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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Grace Gilchrist Knie, Circuit Court Judge

2025-CP-23-5799

Tieberius T. Rozier, Appellant,

v.

The State, Respondent.

NOTICE OF APPEAL

Tieberius T. Rozier appeals the Honorable Grace Gilchrist Knie's Order Granting Belated Appeal and Dismissing All Other Allegations filed August 5, 2026 granting belated review pursuant to *White v. State* and dismissing all other allegations.

This 14th day of August, 2026.

s/ Susannah Ross
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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Tieberius T. Rozier, SCDC #397374,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) THIRTEENTH JUDICIAL CIRCUIT
)

) CASE NO. 2025-CP-23-5799
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**ORDER GRANTING BELATED
APPEAL AND DISMISSING ALL
OTHER ALLEGATIONS**

FILED: 26/05/2025
CLERK OF COURT
COUNTY OF GREENVILLE, SC

This matter comes before the Court pursuant to an application for post-conviction relief (“PCR”) filed by Tieberius T. Rozier (“Applicant”) on September 11, 2025. Respondent filed its Return, requesting that an evidentiary hearing be held on the allegations. On June 22, 2026, an evidentiary hearing was held at the Greenville County Courthouse before the Honorable Grace Gilchrist Knie. Applicant was present and represented by Susannah C. Ross, Esquire. Assistant Attorney General Sydney N. Willingham represented Respondent. Applicant proceeded on the allegations in his application. This Court received testimony from Applicant and his plea counsel, Paul K. Neely, Esquire.

Following a thorough review of the record, along with the testimony and evidence presented at the hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief beyond a finding under White v. State that he is entitled to belated appellate review. Accordingly, this Court **DENIES** and **DISMISSES** this action with prejudice.

PROCEDURAL HISTORY

Applicant is currently confined in the South Carolina Department of Corrections, McCormick Correctional Institution, pursuant to orders of commitment from the Greenville

County Clerk of Court. During the April 2025 term, the Greenville County Grand Jury indicted Applicant for Attempted Murder (Count I) and Possession of a Weapon During the Commission of a Violent Crime (Count II) (2025-GS-23-2731) and Armed Robbery (2025-GS-23-2726).

On May 7, 2025, Applicant pled guilty before the Honorable Vernon Dunbar. (Plea Tr. p. 1, 5).¹ Applicant was represented by Paul Neely, Esq. and Marc Smith, Esq. prosecuted the case for the State. (Plea Tr. p. 2). The solicitor presented the following recitation of facts:

[O]n the evening of July 26, 2023, this Defendant, a co-defendant, a 14 year-old victim and others were hanging out. The 14 year-old victim took some videos with his cellphone, which made this Defendant angry. Eventually, everyone went on a ride to transport one of the witnesses to a friend's house of his. And after dropping the friend off and while returning, this Defendant asked the driver to pull over the vehicle near the area of Roper Mountain Road Extension. The Defendant ordered the 14 year-old victim out of the car at gun point, which he had obtained from the center console or glove box without the driver's knowledge or permission. The co-defendant also exited the vehicle. Her name was Ginger Kehn.

Again, this Defendant and the co-defendant, while they were riding around, actually pistol whipped this young man on the way, when they were told to pull the car over. They went off into the wood line and shortly thereafter, a gunshot was heard by the driver of the car. The Defendant and co-defendant returned to the vehicle without the 14 year-old victim. The driver stated that The Defendant made statements with him having shot the 14 year-old victim.

Prior to the shooting, The Defendant had taken the victim's cellphone, magnetic key card, black hoodie and shoes. After the victim was shot, he laid on the ground until he was alone and waited for an hour or so until he was sure that he was alone. Judge, it was late in the evening. He was afraid to go to neighbor residences, he was a young African American male. Afraid to ring somebody's doorbell for fear that he might get shot by somebody else.

About 7:14 a.m., he had made his way over to a Walgreen's in that area. And approached a lady, who was an employee there, I believe. And she was coming into the Walgreen's, he approached her and said he needed help, he had been shot. Law enforcement, ambulance was called and they took him to the hospital. Law enforcement responded and they did a very thorough and quick investigation. It just so happened that the co-defendant, who was driving the vehicle and whose gun it was, had gone to his apartment, started cleaning the gun and it was loaded and it

¹ The State dismissed the Possession of a Weapon During the Commission of a Violent Crime charge (2021-GS-23-2731).

actual went off and he shot himself in the hand. So he ended at the hospital, about the same time that this victim ended up at the hospital. And that co-defendant immediately was telling him, hey, here's what happened. And so they really had a good jump on cracking this case open.

The investigation revealed that there was a shell casing at the incident location. Further, this victim's clothing had been taken, was found where witnesses stated it had been thrown away by this Defendant in the wood line near the apartments – the hotel where the victim was staying. The victim's cellphone and magnetic key card was found in a storm drain, where witnesses told police that this Defendant had thrown them away near the same area where they were staying. The gun used by The Defendant was recovered because they went by the co-defendant's home, found the gun and the rounds from the weapon are the same type as the shell casings that were found at the scene.

(Plea Tr. pp. 5-7).

Judge Dunbar sentenced Applicant to twenty-one (21) years imprisonment for Attempted Murder and twenty-one (21) years imprisonment for Armed Robbery, each sentence to run concurrently, with credit for time served. (Plea Tr. p. 18). Applicant did not appeal his convictions or sentences.

CURRENT ALLEGATIONS AND RELIEF SOUGHT

Applicant raises the following allegations in his application filed on September 11, 2025, interpreted by Respondent as follows:

1. "They falsely accused of attempted murder."
 - a. "There no evidence that can be used against me."
2. "Victim could not identify the shooter."
 - a. "Victim could not identify who shot him."
3. "They never found a weapon in my position."
 - a. "No GSR and when arrested no gun found on me."

(App. at 3).

In addition, in response to question 9, Applicant wrote "My lawyer would not contact me so I can appeal;" "Could not get on the phone to contact a lawyer;" and "My lawyer never gave me the option to appeal." (Appt at 2-3).

Applicant is seeking relief in the form of “conviction exoneration and or sentencing reduction/exhaustion.” (App. at 6).

At the evidentiary hearing, Applicant amended his application to include the following allegations:

1. Failure to assure the plea was knowingly and voluntarily made.
2. Plea Counsel advised Applicant the charge was paroleable at 65%.
3. Applicant called to ask Plea Counsel for appeal and could not get through.
4. Plea Counsel never advised Applicant that the victim did not want to testify.
5. Culpable co-defendant got thirteen years.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act² (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

²S.C. Code Ann. §§ 17-27-10 to -160.

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

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence. A mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. Strickland v. Washington, 466 U.S. 668 at 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687-88; Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[without proof of both deficient performance and prejudice to the defense... it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea. Hill v. Lockhart, 474 U.S. 52 (1985), extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel. See Padilla v. Kentucky, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). The analysis of counsel's performance under the first prong of Strickland remains unchanged, the applicant must show that 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 FACTS 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 beyond a finding under White v. State that he is entitled to belated appellate review. 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 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).

BELATED APPEAL

Based upon its review of the records, this Court finds Applicant is entitled to a belated appeal. Where an accused establishes in a PCR hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the PCR decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal had been perfected. White v. State, 263 S.C. 110, 119, 208 S.E.2d 35, 39-40 (1974). In the context of guilty pleas, “counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing” Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029 (2000); Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995). “In making this determination, courts must take into account all the information counsel knew or should have known.” Id. “Although not determinative, a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings.” Id.

Here, Applicant alleges that he called Plea Counsel to ask for an appeal but could not contact Plea Counsel within the time frame to file an appeal. This Court finds the Applicant was unconstitutionally deprived of his right to a direct appeal and thus is entitled to a belated appeal pursuant to White v. State, *supra*.

ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF PLEA COUNSEL

I. Failure to assure the plea was knowingly and voluntarily made.

Applicant alleges Counsel's representation was constitutionally ineffective, specifically, Applicant alleges Counsel failed to assure the plea was knowingly and voluntarily made. This Court finds this allegation is without merit.

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty but would have insisted on going to trial instead. See Roscoe v. State, 345 S.C.16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362, 426 S.E.2d 795, 797 (1993). 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.").

To find a guilty plea has been voluntarily and knowingly entered, 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). Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he is waiving, the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. Boykin v. Alabama, 395 U.S. 238, 244 (1969). Additionally, the defendant "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty,

and the nature of the constitutional rights being waived.” Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). The defendant’s knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and “may be accomplished by colloquy between court and defendant, between court and defendant’s counsel, or both.” State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993).

FINDINGS

As an initial matter, this Court finds the record supports the colloquy at the plea hearing shows that Applicant’s plea was knowingly and voluntarily entered. See Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994) (“finding a guilty plea voluntary where [Applicant] admitted committing the crimes, acknowledged the potential sentences, and stated that his plea had not been induced by promises”). Applicant confirmed that he was pleading guilty freely and voluntarily. (Plea Tr. p. 4). Applicant was advised of his constitutional right to a jury trial. (Plea Tr. p. 4). Applicant confirmed that he understood that he was waiving these rights by entering a guilty plea. (Plea Tr. p. 4). The colloquy establishes that Applicant did not have any misconceptions regarding sentencing. (Plea Tr. p. 4). Applicant confirmed he was satisfied with the services of his attorney. (Plea Tr. p. 4). Applicant should be held to the assertions he made to the court. See generally Wolfe, 485 S.E.2d at 367 (“[Applicant’s] claim he understood from counsel that the trial judge’s questions at the guilty plea were only a ‘polite fiction’ was ‘not an invitation to answer untruthfully’”).

This Court finds from the record that Applicant understood the charges, the weight of the evidence, and the proceedings against him. Further, this Court finds Plea Counsel’s testimony *credible* and Applicant’s testimony on this topic *not credible*. Plea Counsel testified that he discussed the option of proceeding to trial or pleading with Applicant, and the possible sentencing

outcome had he decided to proceed with the trial. Plea Counsel testified that at no point during his conversations with Applicant prior to his plea did Applicant want to proceed with trial. Moreover, to whatever extent Applicant was not entirely satisfied with the plea, he was presented an opportunity to express his dissatisfaction with the plea court, knowingly opted not to do so, and instead chose to proceed with his guilty plea so that he would not have to proceed to trial.

Based on the foregoing, this Court finds Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Plea Counsel failed to render reasonable, 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 Plea Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, this allegation is denied and dismissed.

II. Counsel was ineffective for advising Applicant the charge was paroleable at 65%.

Applicant alleges Plea Counsel was constitutionally ineffective for advising him that the charge was paroleable at 65%. This Court finds this allegation is without merit.

Parole eligibility is considered a collateral consequence, and counsel is not required to specifically advise Applicant on parole eligibility. Smith v. State, 329 S.C. 280, 283, 494 S.E.2d 626, 628 (1997) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). However, if counsel rendered erroneous advice as to parole eligibility and Applicant relied on that advice as a basis for entering the plea, then the voluntariness of the plea may be attacked. See Smith, 329 S.C. at 283, 286, 494 S.E.2d at 628-629.

PCR EVIDENTIARY HEARING

At the PCR hearing, Applicant testified that he would not have pled and insisted on going

to trial if he knew he was not eligible for parole. Plea Counsel testified he would not have told Applicant that he was parole eligible at 65%. Further, Plea Counsel testified that he discussed the option of pleading or proceeding to trial and at no point did Applicant express an interest in going to trial.

FINDINGS

The Court finds Applicant has failed to prove Counsel was deficient for advising him that the sentence was parole eligible at 65%. Here, Applicant asserts that he was advised that he was eligible for parole at 65%. However, both the plea transcript and Plea Counsel's *credible* testimony at the evidentiary hearing establish that Counsel discussed the charge was considered violent and serious with Applicant. Plea Counsel testified he would not have told Applicant that he was parole eligible at 65%. Further, the plea hearing colloquy establishes Applicant understood the nature of his charges and that they were violent and serious. The Court finds Applicant has failed to rebut the strong presumption that Counsel rendered constitutionally adequate assistance. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Testimony from Plea Counsel indicates that Applicant was adamant about pleading guilty and there was no indication he wanted a trial at any point. See Hill supra. Applicant has therefore failed to show prejudice. To show prejudice, Applicant must show but for counsel's errors he would have insisted on going to trial instead of pleading guilty. Hill v. Lockhart, 474 U.S. 52, 59, 106 S. Ct. 366, 370, 88 L. Ed. 2d 203 (1985). Moreover, to whatever extent Applicant was not entirely satisfied with the plea he was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to proceed with his guilty plea so that he would not have to proceed to trial. Applicant has failed to prove deficiency or prejudice and thus this claim is denied and dismissed.

III. Counsel never advised Applicant that the victim did not want to testify.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to advise him that the victim did not want to testify. This Court finds this allegation is without merit. An applicant must present evidence to show how [the] discoverable matters or defenses would have resulted in a different outcome. Harris v. State, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018); 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)).

FINDINGS

Applicant failed to present “any evidence of how additional preparation or communication would have resulted in a different outcome.” Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012); Applicant failed to present any evidence at the evidentiary hearing to substantiate his claims. Plea Counsel *credibly* testified Applicant did not intend to go to trial. Further, Plea Counsel *credibly* testified he discussed with Applicant the victim was cooperative with the State and would have likely testified at trial. This Court finds Applicant’s testimony on the matter *not credible*. Applicant was aware that there was a possibility the victim may have testified at trial. Applicant has not suggested any defenses, or any evidence of how the victim allegedly not wanting to testify as a part of the State’s case would have resulted in him deciding to go to trial instead of entering a plea, resulting in mere speculation. Moreover, the State has the capability to subpoena a victim as a witness in a criminal case. See Rule 13, SCRCrimP. Further, to whatever extent Applicant was not entirely satisfied with the amount of time to prepare and

investigate the charges, he was presented an opportunity to express his dissatisfaction to the plea court and chose to proceed with his guilty plea. Applicant has failed to prove deficiency or prejudice, and thus this claim is denied and dismissed.

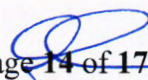
IV. Culpable co-defendant got 13-year sentence.

Applicant alleges Counsel's representation was constitutionally ineffective because his co-defendant got a 13-year sentence. This Court finds this allegation is without merit.

An applicant who enters a guilty 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). Applicant has presented no valid reason why he should be able to depart from the statements made during her guilty plea. See Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975), overruled on other grounds by United States v. Whiteley, 759 F.2d 317 (4th Cir. 1985) (finding that the accuracy and truth of an accused's statements at a guilty plea proceeding are "conclusively" established unless he makes some reasonable allegation why this should not be so). "When considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." Moorehead v. State, 329 S.C. 329,333,496 S.E.2d 415,416 (1998) (citing Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997)).

PCR EVIDENTIARY HEARING

At the PCR hearing, Applicant testified he was surprised his co-defendant got 13-years.


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Plea Counsel testified on direct examination to the evidence of the case: Applicant was filmed “slap boxing” the 14-year-old victim, Applicant got mad and brought the victim to the woods and shot him, thereafter, Applicant took the victim’s shoes and phone. Plea Counsel testified originally it was a straight-up plea offer in this case. Plea Counsel testified on the morning of the plea, the State offered 22 years, and Applicant ultimately received a 21-year sentence. Plea Counsel testified Applicant pled before his co-defendant, therefore, there was no way to know of co-defendant’s sentence at the time of Applicant’s guilty plea.

FINDINGS

This Court finds the colloquy at the plea hearing shows that Applicant’s plea was knowingly and voluntarily entered. See Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994) (“finding a guilty plea voluntary where [Applicant] admitted committing the crimes, acknowledged the potential sentences, and stated that his plea had not been induced by promises”). Plea Counsel *credibly* testified he was not aware of the co-defendant’s sentence at the time Applicant entered his plea because Applicant pled before his co-defendant.

This Court finds the plea colloquy establishes that Applicant did not have any misconceptions regarding sentencing. (Plea Tr. p. 4). Applicant confirmed he was satisfied with the services of his attorney. (Plea Tr. p. 4). Applicant should be held to the assertions he made to the court. See generally Wolfe, 485 S.E.2d at 367 (“[Applicant’s] claim he understood from counsel that the trial judge’s questions at the guilty plea were only a ‘polite fiction’ was ‘not an invitation to answer untruthfully’”). Moreover, to whatever extent Applicant was not entirely satisfied with Plea Counsel’s representation or investigations, he was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to avail himself of the benefit of his guilty plea. Accordingly, this Court finds Applicant has failed to

establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, this allegation must be denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief with a finding under White v. State that he is entitled to belated appellate review. 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 in regard to all allegations except the appeal issue addressed below;
2. Applicant is granted a belated appeal pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). Within thirty days of service of this Order, counsel for Applicant must file a Notice of Appeal to secure the appropriate review of Applicant's convictions. Counsel and the Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986) and South Carolina Appellate Court Rule 227(g) for the appropriate procedure for securing belated appellate review.; and
3. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.



THE HONORABLE GRACE GILCHRIST KNIE
Presiding Judge
Thirteenth Judicial Circuit

7/31/24

, South Carolina