,	)	Case No. 2024-CP-11-00854
	)	
Applicant,	)	
v.	)	ORDER OF DISMISSAL
	)	WITH PREJUDICE
State of South Carolina,	)	
	)	
Respondent.	)	

Presiding Judge:	Hon. Walton J. McLeod, IV.
Applicant's Attorney:	Susannah C. Ross, Esq.
Respondent's Attorney:	O. McConnell Harison, Esq.
Plea Counsel:	Michael A. Berry, Esq.
Solicitor:	George M. Kendall, Esq.
Court Reporter:	Bobbi Fisher
Date of Hearing:	March 3, 2026

This matter comes before the Court by way of Joshua L. Shoemaker's (Applicant) application for post-conviction relief (PCR) filed on December 11, 2024. On February 13, 2026, Respondent filed its Return and Partial Motion to Dismiss¹. Applicant subsequently amended his PCR application to include additional claims of ineffective assistance of counsel.

On March 3, 2026, an evidentiary hearing was held at the Spartanburg County Courthouse before the Honorable Walton J. McLeod, IV. Applicant was present and represented by Susannah C. Ross, Esq. Assistant Attorney General O. McConnell Harison represented Respondent. Applicant proceeded on the claims in his original PCR application and amended application. In

¹ Respondent moved to dismiss Applicant's claims alleging prosecutorial misconduct for "disparate treatment from solicitors" and "treating others more fairly with worst [sic] crimes" as these are not cognizable claims that can be asserted under the PCR Act.

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support of these claims, Applicant testified on his own behalf. Respondent presented testimony from Michael A. Berry, Esq. (Plea Counsel) and Matthew Starling, Esq.

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

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of the Cherokee County Clerk of Court. In the July 2022 term, the Cherokee County Grand Jury indicted Applicant for armed robbery (2022-GS-11-910), possession of a firearm during a violent crime (2022-GS-11-910(A)), and pointing and presenting a firearm (2022-GS-11-911). Applicant was later indicted for assault and battery, 2nd degree (2024-GS-11-607), and escape and subject recapture (2024-GS-11-608). Applicant was represented by Michael A. Berry, Esquire. George M. Kendall of the Seventh Circuit Solicitor's Office prosecuted the case.

On May 21, 2024, Applicant appeared before the Honorable J. Durham Cole, Sr. and pled guilty pursuant to Alford² to armed robbery, PWDVC, and pointing and brandishing a firearm. Applicant pled guilty as indicted to grand larceny, more than \$2,000 but less than \$10,000 enhances pursuant to 16-1-57, assault and battery, 2nd degree, and escape.

Judge Cole sentenced Applicant to fifteen years' imprisonment for armed robbery, five years' imprisonment for PWDVC, five years' imprisonment for pointing and brandishing a firearm, and ten years' imprisonment for grand larceny, all to run concurrently, with credit for 686 days time served. Judge Cole sentenced Applicant to three years' imprisonment for assault and battery

² North Carolina v. Alford, 400 U.S. 25 (1970).

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second degree, with credit for 231 days' time served. Applicant was sentenced to one year of imprisonment for escape, to run consecutively to his other sentences.

Applicant did not appeal his convictions or sentences.

FACTUAL BASIS FOR GUILTY PLEA

This occurred on July 30th of 2021 at the Hickory Points Gas Station here in Cherokee County, South Carolina. At that time Casey Mauney came and parked his Jeep Grand Cherokee that belonged to he and his wife at the gas pumps. He then got out and walked inside of the store to buy a drink. You see on video an individual kind of come out from the kind of off screen, walk to the car and get in the car. The individual was a Caucasian male. Appears to have a shirt dangling over his head. As Mr. Mauney comes out of the store he notices the individual is inside of his car. The individual attempts to hit the gas pedal. The car won't go anywhere however because its on push button ignition system, Your Honor, and the key has to be present for it to go. At that time the individual brandishes what appears to be a firearm and cocks it and demands the keys. Mr. Mauney then walks up to him and hands him the keys, so he's approximately an arm's length away. The individual drives off. As he's driving off – or excuse me – after he drives off there's some communication between he and various family members who have attempted to call Mr. Mauney to find out what's going on. Law enforcement responded. They got a copy of the video. At the same time Mr. Mauney's wife post a Facebook post kind of explaining what happened and asking for information. An individual named Schylar Johnson who is a former or is a friend of the defendant responded. She indicated that she knew who had taken it, that it was Mr. Shoemaker, that he had contacted her wanting him to – wanting her to go with him to Arizona. And she indicated that he had told her that he had actually stolen the car when she explained that she had seen posts on it. And she got in touch with the defendant's – or excuse me – with the victim's wife. In addition, Your Honor, through this social media search they also found some additional photographs and video that appear from his Instagram account that appeared to indicate that a short time after this, within a few days, he was actually driving the vehicle, it appearing to be the same vehicle based her understanding of it. It's kind of a cockpit view. In addition, Mr. Casey Mauney picked him up out of a photo lineup as the person who had pointed the gun at him at the gas station. Finally, law enforcement ultimately recovered the car in York towards the end of August of 2021. At that time the defendant was incarcerated already, but they found it in the possession of a Wendy Snipes. As they kinda went through the car and law enforcement went out and responded to the scene they found a significant amount of Mr. Shoemaker's paperwork, belongings and things like that. They were inside the vehicle connecting him clearly to it. When asked about it she gave – this is kind of an odd story, but that she had gotten it from someone who is in jail who is trying to get bond money, but she went through an individual kind of as a mediator.

The second set of charges, Your Honor, is a grand larceny. This occurred June 20th of 2021 to a motor vehicle theft that occurred at 1406 West Floyd Baker Boulevard, more commonly known as the Fast Point store. The vehicle is described as a black Chrysler with tinted windows. Upon arrival law enforcement made contact with the owner, Monica Hines. And her boyfriend had been in possession of the vehicle at the time. There was also video from this incident. You see an individual who appears to be the defendant, basically, as the car is sitting at the gas pumps get in the car and ultimately drive away. They're able to connect him through another individual who was there as well conceivably with him. He picked him out of a photo lineup and indicated that it was him who had, in fact, stolen the car.

With regards to the assault and battery in the second degree, this occurred at the Cherokee County Detention Center at approximately 6:30 in the evening. Lieutenant Ackerson was the shift supervisor for the day. Basically, this involved a disagreement over whether or not individuals in c-max were going to be allowed to use phones that day. When told they're not, Mr. Shoemaker got extraordinarily upset and took a swing towards the facial area of Lieutenant Ackerson. Ultimately, they're on the ground. Mr. Shoemaker hit him about the head multiple times to a point where Lieutenant Ackerson lost consciousness and had to go to the hospital to be checked out, Your Honor.

Finally, we have the attempted escape. This occurred on October 24th of 2022. Law enforcement was informed that Mr. Shoemaker had escaped from the detention center. At that time he was an inmate down here at the Cherokee County Detention Center. Basically, what had happened was he had gotten out through the yard and used a carpet or blanket to get over the razor wire. He subsequently escaped, and they found his, I think, jumpsuit shortly nearby. He was arrested in – on October 26th, 2022, in Shelby, North Carolina.

(Plea Tr. pp. 16, ll. 21 – pp. 20, ll. 17).

CURRENT APPLICATION BEFORE THIS COURT

In his PCR application filed on December 11, 2024, Applicant alleges he is being held in custody unlawfully for the following reasons:

- I. Ineffective Assistance of Counsel
 - a. “Counsel didn’t raise issues to courts about problems in my case with misidentification”.
 - b. White³ Claim
 - i. “Did not have the time to [appeal] was immediately sent to R&E”.

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

- ii. “Was immediately sent to Receiving and Evaluation for 6 months with no access to law library or legal materials”.
- II. Prosecutorial Misconduct
 - a. “Disparate treatment from solicitors”.
 - b. “Treated others more favorably with worst [sic] crimes”.
- III. Due Process Violations
 - a. “No bond ever set in 3 years and attorney & solicitor denied opportunity for preliminary hearing”.
 - i. “Didn’t allow for preliminary hearing when I explicitly expressed I wanted to go”.
 - ii. “Denied bonds on unwarranted grounds”.
 - b. “Charged me wrongly, no law library, etc.”
 - i. “Should be charged with carjacking and robbery”.
 - c. “Out of court identification was done illegally”.

Applicant subsequently amended his PCR application through counsel to withdraw the claims of ineffective assistance of counsel regarding Applicant’s convictions that were not plead to under Alford, and to include the following claims of ineffective assistance of counsel:

- I. Ineffective Assistance of Counsel
 - a. “Advising Applicant to plead guilty under NC v. Alford plea when he had an alibi and the victim’s description of the perpetrator mentioned did not match the Applicant.”
 - b. “Failing to provide discovery to Applicant.”
 - c. “Failing to meet with Applicant enough in preparation for trial.”
 - d. “Failing to subpoena alibi witness in preparation for trial.”
 - e. “Failing to give state notice of alibi witness in preparation for trial.”

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

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act⁴ (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based on the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

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

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine

⁴ S.C. Code Ann. §§ 17-27-10 to -160.

whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. Strickland v. Washington, 466 U.S. 668 at 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687–88; Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[without proof of both deficient performance and prejudice to the defense . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart, 474 U.S. 52 (1985), extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel. See Padilla v. Kentucky, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). The analysis of counsel's performance under the first prong of Strickland remains unchanged, the applicant must show that counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000).

An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the range of competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56. The second, or "prejudice" prong, however, "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the

plea process." Id. at 58–59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59.

This inquiry "focuses on a defendant's decision making" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. 357, 367 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—**not** whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999) (emphasis added).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility.

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

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

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

INITIAL FINDINGS

This Court 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 court in making a credibility assessment."); Clemons v. Mississippi, 494 U.S. 738, 766 (1990) (Blackmun, J., concurring in part and dissenting in part) ("The trial judge who hears the witnesses live, observes their demeanor and in general smells the smoke of the battle is by his very position far better equipped to make findings of fact which will have the reliability that we need and desire.").

This Court makes the following findings from the record: (1) Applicant indicated he understood the charges against him and the potential sentences he was facing for each charge. (Plea Tr. pp. 4 – 7); (2) Applicant indicated that he had plenty of time to discuss his case with Plea

Counsel. (Plea Tr. p. 7); (3) Applicant indicated that his counsel went over each indictment with him, explained each charge, explained potential sentences he was facing, and reviewed the State's evidence (Plea Tr. p. 8); (4) Applicant indicated that he told his counsel everything he knew about the allegations against him (Plea Tr. p. 8); (5) Applicant understood that by pleading guilty, he was waiving his right to assert any defense that he might have. (Plea Tr. p. 9 - 10); (6) Applicant indicated that his counsel explained each right he was waiving by entering a guilty plea, including the right to remain silent and the right to confront his accusers, and he understood this. (Plea Tr. pp. 11 - 13); (7) Applicant indicated that he wished to waive his rights to plead guilty. (Plea Tr. pp. 12 - 13); (8) Applicant indicated that he understood his right to a jury trial and that the burden of proof is on the State to prove his guilt beyond a reasonable doubt. (Plea Tr. pp. 13 - 14); (9) Applicant indicated that he understood the plea offer with a negotiated sentence. (Plea Tr. p. 14); (10) Applicant indicated that he was not threatened, coerced, or pressured by anybody to plead guilty. (Plea Tr. p. 14); (11) Applicant indicated that he agrees with the solicitor's recitation of the facts supporting his conviction. (Plea Tr. p. 21); (12) Applicant indicated that he agrees with the State's explanation of his prior convictions, causing him to be eligible for LWOP. (Plea Tr. p. 24); (13) Applicant indicated that he understood the significance of pleading guilty to violent and most serious offenses, as well as no-parole offenses. (Plea Tr. p. 24); Applicant indicated that he would rather plead guilty than risk going to trial, and indicated that he was satisfied with his decision. (Plea Tr. pp. 24 - 25).

ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

- Allegation:** "Failing to provide discovery to Applicant".
- Allegation:** "Failing to meet with Applicant enough in preparation for trial".
- Allegation:** "Failure to subpoena alibi witness in preparation for trial".
- Allegation:** "Failure to give state notice of alibi witness in preparation for trial".
- Allegation:** "Counsel didn't raise issues to courts about problems in my case with misidentification".

Applicant alleges that his Plea Counsel was constitutionally ineffective for failing to meet enough times, failing to provide discovery to Applicant, and failing to raise issues in Applicant's case. Specifically, Applicant contends that Plea Counsel was ineffective for failing to subpoena and give notice of an alibi witness for trial, and for failing to raise an issue regarding misidentification. This Court finds these allegations 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)).

"[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 690–91. "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Id. at 691. "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Id. "The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Id. "Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant." Id. "In particular, what investigation decisions are reasonable depends critically on such information." Id.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing Jackson v.

State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Guilty Plea

During Applicant's guilty plea hearing, the following colloquy occurred between Applicant and the court:

THE COURT:	Mr. Barry is your lawyer. How long has he been representing you on these charges?
APPLICANT:	I believe for about two years now.
THE COURT:	And during that period of time have you had plenty of opportunity to talk to him about these charges and your decision as to how you want to proceed with their dispositions?
APPLICANT:	Yes, sir.
THE COURT:	Did he go over every indictment separately?
APPLICANT:	Yes, sir.
THE COURT:	Did he explain to you the charges?
APPLICANT:	Yes, sir.
THE COURT:	Did he also tell you what kind of sentence could be imposed upon a conviction?
APPLICANT:	Yes, sir.
THE COURT:	Did he share with you the evidence that the state has that they would present in court if any one of those cases went to trial before a jury?
APPLICANT:	Yes, sir.
THE COURT:	And did you tell him everything you know about the allegations made against you by way of each of these indictments?
APPLICANT:	Yes, sir.
THE COURT:	And did y'all discuss all of that information in detail?
APPLICANT:	Yes, sir.

THE COURT: And after discussing it did you determine whether or not you had a defense to any one or more of the charges contained in these indictments?

APPLICANT: There's a couple of them, but it's just the fact that with the state seeking life, I figured it best, in my best interest, just to take an Alford plea on the robbery and everything.

THE COURT: All right. You get to make that decision, but when I'm trying to find out right now is if you have a defense, and, if you do, what it is and to which indictment it applies. Let's start with the armed robbery indictment. That's the most serious offense likely. So you've got a charge of armed robbery that related to Mr. Mauney that alleges you stole his vehicle. Do you have a defense to that?

APPLICANT: Yes, sir.

THE COURT: What is your defense to it?

APPLICANT: I had an alibi for that night and it wasn't me.

THE COURT: All right. So your defense is it wasn't you that committed the crime.

APPLICANT: Yes, sir.

THE COURT: Do you understand that if you choose to plead guilty to a crime, even though you disputed the facts and deny your guilt, that when you plead guilty to the crime you authorize me to impose a sentence just as if you had pled guilty and admitted everything that's contained in the indictment or just as if you had denied your guilt, went to trial before a jury and the jury found you guilty of it.

APPLICANT: Yes, sir.

THE COURT: Do you understand you still authorize me to impose a sentence of not less than ten and not more than 30?

APPLICANT: Yes, sir.

THE COURT: And you give up your right to assert the defense.

APPLICANT: Yes, sir.

(GP pp. 7 – 10).

PCR Evidentiary Hearing

On direct examination, Applicant testified that he had two prior lawyers appointed to his case before Plea Counsel was appointed, and that the two lawyers told him the State's case against him was weak. Applicant testified that these lawyers informed him that the case was a win in their opinion and advised him not to do anything drastic. Applicant testified that these two lawyers were suddenly removed from his case, and he was then appointed Plea Counsel. (PCR Tr. pp. 7 – 8).

Applicant testified that Plea Counsel did not review discovery with him, and that he is still receiving discovery for his case as of December 2025. Applicant testified that he is still receiving items from his case that he should have received long ago, and that he has not yet received any discovery concerning his North Carolina charges. (PCR Tr. p. 8).

Applicant testified that his first lawyer, Matthew Starling (Starling), met with him the day prior to his scheduled preliminary hearing and reviewed discovery with Applicant, including the video of the armed robbery. Applicant testified that he informed Starling that the man in the video does not have tattoos and then showed Starling his visible tattoos. Applicant testified that pictures were taken of Applicant's tattoos, and that Starling informed him that he has nothing to worry about and that he would be out tomorrow. Applicant testified that Starling did not contact him again, and he was then appointed his second lawyer before Plea Counsel was appointed. (PCR Tr. p. 15).

Applicant testified that there is a video relating to the armed robbery, but asserts that the individual in the video is not him. Applicant testified that the person in the video has no tattoos. Applicant then showed the court the tattoo on his arm depicting the cartoon character Lisa Simpson on a stripper pole. (PCR Tr. p. 9). Applicant testified that the victim of the armed robbery gave no details regarding tattoos when giving police a description of the perpetrator, but did describe the suspect as being a white male with freckles on his face, wearing a gray tank top, and in possession of a black gun with an American flag on it. Applicant testified that the victim did not describe his goatee nor his facial piercings to the officers when describing the suspect. (PCR Tr. pp. 9 – 10).

Regarding the alibi witness, Applicant testified that his alibi witness was not subpoenaed for his scheduled trial. Applicant testified that he gave Plea Counsel all of the contact information to contact the alibi witness, but Plea Counsel never contacted her. Applicant testified that Plea

Counsel did not say anything regarding filing a notice of an alibi defense, and that nothing was ever filed with the witness's information. (PCR Tr. pp. 11 – 12). Applicant testified that if Plea Counsel had investigated his case more adequately and gotten in contact with his alibi witness, he would have proceeded to trial instead of taking a plea. Applicant testified that if Plea Counsel had investigated, he would have seen that there are four or five different suspects. When asked who these suspects are, Applicant testified that they were friends and people he “used to hang out with to get these stolen cars or that I would get them drugs and receiving stolen goods and stuff like that.” (PCR Tr. pp. 13 – 14).

On cross-examination, Applicant testified that he met with Plea Counsel two or three times, and that during the week of his scheduled trial was the only time they communicated. Applicant testified that the only discovery he had up to the point of his plea consisted of victim statements, the police investigation, and his criminal history. Applicant testified that he thinks Plea Counsel had more discovery than this, but Applicant never received all of the discovery (PCR Tr. p. 16).

On direct examination, Plea Counsel testified that he was appointed to Applicant's case approximately one year prior to the guilty plea. He testified that Applicant had previously had two lawyers assigned to his case and explained that the first lawyer, Mr. Starling, left the office for other employment, which led to the case being reassigned to Mr. Allen, who ultimately left the office for other employment. Plea Counsel testified that he was appointed to the case in May of 2023. (PCR Tr. pp. 19 – 20).

When asked about discovery, Plea Counsel testified that he had the discovery file, which had been in the office for two years from Applicant's previous representation. Plea Counsel testified that he then coordinated with a prosecutor to ensure he had all discovery for trial, and that he continued coordinating to ensure the discovery file was complete up to a week before the

scheduled trial. (PCR Tr. p. 20). When asked what was included in the discovery file, Plea Counsel testified, “It would have been everything. There were video-recorded statements. There was a surveillance video from the gas station that Mr. Shoemaker referenced. It would have been all written discovery. Unfortunately, for Mr. Shoemaker, one of the victims – actually, the wife of the armed robbery is somewhat of an undercover sleuth because she had done a lot of investigating on her own, including reaching out to some of the State’s witnesses, and there were several text message threads between the victim’s wife and some of the State’s witnesses who knew Mr. Shoemaker.” (PCR Tr. pp. 20 – 21). Plea Counsel testified that he reviewed all the discovery with Applicant, and that he does not recall Applicant ever requesting a copy of discovery. Plea Counsel testified that he generally advises against incarcerated clients having a copy of discovery in jail due to the threat of other inmates improperly obtaining it. (PCR Tr. p. 21).

Plea Counsel testified as to the State’s evidence against Applicant for the armed robbery, stating that video surveillance from the gas station shows a man (victim) in a Jeep Grand Cherokee parked at a gas pump who puts gas in his car and then proceeds into the store. While the victim is inside the store, the video shows another man emerge from the woods and walk toward the victim’s Jeep. The Jeep’s door is open, and the man ends up getting in the vehicle. The victim exited the store and saw the man in his Jeep. Plea Counsel testified that the victim told the man not to come any closer because he was armed, and that the victim began reaching towards his pocket. Plea Counsel testified that it was clear from the video that something had happened because the victim put his hands up and went back towards the store, and that the man then stole the Jeep. (PCR Tr. pp. 21 – 22).

Plea Counsel testified that the case was not “broken” until the victim’s wife got involved. Plea Counsel testified that the victim’s wife got information about the case from Applicant’s ex-

girlfriend, Skylar Johnson. Plea Counsel testified that Johnson informed the victim's wife that Applicant confessed to Johnson about stealing the victim's Jeep, and that Applicant informed Johnson that he told the victim he had a gun but that he was not actually armed during the robbery. Plea Counsel testified that the facts relayed by Johnson to the victim's wife were the same facts that had been relayed to police in the victim's statement. (PCR Tr. p. 22). Plea Counsel further testified that a woman informed police that she had purchased a stolen vehicle from Applicant in North Carolina, and that police were able to place Applicant at the scene of the hit and run in North Carolina. (PCR Tr. pp. 22 – 23).

Plea Counsel testified that the video of the armed robbery was in the discovery file when he was appointed to the case, and that he did review this video with Applicant in meetings prior to Applicant's guilty plea. Plea Counsel testified that Applicant raised an issue regarding the video, citing his prior two lawyers as telling him the case was weak. Plea Counsel testified that the strategy at trial would have been to attack the credibility of the State's witnesses for lack of physical evidence. (PCR Tr. pp. 24 – 25).

Plea Counsel testified that he definitely met with Applicant more than three times. He testified that he likely met with him at least three times in the week leading up to the scheduled trial. Plea Counsel testified that meeting the evening before the trial is typical in any case he handles. He testified that he began communicating with the solicitor via email in July 2023 and was asking about discovery materials in the case. (PCR Tr. p. 23).

In regard to Applicant's claim about an alibi witness, Plea Counsel testified that he was unaware of any potential alibi witness until he saw it listed as an allegation in Applicant's PCR application. Plea Counsel testified that he spoke with every witness that was mentioned in the State's file and stated that he has email correspondence showing his requests for contact numbers

from the prosecution in order to interview everyone mentioned in the file. Plea Counsel testified that he did not have any notes about any alibi witness from Applicant. Plea Counsel testified that Applicant wanted him to call a woman named Maria Button, and that he attempted to do so from the jail during one of his meetings with Applicant. (PCR Tr. p. 24).

On cross-examination, when asked if Applicant provided Plea Counsel or his prior attorneys the contact info for Bridget Lawson out of Shelby, North Carolina, as a potential alibi witness, Plea Counsel testified that he was not aware of the name Bridget Lawson at all. Plea Counsel testified that he was specifically given the names Skylar Johnson and Maria Button. Plea Counsel testified that he attempted to contact Maria Button and spoke with Skylar Johnson about the case. Plea Counsel testified that he did not give the State notice of these witnesses because they were not alibi witnesses, according to the statements they provided to Plea Counsel. Plea Counsel clarified that while there was not much physical evidence against Applicant, there were documents in Applicant's name found in the recovered stolen vehicle. (PCR Tr. pp. 28 – 29).

Findings

This Court finds Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland). This Court additionally finds that Applicant has failed to overcome his burden in proving 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 clear that Plea Counsel was prepared and provided representation that satisfies the Strickland standard. See Mazzell v. Evatt, 88 F.3d 263, 269 (4th Cir. 1996) (declining "to allow an ineffective assistance of counsel claim to create a situation where post-conviction attorneys stroll with the

full benefit of hindsight to second-guess trial lawyers who professionally discharge their duties to their clients under the manifold pressures of a state trial").

The record and Plea Counsel's testimony establish that Applicant has failed in meeting his burden of proof to show that Plea Counsel was constitutionally ineffective in his representation. Plea Counsel credibly testified that he met with Applicant multiple times over the course of his representation and likely met with him at least three separate times during the week leading up to his scheduled trial. Plea Counsel credibly testified that he coordinated with the solicitor to ensure he had all the discovery from Applicant's case and, considering he was the third attorney on the case, the file had been in the public defender's office for approximately two years at that point.

Plea Counsel testified that everything was included in the discovery file, including the video of the armed robbery, and that he reviewed all of this discovery with Applicant. Plea Counsel credibly testified that Applicant believed the video wasn't as persuasive evidence as Plea Counsel believed it to be. This belief stemmed from prior counsel telling Applicant that the State had a weak case. Plea Counsel testified that he agreed with prior counsel that the video was blurry, and that the defense at trial would be able to hammer on the credibility of the State's witnesses testifying regarding the video surveillance. Plea Counsel testified that he does not recall Applicant ever requesting a copy of his discovery and that he generally advises against incarcerated clients keeping a copy of their discovery for confidentiality purposes.

Regarding the alibi witness, Plea Counsel credibly testified that he spoke with or attempted to speak with every witness that Applicant provided to him. Plea Counsel testified that he was in communication with the solicitor to obtain contact information for each of the State's witnesses so he could interview them. Plea Counsel credibly testified that he did not have any case notes from Applicant regarding an alibi witness. Plea Counsel testified about the witnesses Applicant gave

him contact information for and stated that he even attempted to call one of them from the jail during a meeting with Applicant. Plea Counsel credibly testified that the two witnesses provided by Applicant would not have been alibi witnesses according to the statements that they provided to Plea Counsel, and that is the reason why he did not notify the State as to any potential alibi witnesses.

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

This Court finds through the combination of the record and Plea Counsel's testimony that Applicant has failed to meet the burden of showing Plea Counsel was constitutionally ineffective. Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation: “Advising Applicant to plead guilty under NC v. Alford plea when he had an alibi and the victim’s description of the perpetrator mentioned did not match the Applicant”.

Applicant alleges that Plea Counsel was constitutionally ineffective for improperly advising him to plead guilty pursuant to North Carolina vs. Alford, as Applicant contends he had an alibi witness and that the description of the perpetrator did not match Applicant. This Court finds this allegation 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 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. Jackson⁵ 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).

Guilty Plea

At Applicant's guilty plea hearing, the following colloquy occurred between Applicant and the court:

THE COURT:	Now, the solicitor has indicated that he has agreed to, if you plead guilty he's agreed to, recommend a sentence of 15 years on the armed robbery and then concurrent sentences that don't exceed 15 on all of the other charges except the escape charge. And that – and the agreement there was to have the Court impose a 1-year sentence to run consecutively to the 15-year sentence.
APPLICANT:	Yes, sir.
THE COURT:	Aside from that were you offered or promised anything?
APPLICANT:	No, sir.
THE COURT:	Have you been threatened or coerced or pressured by anybody in any way that resulted in your decision to plead guilty?
APPLICANT:	No, sir.
THE COURT:	What's so funny about that?
APPLICANT:	I feel intimidated by a life sentence for something that I didn't do. So, I mean, I take it as in my best interest. So, no,

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

THE COURT: sir. Nobody coerced me to do anything, but it's in my best interest to take the 15 years.

THE COURT: All right. Well, obviously, that would be some pressure that you might face a life sentence if you went to trial. Of course you could be found not guilty too.

APPLICANT: Could, but I'm just – I don't trust the justice system, I guess. I have to say that. I got to leave it up to 12 strangers to decide whether or not I'm guilty or not. I mean, just go ahead and take the ten. I'll be all right.

THE COURT: Okay. So you've had plenty of time to think about it and you've decided you want to take advantage of the offer made by the state and plead guilty to the charges.

APPLICANT: Yes, sir.

THE COURT: And you're fully aware of the consequences of that.

APPLICANT: Yes, sir.

(GP Tr. pp. 14 – 15).

Following the solicitor's recitation of the facts supporting Applicant's conviction, the court asked Applicant whether there is a substantial likelihood that a jury would find him guilty of armed robbery, possession of a weapon during a violent crime, and brandishing a firearm. Applicant responded that he believed it would result in a hung jury at trial, and that he did not want to take the risk of being exposed to life in prison without the possibility of parole. Applicant stated that, "I just figured I'd just go ahead and take the 15, and I know instead of going and taking risk of something that I don't know." The court asked Applicant why it was logical to accept the plea if Applicant believes a jury would not be able to convict him, to which Applicant responded that he would proceed with trial if the life sentence was not on the table. Applicant stated that he did not want to risk being sentenced to life in prison and leave the decision of his guilt in the hands of twelve strangers. When the court asked if Applicant felt there was enough risk or chance that he would be convicted at trial, Applicant answered affirmatively. (GP Tr. pp. 22 – 23).

PCR Evidentiary Hearing

On direct examination, Applicant testified that he was under the impression that there was not enough evidence against him to take the charges to trial. When asked why he took the plea instead of proceeding to trial, Applicant testified:

“Because it was three days before – before trial. It was – it was – we – my lawyer met with me for the first time I ever met him. Then we’re going over the initial questions of this, that, and the third. And then I let him know I got an alibi. And he’s like, ‘All right. Cool. We’re going to prepare for trial.’ Then the very last day before trial, the day of – the night before trial, he comes and sits with me and he’s like, ‘Look, if you don’t take this plea, you’re going to get life. It’s just plain and simple.’ Like, ‘You ain’t got no fight in this. You ain’t – don’t – don’t take this to trial because you’re going to lose.’” (PCR Tr. pp. 10 – 11).

Applicant testified that he did not want to enter a plea at all. Applicant testified that he believed the State noticing him with life without the possibility of parole was being used against him as an intimidation tactic in order to get him to enter a plea. Applicant testified that other plea offers were extended to him, including 25- to 30-year offers, which he rejected. (PCR Tr. p. 12). Applicant testified that while he pled guilty to larceny and assault and battery, he asserts that he was not involved in the armed robbery and informed his lawyer prior to his plea that he did not want to plead guilty to a crime he didn’t commit, as he contends he was in another state when the armed robbery occurred. (PCR Tr. p. 14).

On cross-examination, the following colloquy occurred between the State and Applicant:

Q. Okay. So, in your meetings with him, did you tell him that you wanted him to investigate those alibi witnesses?

- A. Right. Yes ma'am. But we didn't have – we really didn't have time to do any type of investigations because it was – like I said, the week of trial was the week that I'm at with my – with my attorney.
- Q. Let's see. At your guilty plea hearing, do you recall informing the plea court that you waived the defenses you could have proceeded with at trial, including that alibi witness?
- A. Say that again.
- Q. Do you recall at your plea hearing informing the Court that you – that you do waive the defenses that you could have proceeded with at trial?
- A. Oh, yeah, yeah. You're talking about when – when the judge asked me all those questions about accepting – yeah, yeah, yes ma'am.
- Q. And, finally, do you recall informing the plea court that you believed it was in your best interest to take the Alford plea?
- A. I did only simply because, I mean, we didn't have – we didn't – we never prepped for a case to go to trial. So, I mean ... it's either take the plea that's being offered to you or go to trial with hopes and wishes because you ain't never prepared for it.

(PCR Tr. pp. 17 – 18).

On direct examination, Plea Counsel testified that they attempted to negotiate plea offers very heavily with the State and that Applicant was very involved with the process. Plea Counsel testified that Applicant wrote prolifically from jail, and that he received several letters from Applicant with instructions on what he would and would not accept. Plea Counsel testified that he does not specifically recall each and every offer that was exchanged. Plea Counsel testified that he was attempting to negotiate better deals with the solicitor on the case, but the victim's wife was "very heated" and was attending every single hearing that occurred. Plea Counsel testified that he agrees the plea was in Applicant's best interest considering all of the State's evidence against him, and that he agrees with Applicant's decision to plead guilty. (PCR Tr. pp. 25 - 26).

On cross-examination, Plea Counsel testified that he discussed what an Alford plea is with Applicant. Plea Counsel testified that, especially in situations where he has a client pleading before Judge Cole, Alford needs to be discussed with the client because Judge Cole typically conducts a thorough colloquy to ensure the defendant understands the proceedings. (PCR Tr. p. 29).

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. See Mazzell v. Evatt, 88 F.3d 263, 269 (4th Cir. 1996) (declining "to allow an ineffective assistance of counsel claim to create a situation where post-conviction attorneys stroll in with the full benefit of hindsight to second-guess trial lawyers who professionally discharge their duties to their clients under the manifold pressures of a state trial").

The record and Plea Counsel's testimony establish that Plea Counsel was not constitutionally ineffective for improperly advising Applicant to plead guilty pursuant to Alford. The record shows that Applicant accepted the negotiated sentence of fifteen years in order to avoid the risk of a potential life without parole sentence. During his guilty plea hearing, the court inquired why Applicant wanted to take a plea if he was unsure if a jury would ultimately convict him, and Applicant stated that he would have proceeded with trial if the life sentence was not on the table. Applicant acknowledged to the court at his guilty plea that he believed accepting the Alford plea was a benefit to him. At the PCR evidentiary hearing, Plea Counsel credibly testified that Applicant was highly involved in their plea negotiations with the solicitor and wrote Plea Counsel letters highlighting offers that he would accept. Plea Counsel testified that, considering all of the evidence the State had against Applicant, it was in Applicant's best interest to take the plea deal. The record

shows that Applicant's plea pursuant to Alford was freely, knowingly, and voluntarily entered in order to avoid a potential sentence of life in prison without the possibility of parole.

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

This Court finds through the combination of the record and Plea Counsel's testimony that Applicant has failed to meet the burden of showing Plea Counsel was constitutionally ineffective. Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation: Failure to File Direct Appeal / White Claim

Applicant alleges that Plea Counsel was constitutionally ineffective for failing to file a direct appeal of his guilty plea conviction and sentence. This Court finds this allegation to be without merit.

To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice because of counsel's deficient performance. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." Watson v. State, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To show prejudice where applicant claims counsel was ineffective for failing to advise

him of his direct appeal, applicant must show that but for counsel's deficient conduct, applicant would have appealed. Roe v. Flores-Ortega, 528 U.S. 470, 484, 120 S. Ct. 1029, 1038, 145 L.Ed.2d 985 (2000); cf. Peguero v. United States, 526 U.S. 23, 119 S. Ct. 961, 143 L.Ed.2d 18 (1999) (defendant not prejudiced by court's failure to advise him of his appeal rights, where he had full knowledge of his right to appeal and chose not to do so)).

Though counsel is required to make certain that a defendant is made fully aware of his or her right to appeal after a trial, a different standard applies to a guilty plea:

Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.

Turner v. State, 380 S.C. 223, 224-25, 670 S.E.2d 373, 374 (2008) (citations omitted); see also Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000) (imposing the duty to consult when there is reason to think either that a rational defendant would want to appeal or that the particular defendant reasonably demonstrated interest in doing so); contra Frazer v. South Carolina, 430 F.3d 696 (4th Cir. 2005) (reading Flores-Ortega to mean counsel generally has a duty to consult with his client regarding whether to pursue an appeal). Therefore, in a collateral action attacking a guilty plea, the “bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief.” Jones v. State, 382 S.C. 589, 598, 677 S.E.2d 20, 23-24 (2009) (quoting Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995)).

Where an Applicant reasonably demonstrates an interest in appealing, or where there is a reason to think a rational defendant would want to appeal, and where Counsel fails to either initiate that appeal or comply with Anders procedure, “White permits consideration of the full trial record of [an] issue in conjunction with appellate review of the PCR proceeding under an exception to

the prohibition against appellate courts considering appeals in the absence of notice of a direct appeal given and timely served.” Smith v. State, 309 S.C 413, 415, 424 S.E.2d 480, 481 (1992) (citing Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986)).

PCR Evidentiary Hearing

On direct examination, when asked if he requested that Plea Counsel file a direct appeal on his behalf, Applicant testified that Plea Counsel informed him that a direct appeal was “only good through trial”. Applicant testified that he did not pursue a direct appeal because he only had ten days to file it, and he was under the impression that it could only occur after a trial. Applicant testified that Plea Counsel informed him that he has the right to file for post-conviction relief following a guilty plea. (PCR Tr. p. 13).

On direct examination, Plea Counsel testified that Applicant did not ask him to file a direct appeal following the guilty plea. (PCR Tr. p. 26).

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. See Mazzell v. Evatt, 88 F.3d 263, 269 (4th Cir. 1996) (declining "to allow an ineffective assistance of counsel claim to create a situation where post-conviction attorneys

stroll in with the full benefit of hindsight to second-guess trial lawyers who professionally discharge their duties to their clients under the manifold pressures of a state trial").

The record and Plea Counsel's testimony shows that Applicant did not request that Plea Counsel file a direct appeal on his behalf, and further that there were no extraordinary circumstances that would have made Plea Counsel file a direct appeal. "In a collateral action attacking a guilty plea, the 'bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief.'" Jones v. State, 382 S.C. 589, 598, 677 S.E.2d 20, 23-24 (2009) (quoting Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995)).

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

This Court finds through the combination of the record and Plea Counsel's testimony that Applicant has failed to meet the burden of showing Plea Counsel was constitutionally ineffective. Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

ALLEGATIONS OF DUE PROCESS VIOLATIONS

Allegation: Failure to Have Preliminary Hearing
Allegation: Failure to Obtain Bond

Applicant alleges that his due process rights were violated by the court's denial of his motions for bond and for not providing him with a preliminary hearing. Specifically, Applicant contends that he had no bond set for three years and was denied bond on unwarranted grounds,

and that he was not allowed a preliminary hearing even though he expressly requested one. This Court finds these allegations to be without merit.

Every criminal defendant is entitled to notice of his right to a preliminary hearing “to determine whether sufficient evidence exists to warrant [his] detention and trial.” Rule 2(a) SCRCrimP. However, there is no state constitutional right to a preliminary hearing. State v. McClure, 277 S.C. 432, 289 S.E.2d 158 (1982); State v. Keenan, 278 S.C. 361, 296 S.E.2d 676 (1982). Furthermore, a preliminary hearing shall not be held if the defendant is already indicted by a grand jury. Rule 2(b) SCRCrimP; see also State v. Hawkins, 310 S.C. 50, 54-55, 524 S.E.2d 50, 53 (Ct. App. 1992) (holding trial court did not err in refusing to quash defendant’s indictments because he did not receive a requested preliminary hearing because he was indicted before a preliminary hearing was held).

Regarding bond, the South Carolina Code of Laws states:

- (A) Magistrates may admit to bail a person charged with an offense, the punishment of which is not death or imprisonment for life; provided, however, with respect to violent offenses as defined by the General Assembly pursuant to Section 15, Article I of the Constitution of South Carolina, 1895, magistrates may deny bail giving due weight to the evidence and to the nature and circumstances of the event including, but not limited to, any charges pending against the person requesting bail. "Violent offenses" as used in this section means the offenses contained in Section 16-1-60. If a person under lawful arrest on a charge not bailable is brought before a magistrate, the magistrate shall commit the person to jail. If the offense charged is bailable, the magistrate shall take recognizance with sufficient surety, if it is offered, in default whereof the person must be incarcerated.
- (B) A person charged with a bailable offense must have a bond hearing within twenty-four hours of his arrest and must be released within a reasonable time, not to exceed four hours, after the bond is delivered to the incarcerating facility.
- (C) In determining conditions of release that will reasonably assure appearance, or if release would constitute an unreasonable danger to the community or an individual, a court, on the basis of the following information, may consider the nature and circumstances of an offense charged and the charged person's:
 - (1) family ties;
 - (2) employment;
 - (3) financial resources;

- (4) character and mental condition;
 - (5) length of residence in the community;
 - (6) record of convictions; and
 - (7) record of flight to avoid prosecution or failure to appear at other court proceedings.
- (D) A court must consider:
- (1) a person's criminal record;
 - (2) any charges pending against a person at the time release is requested;
 - (3) all incident reports generated as a result of an offense charged;
 - (4) whether a person is an alien unlawfully present in the United States, and poses a substantial flight risk due to this status;
 - (5) whether the charged person appears in the state gang database maintained at the State Law Enforcement Division; and
 - (6) whether a person is currently out on bond for another offense.

S.C. Code § 22-5-510 (A) - (D).

PCR Evidentiary Hearing

On direct examination, Plea Counsel testified that he recalls Applicant having at least four separate bond hearings. Plea Counsel testified that the victim's wife was "very heated" and was in attendance for each of these bond hearings. (PCR Tr. p. 26).

On cross-examination, Plea Counsel was asked if he recalls the victim's wife being "very heated" at a bond hearing due to the fact that she believed Applicant was still in possession of their keys, making her fear for her life. Plea Counsel testified that he ordered the transcripts of Applicant's first two bond hearings that Plea Counsel was not involved in. Plea Counsel testified that he planned to potentially use this at trial as a way to discredit the victim's description of Applicant. Plea Counsel reiterated the fact that the victim's wife was very angry and present at every hearing they had. Plea Counsel testified that the victim's wife made an allegation that Applicant threatened her, but that he is unaware of the details surrounding that. Plea Counsel testified that he believed the victim's wife had gotten the keys back at this point and testified that it would not surprise him if the victim's wife was not being truthful about the keys, considering the car was already recovered at that point. (PCR Tr. pp. 27 – 28).

On direct examination, Matthew Starling testified that he was appointed to Applicant's case late August of 2021 and left the office early in 2022. When asked why Applicant did not receive a preliminary hearing, Starling testified to the following:

When he testified, I do remember going over with him the video prior to, as he stated, the preliminary hearing and taking pictures, going back and forth from the video to his pictures – I mean, his tattoos on himself and trying to discern if there would be probable cause there. I do remember that. I do remember me talking to him about, you know, what a preliminary hearing is, how it works. You know, the State's got a burden of – or probable cause. And I do that universally with all my clients. I also talked about, at that time, they did have the – where the victim's wife posted the video of the incident on Facebook. And I believe, at that time, we knew that Skyler Johnson reached out to the victim's wife and stated that Mr. Shoemaker called me and said he did it and wanted me to go with him to a state out West. Obviously, I thought that was very damning and would potentially – they would find probable cause subsequently. I believe at the time also there was – the wife also had – the wife of the victim also had videos that allegedly Mr. Shoemaker posted of him driving the car that he stole from the victim. And I believe there's one more thing. I thought – potentially, if I remember correctly, at the time also when they found the car in North Carolina, as Mr. Berry already testified to, that they found documents relating – with his name on it. I can't remember what those documents were. So those – you know, I tell the client that sometimes it's not always good to go to a prelim when there's that much evidence that you might give away one of your strategies and the State knows what you're going to argue in the future. That was from my recollection, what I stated to Mr. Shoemaker, and I thought -- you know, at the time, I believe that we agreed to waive the prelim. That's my recollection of the event.

(PCR Tr. pp. 32 – 33).

On cross-examination, Starling testified that he took pictures of Applicant's tattoos in conjunction with reviewing the video surveillance of the armed robbery. Starling testified that the video is extremely grainy and hard to decipher, given that the footage has a bad light reflection and was filmed at night. Starling testified that he believes the suspect in the video had tattoos, but he cannot recall whether those tattoos matched the Applicant. Starling testified that he felt a preliminary hearing was not a wise choice, considering the addition of evidence of Skyler Johnson's statement to the victim's wife regarding the Applicant being the suspect. Starling

testified that he would have told Applicant all of this information and allowed him to decide to have the preliminary hearing or waive it. (PCR Tr. pp. 33 – 34).

Starling testified that he recalls the victim's wife obtaining the video from law enforcement and subsequently posting it on Facebook. Starling testified that Skyler Johnson stated she saw the video and reached out to the victim's wife, informing her the suspect was Applicant. When asked whether Applicant was already the suspect at that point, Starling testified that Applicant was the suspect based on the video and subsequent videos he posted of himself driving the stolen vehicle. Starling testified that he believes Applicant was arrested in North Carolina due to the videos posted on Facebook. Starling testified that the victim's wife informed the police of Skyler Johnson's statement to her, and that Applicant was subsequently picked out of a photo lineup by the victim. (PCR Tr. pp. 34 – 35).

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland). 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. See Mazzell v. Evatt, 88 F.3d 263, 269 (4th Cir. 1996) (declining "to allow an ineffective assistance of counsel claim to create a situation where post-conviction attorneys stroll in with the full benefit of hindsight to second-guess trial lawyers who professionally discharge their duties to their clients under the manifold pressures of a state trial").

Regarding bond, the record reflects that Applicant's counsel filed at least three (3) motions for bond on his behalf. The first was filed on August 31, 2021, with a hearing held on September 20, 2021, and the order denying bond was filed on September 21, 2021. The second motion for bond was filed on January 12, 2022; a hearing was held on February 8, 2022, and the order denying bond was filed on February 9, 2022. The third motion for bond was filed on August 17, 2022; a hearing was held on August 30, 2022, and the order denying bond was filed on September 1, 2022. After considering the factors required at the hearing, the court found that bond was inappropriate each time due to an unreasonable risk of danger to the community and the flight risk that Applicant posed. Applicant, therefore, cannot meet his burden in proving that his counsel was constitutionally ineffective for failing to have Applicant's bond motion granted, as multiple motions were filed and heard before the court. Counsel has no control over the court's decision regarding the grant or denial of bond, and the court emphasized Applicant's danger to the community and risk of flight.

Regarding a preliminary hearing, the record and Starling's testimony establish that Applicant waived his right to a preliminary hearing following discussions with Starling surrounding the State's evidence. Starling testified that following his discussions with Applicant, he recalls both agreeing to waive the preliminary hearing. Starling credibly testified that video evidence of Applicant, in addition to statements made to the victim's wife, made him feel as if a preliminary hearing was not a wise choice for Applicant. Starling testified that he informed Applicant that the preliminary hearing might be a bad choice for them, given the amount of evidence the State would present, which could reveal defense strategies ahead of trial. Therefore, Applicant cannot meet his burden in proving that Starling was constitutionally ineffective for failing to get Applicant a preliminary hearing, as it shows Starling had a reasonable strategy in not

having one – to avoid giving away any potential defenses that they would use at trial. Further, the record indicates that Starling and Applicant agreed to waive the preliminary hearing.

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

This Court finds through the combination of the record and Plea Counsel's testimony that Applicant has failed to meet the burden of showing Plea Counsel was constitutionally ineffective. Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

ABANDONED ALLEGATIONS

In his original PCR application, Applicant alleges prosecutorial conduct on the grounds that, “disparate treatment from solicitors” and “treated others more fairly with wors[e] crimes”. Applicant also alleged due process violations on the grounds that, “charged me wrongly, no law library, etc.” and “out of court identification was done illegally”.

Applicant failed to present any evidence, testimony, or legal authority regarding this allegation at the evidentiary hearing. "When a party provides no legal authority regarding a particular argument, the argument is abandoned and the court will not address the merits of the issue." Palmer v. State, 427 S.C. 36, 47, 829 S.E.2d 255, 261 (Ct. App. 2019) (citing State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011)). Therefore, the Court deems this allegation abandoned. Thus, this allegation must be **DENIED** and **DISMISSED**.

CONCLUSION

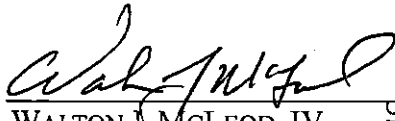
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be **DENIED and DISMISSED WITH PREJUDICE**.

This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that PCR counsel must serve and file a Notice of Appeal on Applicant's behalf if Applicant wishes to seek appellate review. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 21 day of July, 2026.


WALTON J. MCLEOD, IV.
Presiding Judge
Seventh Judicial Circuit

Greenville, South Carolina.

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CHEROKEE COUNTY, SC
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BRANDY W. MCBEE