

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

Davijon K. McCall, #393651,

Applicant,

v.

State of South Carolina,

Respondent.

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

) CASE NO. 2025-CP-16-00133
)

**ORDER OF DISMISSAL
WITH PREJUDICE**

Presiding Judge: Hon. Carmen T. Mullen
Applicant's Attorney: Steven W. Fowler, Esq.
Respondent's Attorney: MacKinnon Westraad, Esq.
Plea Counsel: Charles T. Brooks, III, Esq.
Date of Hearing: May 27, 2026

SCOTT B. SUGGS
CLERK OF COURT/A.D.
DARLINGTON COUNTY, S.C.

2026 AUG -3 P 3:03

FILED

This matter comes before this Court by way of Davijon K. McCall's (Applicant) application for Post-Conviction Relief (PCR) commenced February 12, 2025. Respondent, the State of South Carolina, filed its Return on July 16, 2025, requesting an evidentiary hearing.

On May 27, 2026, an evidentiary hearing was held at the Darlington County Courthouse before the Honorable Carmen T. Mullen. Applicant was present at the hearing and represented by Steven W. Fowler, Esquire. Assistant Attorney General MacKinnon Westraad appeared on behalf of Respondent. Applicant proceeded on the allegations within his original PCR application, as well as a claim that his guilty plea was involuntary. In support of these claims, Applicant testified on his own behalf. Respondent called Charles T. Brooks, III, Esquire (Plea Counsel) to testify.

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

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Darlington County Clerk of Court. During the June 2020 term, the Darlington County Grand Jury indicted Applicant for two (2) counts of Murder (2020-GS-16-0897, -0898) and Attempted Murder (2020-GS-16-0901). Applicant was represented by Plea Counsel. Fourth Circuit Assistant Solicitor Glenn M. Bell prosecuted the case.

On March 25, 2024, Applicant appeared before the Honorable R. Kirk Griffin and pleaded guilty straight up to Voluntary Manslaughter for each Murder, and Assault and Battery of a High and Aggravated Nature (ABHAN) for the Attempted Murder. Judge Griffin sentenced Applicant to eighteen (18) years' imprisonment for each Voluntary Manslaughter charge, to run consecutively, and fifteen (15) years' imprisonment for ABHAN, to run concurrently.

Applicant filed a timely Notice of Appeal. The South Carolina Commission on Indigent Defense sent Applicant supplemental affidavits of indigency to be completed and returned, but Applicant did not return them in a timely manner. On August 13, 2024, the Court dismissed Applicant's appeal by filed order for failure to order the transcript. The Remittitur was returned on August 29, 2024.

FACTS GIVING RISE TO THE PLEA

At Applicant's plea hearing, Assistant Solicitor Bell articulated the facts giving rise to the plea as follows:

SOLICITOR BELL: Yes, Your Honor, May it please, the Court? Your Honor, this incident occurred January 26, 2020, 115 Camden Avenue in the City of Harrisville located in Darlington County. Your Honor, there's a night club, a bar, an 18 and older bar by the name of Mac's Lounge. Your Honor, I know you're somewhat

familiar with it because you were the judge that heard the Darius Dickey case. But, Your Honor, in regards to Mr. with a friend, Leonard Sweetenburg. And DiCaprio Collins along with Darius Dickey and another, Antonio Mills, was another faction that was also at Mac's Lounge. Your Honor, we've heard many rumors going around Hartsville what the pre-existing issues they had with each other, but the State never was ever really able to hash that out a hundred percent. But there was some pre-existing problems that they had with each other. Your Honor, if you recall with the Darius Dickey trial, Mr. Dickey did brandish a weapon: And at some point the faction with DiCaprio Collins and Darius Dickey, Antonio Mills, at some point, one of those individuals did go over and strike Mr. McCall starting a fight. At which point after that fight started, Your Honor, that's when Mr. McCall pulled a gun by his own ambition and got to shooting. The first person that was shot was DiCaprio Collins. DiCaprio Collins was 21 years of age. Based on the autopsy he was shot in the back of the head. If we would have went to trial we would've been able to show that. And we do have forensic evidence matching the bullet and bullet fragments that was removed from Mr. Collins to the gun that was retrieved from Mr. McCall. At which point, once Mr. Collins falls, Mr. Darius Dickey did return fire at Mr. McCall and McCall shot at Darius Dickey. During this shoot out Mr. McCall did miss Darius Dickey and did strike Bryan Robinson, age 29. Struck him also in the back of the head. We also, if we was to go to trial, we would have forensic evidence to show that it was Mr. McCall's gun that actually killed Mr. Robinson. After this mayhem, Your Honor, and again, also during this gun battle other people were injured. There was a Garrett Bakhsh, Bakhsh, excuse me, that was was killed and that was by the, the bullet of Mr. Darius Dickey. But also other individuals were injured. An Ivan Granados was injured. A Leonard Sweetenburg was injured. But what's relevant for Mr. McCall, Mr. Michael Gryder was injured. He was shot. He was a security guard/bouncer, bouncer for Mac's Lounge, he was shot as well. And we do believe based on the trajectory and where everybody was standing we feel like Mr. McCall's bullet did injure Mr. Michael Gryder. Your Honor, after the shooting Mr. McCall did flee to Durham. He was apprehended by our task force. And once they made contact with Mr. McCall they did find the 9 millimeter weapon that was used in this crime. Once they got Mr. McCall back to Hartsville City, he did give a statement, at least, admitting to one: having a gun in the establishment, not owning a concealed weapon permit, and open fire and shooting in that night club. That's all the facts that I have from State, Your Honor.

(Plea Tr. pp. 10-13).

CURRENT ACTION BEFORE THIS COURT

In his application, Applicant alleged he is being detained unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

- a. Failed to file a motion pursuant to the Protection of Persons and Property Act
- b. Plea Counsel failed to inform Applicant of his right to appeal

At his PCR hearing, Applicant also alleged that his guilty plea was involuntary.

Applicant requests relief in the form of “sentence vacated and set-aside, or alternatively remand for a new trial, or pretrial determination to establish claim for self-defense.”

Before this Court are the Darlington County Clerk of Court records regarding the subject's convictions and sentences, Applicant's records from the SCDC, the guilty plea transcript, and the records of the current PCR action.

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).

¹ S.C. Code Ann. §§ 17-27-10 to -160.

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 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), SCRPC; 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 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 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. 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 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 the 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), SCRCF (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.”).

Accordingly, set forth below are the relevant findings of fact 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 understood his charges and the potential sentences for each charge (Plea Tr. pp. 6-7); 2. Applicant understood that the only recommendation from the State was that the ABHAN conviction run concurrently, but that the plea court otherwise had complete discretion within the bounds of the law over the sentences for voluntary manslaughter (Plea Tr. p. 9); 3. Applicant indicated no one promised him anything, or forced or threatened him, to plead guilty (Plea Tr. pp. 9-10); 4. Applicant understood he was waiving his rights to remain silent, have a jury trial, and confront witnesses against him (Plea Tr. p. 7); 5. Applicant was informed that he could present a defense if he took the case to trial, but that he was waiving his defenses by pleading guilty, and indicated he understood that waiver (Plea Tr. p. 7); 6. The plea court accepted Applicant's version of the facts for his plea (Plea Tr. p. 46); 7. Applicant was not under the influence of drugs or alcohol, and had never been treated

for any mental health problems (Plea Tr. p. 6); 8. Applicant was satisfied with the services of Plea Counsel (Plea Tr. p. 10).

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS ON THE MERITS

Allegation: Failed to file a motion pursuant to the Protection of Persons and Property Act.

Applicant alleges Plea Counsel was ineffective for failing to file a motion pursuant to the Protection of Persons and Property Act. Applicant also alleges that if Plea Counsel had reviewed the evidence and strategies with him more, Applicant would have known he had a stronger self-defense claim, and would have gone to trial. This Court finds this allegation is without merit.

The Protection of Persons and Property Act states the following:

- (A) It is the intent of the General Assembly to codify the common law Castle Doctrine which recognizes that a person's home is his castle and to extend the doctrine to include an occupied vehicle and the person's place of business.
- (B) The General Assembly finds that it is proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others.
- (C) The General Assembly finds that Section 20, Article I of the South Carolina Constitution guarantees the right of the people to bear arms, and this right shall not be infringed.
- (D) The General Assembly finds that persons residing in or visiting this State have a right to expect to remain unmolested and safe within their homes, businesses, and vehicles.
- (E) The General Assembly finds that no person or victim of crime should be required to surrender his personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack.

SC Code § 16-11-420 (2006).

Our Supreme Court has made clear that immunity under the Act should be addressed in pretrial motions, and that the defendant bears the burden of establishing immunity by a

greater weight of the evidence. State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011). The elements of immunity must be established as follows:

A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

SC Code § 16-11-440(C) (2024).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Plea Counsel gave him the discovery but did not go over it in detail with him, repeatedly stating that the State had no evidence. Applicant testified that he assumed everything was good since Plea Counsel was not reaching out to him. Applicant testified that he was not engaged in an unlawful activity and that he was standing his ground when he killed the victims. Applicant testified that he believed self-defense could have applied. Applicant testified that Plea Counsel told him he had been requesting a Duncan hearing, but the courts had not yet responded. Applicant testified that Plea Counsel came to visit him and skimmed through the discovery with him, but would not go into specifics. Applicant testified that he went to Plea Counsel's office several times and spoke with Plea Counsel. Applicant testified that after his plea, he began reviewing certain statutes, and it started to look better for him because it showed he was defending himself. Applicant testified that he was confused by Plea Counsel's claim that there was no evidence because Applicant knew the State had his weapon, so Applicant kept asking about SLED analysis and ballistics.

On cross-examination, Applicant testified that he remembered the judge at his plea telling him he was waiving his right to present defenses.

On direct examination, Plea Counsel testified that he convinced Judge Henderson to grant Applicant a bond in August of 2021. Plea Counsel testified that he was on this case for more than three years. Plea Counsel testified that he met with Applicant numerous times, including at Plea Counsel's office with Applicant's mother, and that they discussed the case extensively. Plea Counsel testified that he went over the sentence ranges with Applicant and explained he could face LWOP for murder. Plea Counsel testified that he went over the autopsy reports with Applicant, showing that one of the gunshots was to the back of the head and another was to the side. Plea Counsel testified that the critical issue was determining who fired the kill shots, but the gun analysis took a long time, so the solicitor's office did not provide it for a while. Plea Counsel testified that he told Applicant there was not evidence yet because they did not have the gun analysis confirming it was Applicant's bullets that hit and killed the victims until much later.

Plea Counsel testified that he believed Applicant had a potential stand-your-ground claim for one of the victims, but that did not help him with the innocent victim who was killed, and another victim who was injured. Plea Counsel testified that one of the other individuals charged in this case went to trial and got a life sentence, so Plea Counsel and Applicant decided it was best to plead in front of the judge given the murder of the innocent bystander. Plea Counsel testified that they hoped it would help that Applicant had little criminal record and was less culpable than the other individual who received a life sentence.

Plea Counsel testified that after he received the discovery regarding the gun analysis, he reviewed it with Applicant. Plea Counsel testified that if they took Applicant's case to trial, he would have had a Duncan hearing on the charge for the victim who instigated the

fight. Plea Counsel testified that his strategy and thought process were that they would succeed with one victim but not the others.

On cross-examination, Plea Counsel testified that the solicitor told him they would have the Duncan hearing directly before the trial. Plea Counsel testified that the case would have gone to trial on both murders; they would not have been bifurcated, so even with a Duncan hearing on the one victim, there was absolutely no defense to the murder of the other victim. Plea Counsel testified that he did not review every single word on every single page of the discovery with Applicant, but he reviewed the discovery and summarized materials such as police reports. Plea Counsel testified that he told Applicant they would have to wait and see what the gun analysis said, and after he got the gun analysis, he went over it with Applicant and told Applicant his gun was responsible for both deaths. Plea Counsel testified he went over the likelihood of success on a Duncan hearing with Applicant.

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*.

As an initial matter, this Court finds Applicant **not credible** that he would have known he had a stronger self-defense claim if Plea Counsel had discussed the case with him more. While Applicant testified that he has reviewed case law and now believes he had a stronger self-defense claim, Plea Counsel **credibly** testified that he discussed the likelihood of success on a Duncan

hearing with Applicant, and Applicant did not present to this Court what he has learned since his guilty plea that would have changed his decision to plead guilty. See Goins v. State, 397 S.C. 568, 726 S.E.2d 1 (2012) (Applicant failed to prove prejudice where he did not show that erroneous advice about the likelihood of success in a suppression hearing was the Applicant's reason for electing not to go to trial).

Additionally, the plea allowed Applicant to go from two murder charges to two voluntary manslaughter charges, with the ABHAN sentence running concurrently. Applicant went from facing two life sentences to a maximum of 60 years, and ultimately received 36 years. See Goins v. State at 575 (finding counsel's testimony supported the conclusion that the applicant chose to plead guilty after the state offered to dismiss two charges and recommend a ten-year sentence).

Applicant did not dispute that one of his murder charges was for an innocent bystander, where he would not be able to argue self-defense. Plea Counsel's testimony explained the strategy of pleading guilty and asking the judge for mercy, given the better facts for Applicant and his lack of a notable criminal record. Even if Applicant had taken the case to trial and succeeded in a Duncan hearing on the one murder charge, he would be facing LWOP on the other murder charge, and up to thirty years for attempted murder. These were factors in Plea Counsel's strategy and Applicant's decision to plead guilty. This Court finds that Applicant received the benefit of the bargain when he decided to plead guilty rather than go to trial and have a Duncan hearing.

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: Plea Counsel failed to inform Applicant of his right to appeal

Applicant alleges Plea Counsel failed to inform Applicant of his right to appeal. This Court finds this allegation is without merit.

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 on [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 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 cross-examination, Applicant testified that he remembered that Plea Counsel filed an appeal on his behalf and that the South Carolina Commission on Indigent Defense (SCCID) sent him multiple letters requesting that he complete his affidavit of indigency to proceed with the appeal. Applicant testified he did not know why that appeal did not go forward.

Upon direct questioning by this Court, Applicant testified that he would not characterize his desire for an appeal as being based on an error of law, but rather ineffective assistance of counsel.

On direct examination, Plea Counsel testified that he spoke with Applicant about the appeal, but Applicant did not want to retain Plea Counsel, so Plea Counsel filed the notice of appeal and sent the affidavit for indigent counsel to Applicant.

Findings

This Court finds from the record that the plea court did advise Applicant of his right to appeal his guilty plea. (Plea Tr. p. 10). Although he characterized his allegation as a failure to be informed of his right to appeal, it is apparent that Applicant was aware of that right and claims that his appeal should not have been dismissed.

"Trial counsel's responsibility to a defendant is governed by Rule 602(e)(1), SCACR, formerly Rule 51(e)(1), South Carolina Rules of Court for the Supreme Court and Court of Appeals, which requires trial counsel to represent a defendant until final judgment, including any proceedings on direct appeal, unless certain exceptions are met." Smith v. State, 309 S.C. 413, 415-16, 424 S.E.2d 480, 481 (1992). Under Rule 602(e)(4), one such exception is where the

accused claims to be indigent at the conclusion of trial, at which point retained counsel must serve and file a notice of appeal. After retained counsel has fulfilled this requirement, "[t]he accused shall then request a determination of his indigency status from the Office of Appellate Defense." Retained counsel is *only* required by Rule 602(e)(4) to continue representation of the accused during the appeal "[i]f the Office of Appellate Defense determines that the accused is not indigent."

While Applicant's appeal was ultimately dismissed for failure to order the transcript, which was the responsibility of counsel of record, Plea Counsel fulfilled his duty to his client by filing the notice of appeal and ensuring he had the materials needed to obtain indigent counsel for his appeal. Applicant was responsible for obtaining counsel by either paying his previously retained attorney (Plea Counsel) or filling out his indigency affidavit to be appointed appellate counsel. Per Rule 602(e)(4), since the Office of Appellate Defense did not determine that Applicant was not indigent—because he repeatedly failed to send them his indigency affidavit—Plea Counsel was not required to continue representation of Applicant during the appeal.

Further, this Court finds that Applicant's testimony at his PCR hearing indicated he did not want a direct appeal for his guilty plea; rather, Applicant merely wanted to appeal on the basis of ineffective assistance of counsel, which he succeeded in doing by filing a PCR application.

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 2: Involuntary Guilty Plea

Applicant alleges his guilty plea was involuntary. Specifically, Applicant alleged that he was not made aware of everything, that he lacked knowledge, and that Plea Counsel did not go

over every detail. This Court finds this allegation is 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 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.

Plea Hearing

The following colloquy occurred between Applicant and the Court:

THE COURT: You understand that the State, other than the reduction of the murder charge, the only recommendation that the State is making is that I sentence you concurrently for the assault and battery of a high aggravated nature and that, otherwise, the sentence is left to my discretion within the bounds of the law for voluntary manslaughter. You understand that?

MR. McCALL: Yes, sir.

(Plea Tr. p. 9)

PCR Evidentiary Hearing

On direct examination, Applicant testified that his plea was involuntary because he was not made aware of everything and Plea Counsel did not go over every detail. Applicant testified that Plea Counsel told him if he took the plea, everything would be concurrent. Applicant testified that he was coerced into taking the plea and that the court did not hear his side of the story. Applicant testified that he was coerced because he believed Plea Counsel had his best interests at heart, but Plea Counsel did not take anything seriously until the last couple of days before trial. Applicant testified that he was confused about his case because Plea Counsel kept saying they had no evidence, but Applicant knew they had his gun and statements to the police, so he kept asking about that evidence. Applicant testified that he pleaded guilty despite the lack of evidence because he was uncertain.

Plea Counsel testified that he thought he may have told Applicant that the State would recommend that all the charges be concurrent. Plea Counsel testified that he told Applicant he would likely get concurrent sentences with his record. Plea Counsel testified that Applicant was not confused about his plea, that Applicant had two bad choices which were not created by Plea Counsel, and that Applicant chose to plead guilty when the gun evidence came back and the co-defendant went to trial and got a life sentence. Plea Counsel testified that he did not rush Applicant, that Applicant had plenty of time. Plea Counsel testified that he asked the solicitor about a

negotiated plea, but the solicitor was not giving any offers.

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 that Applicant was fully aware of the minimum and maximum sentencing ranges for the charges to which he pleaded guilty. 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). Plea Counsel **credibly** testified that he discussed the gun analysis with Applicant upon receiving it, at which point Applicant decided to plead guilty. The evidence against Applicant included statements, from victims and himself, that he was present at the shootout, and the gun analysis from the gun taken from Applicant showing that his gun killed two people and injured another. Applicant received the benefit of the bargain by pleading guilty.

Moreover, the plea colloquy cured any alleged deficiency regarding Plea Counsel's advice. Although Plea Counsel testified that he may have told Applicant the State was recommending the

charges be concurrent, the plea court clarified by directly asking Applicant whether he understood that only the ABHAN would be concurrent and that he could sentence anything within the legally permitted range for the voluntary manslaughter charges, which Applicant understood.² The plea transcript reflects that Applicant entered his plea knowingly and voluntarily, engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the plea court's questions. This Court finds the combination of the record and Plea Counsel's credible testimony at the evidentiary hearing provides Applicant knew the nature of the charges against him, the terms of the plea, and the consequences of pleading guilty pursuant to the requirements of Boykin v. Alabama, 395 U.S. 238 (1969), and Roddy v. State, 339 S.C. 29 (2000). 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**.

[CONCLUSION & SIGNATURE PAGE FOLLOWS]

² Plea Tr. p. 9.

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 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. 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 27 day of July, 2026.


CARMEN T. MULLEN
Presiding Judge
Fourth Judicial Circuit

2026 AUG -3 P 3:03
FILED
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

Beaufort, South Carolina