

RECEIVED

Aug 20 2026

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
The Honorable Jennifer McCoy, PCR Action Judge
2024-CP-32-04303

TERRELL LYNES, #345710,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Terrell Lynes appeals the denial of his post-conviction relief application. The post-conviction relief action was heard and denied by the Honorable Jennifer McCoy, circuit court judge, on December 1, 2025, and was denied by written order issued filed on August 17, 2026. Applicant received notice of the judgement on August 17, 2026.

/s Chelsey F. Marto
Chelsey F. Marto, Esquire
Attorney for the Applicant
The Law Office of Chelsey F. Marto, LLC
P.O. Box 8795
Columbia, SC, 29201
(864)-404-5583

Other Counsel of Record:
Jordan Killough, Esquire
Office of the Attorney General, State of SC
P.O. Box 11549
Columbia, SC, 29211-1549

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

FILED

2025 AUG 17

) IN THE COURT OF COMMON PLEAS
) FOR THE ELEVENTH JUDICIAL CIRCUIT
) PM 1:30

Terrell D. Lytes, #345710,

) CASE NO. 2024-CP-32-04303

Applicant,

LISA COMER
CLERK OF COURT
LEXINGTON, SC.

v.

**ORDER OF DISMISSAL
WITH PREJUDICE**

State of South Carolina,

Respondent.

Presiding Judge:	Hon. Jennifer Blanchard McCoy
Applicant's Attorney:	Chelsey F. Marto, Esq.
Respondent's Attorney:	Jordan Brett Killough, Esq.
Plea Counsel:	David M. Mauldin, Esq.
Date of Hearing:	December 1, 2025
Court Reporter:	Cathy J. Provost

This matter comes before the Court by way of Terrell D. Lytes's (Applicant) application for post-conviction relief (PCR) filed on October 21, 2024. Respondent, the State of South Carolina, filed its Return and Motion to Dismiss on July 22, 2025. On December 1, 2025, Applicant, through counsel, filed his amended PCR application.

On December 1, 2025, an evidentiary hearing was held at the Lexington County Courthouse before the Honorable Jennifer Blanchard McCoy. Assistant Attorney General Jordan Brett Killough represented Respondent. Applicant was present and represented by Chelsey F. Marto, Esquire. At the hearing, Applicant proceeded on the claims in his amended application for PCR. In support of these claims, Applicant testified on his own behalf and presented testimony from David M. Mauldin, Esquire.

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

Jm/1

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). On May 23, 2024, the Applicant waived presentment of his indictment to the grand jury for Criminal Sexual Conduct – Second degree (2024-GS-32-01797). On May 23, 2024, Applicant pleaded guilty before the Honorable Thomas L. Hughston, Jr. David M. Mauldin, Esquire (Plea Counsel), represented Applicant. Assistant Solicitor, Ashley Elizabeth Wellman, Esquire (A.S. Wellman), represented the State. Pursuant to negotiations, Judge Hughston sentenced Applicant to ten (10) years' imprisonment.

Applicant did not appeal his convictions or sentences.

FACTS GIVING RISE TO THE CONVICTION

The facts giving rise to the convictions were articulated by the State at Applicant's guilty plea hearing as follows:

Your Honor, this incident occurred on -- about 5 AM on the morning of October 2nd of 2023. The victim in this case is [REDACTED]. She resided at [REDACTED] here in Lexington County. She was 27 years old.

So at about 5 AM, she is in bed asleep with her husband. The defendant removed an AC vent to -- and entered the victim's master bedroom through her window. He crawled in bed with the victim and her husband and he pulled her shorts and her underwear down while she was sleeping. The victim sort of started to wake up, but she thought this was her husband, so she's like pushing her husband away, and then ultimately the defendant licked the inside of her butt cheeks around her anus and then he attempted to -- or he put his penis inside of the victim's buttocks attempting to insert his penis into the victim's or -- into the victim's anus.

During this process the victim and her husband awoke. A struggle ensued between the defendant and [REDACTED]. The victim's husband screamed at the defendant to get out, but [REDACTED] actually followed the victim {sic} and law enforcement was able to locate him.

The defendant actually left a satchel in the master bedroom of [REDACTED]'s home that did have his ID inside of it and so that's how he was able to be positively identified.

The victim was sent to the hospital for a SANE exam. Suspected saliva samples were taken, but we don't have the results back yet.

So that would be a summary, Your Honor.

(Plea Tr. pp. 7--9).

CURRENT ACTION BEFORE THIS COURT

In his application for post-conviction relief, Applicant alleged he was being held in custody unlawfully for the following reasons (excerpts verbatim):

1. "I was in the middle of crossing the road"
 - a. "I was crossing the highway #6 in Lexington and got blue lighted"
2. "No DNA was found in or on the victim"
 - a. "No semen was found in or on the victim's body or mouth"
3. "No witness in court, no victims present"
 - a. "The victims quit being active in the case, a no-show in court"

On December 1, 2025, Applicant, through PCR Counsel, amended his application for post-conviction relief to include the following allegations (excerpts verbatim):

1. Ineffective assistance of counsel for:
 - a. "Failure to get a non-violent plea offer."
 - b. "Failure to use the fact that the victim was non-responsive during criminal proceedings in negotiating a lesser plea."
 - c. "Failure to assert a defense."
 - i. "Failure to challenge the reason for the stop."
 - ii. "Failure to argue that there was no DNA evidence."
 - iii. "Failure to argue that the victim wasn't injured."
 - d. "failure to explain that Applicant was pleading to a violent offense."
 - e. "Failure to get a continuance."
 - f. "Failure to properly mitigate the sentence."
 - i. "Failure to argue that Applicant was under the influence during mitigation."
 - g. "Failure to move to reconsider the sentence."
 - h. "Failure to file an appeal."
 - i. "Failure to argue for probation instead of conceding Applicant should get active time."
2. "Applicant was coerced into pleading."
3. "Applicant thought that, by pleading, he would receive a sentence under ten years."

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

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act¹ (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).

¹ S.C. Code Ann. §§ 17-27-10 to -160.

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, 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 decisionmaking" 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 and a claim of involuntary guilty plea 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), SCRPC (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).

This Court makes the following findings from the record: 1. Applicant understood the charge and the possible sentence of twenty (20) years' imprisonment (Plea Tr. pp. 3–4); 2. Applicant indicated that he discussed his case thoroughly with Plea Counsel and did not need any more time to talk with him (Plea Tr. p. 4); 3. Applicant understood his right to a jury trial and indicated that he did not want a jury trial (Plea Tr. pp. 4–5); 4. Applicant indicated that he wished

Jm/7

to plead guilty (Plea Tr. pp. 6–7); 5. Applicant indicated that no one promised him anything or threatened him in any way to get him to plead guilty and that he was pleading guilty of his own free will (Plea Tr. p. 7); 6. The plea court accepted Applicant's plea (Plea Tr. p. 7).

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS

Allegation 1a: Plea Counsel Failed to Get a Non-Violent Plea Offer.
**Allegation 1b: Plea Counsel Failed to Use the Fact That Victim Was
Non-Responsive During Criminal Proceedings In
Negotiating a Lesser Plea.**

Applicant alleges Plea Counsel's representation was constitutionally ineffective for failing to get a non-violent plea offer and for failing to use the fact that Victim was non-responsive during criminal proceedings in negotiating a lesser plea. This Court finds these allegations are without merit.

A defendant has the right to effective assistance of counsel during the plea-bargaining process. Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018)). "The United States Supreme Court has held that 'defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused.'" Collins v. State, 422 S.C. 250, 261, 810 S.E.2d 871, 876 (2018) (quoting Missouri v. Frye, 566 U.S. 134, 145 (2012)). Generally, defense counsel provides deficient performance when he or she does not communicate such an offer to the defendant. Frye, 566 U.S. at 145. To show prejudice, an applicant for post-conviction relief "must demonstrate a reasonable probability that: (1) he [or she] 'would have accepted the earlier plea offer had [he or she] been afforded effective assistance of counsel;' (2) 'the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it;' and (3) 'the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time.'" Collins, 422 S.C. at 262, 810

S.E.2d at 877 (quoting Frye, 566 U.S. at 147; citing Lafler v. Cooper, 566 U.S. 156, 164 (2012)). An applicant must show actual prejudice, but depending on the facts of the case, an applicant's self-serving statement *may* be sufficient to establish actual prejudice. Davie, 381 S.C. at 613, 675 S.E.2d at 422.

PCR Evidentiary Hearing

On direct examination, Applicant testified that Plea Counsel "[c]ould have raised more points that he had in the motion," specifically that none of the witnesses were present at the guilty plea hearing, responded to phone calls, or "were added to the case." (PCR Tr. pp. 6–7). Applicant testified that Plea Counsel did not try to get a reduced sentence or a non-violent sentence where no weapons were involved. (PCR Tr. p. 7). Applicant testified that he wanted Plea Counsel to get him a better plea offer, at least a non-violent one, and that eighty-five percent to sixty-five percent was a "big difference." (PCR Tr. p. 7). Applicant testified that Plea Counsel could have argued "a bunch more" than he did. (PCR Tr. p. 7). Applicant testified that Plea Counsel could have brought up that Victim was not active in Applicant's case. (PCR Tr. p. 8). Applicant testified that he would be fine with the sentence cap of ten years if the classification was nonviolent or if the plea court gave him a reduced sentence. (PCR Tr. p. 9).

On *sua sponte* examination by this Court, Applicant testified that he did not know that the classification would be violent and that he "wish[ed] [he] would have asked [Plea Counsel] could he do a nonviolent sentence versus a violent." (PCR Tr. p. 12). When questioned whether he understood that the statute determines whether the classification is violent or nonviolent, Applicant testified "not really." (PCR Tr. p. 12). When informed by this Court that classification is based on the charge and is not in the judge's discretion, Applicant indicated that he understood. (PCR Tr. p. 12).

Jm/9

On direct examination, Plea Counsel testified that there was nothing he could have done to obtain a better deal from A.S. Wellman, who was a "pretty strict solicitor." (PCR Tr. p. 14). Plea Counsel testified that A.S. Wellman mentioned on the day of the guilty plea hearing that if Applicant did not take the plea deal, then it would be withdrawn. (PCR Tr. p. 14).

When questioned whether he was able to use Victim not being present at the plea in negotiating a lesser plea, Plea Counsel testified to the following:

If you talk about that with the solicitor their attitude is I don't care, I'll get ahold of them by the time trial goes around. So it varies case by case, but in a case like this, yeah, you'd have to really push it to the edge and see if they could find him or not. They did have contact with him initially. I just think they didn't show up for court.

(PCR Tr. p. 15).

Plea Counsel testified that he informed Applicant that he was pleading to a violent offense and that the classification was based on the charge. (PCR Tr. p. 17). Plea Counsel testified that he explained to Applicant that the plea court would not reduce the charge from eighty-five percent. (PCR Tr. p. 17).

On cross-examination, Plea Counsel testified that Applicant was charged with First-Degree Burglary and Criminal Sexual Degree – First Degree. (PCR Tr. p. 20). Plea Counsel testified that the State, wanting to move the case, extended a plea deal that would be less than what Applicant would face if convicted of First-Degree Burglary. (PCR Tr. p. 20).

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, 372 S.C. at 331, 642 S.E.2d at 596 (citing Strickland, 466 U.S. 668). As an initial matter, this Court finds Plea Counsel's testimony credible in this matter. Concerning Applicant's contention that Plea Counsel failed to obtain a non-violent sentence, a

crime's classification is statutorily determined². Plea Counsel credibly testified that he explained to Applicant the classification of the crime and that the plea court was not going to reduce the eighty-five percent sentence he would have to serve. During this Court's *sua sponte* examination, Applicant conceded when confronted with the fact that the classification of a crime is determined by statute and is not in the discretion of the judge. Accordingly, Applicant has failed in his burden of proving any deficient performance by Plea Counsel on this allegation.

Concerning Applicant's allegation that Plea Counsel failed to use the fact that Victim was not present during the plea, although Applicant testified that Plea Counsel could have argued the victims' unresponsiveness in negotiating a more favorable plea deal, Plea Counsel credibly testified that he believed that the victims merely did not show up for court and that the State could have secured their presence for trial. Therefore, Plea Counsel was not deficient for failing to use the fact that the victims were "non-responsive" in negotiating a lesser plea.

Additionally, the decision to offer a plea deal and the terms of that plea deal are in the full discretion of the solicitor. See State v. Thrift, 312 S.C. 282, 291–92, 440 S.E.2d 341, 346–47 (1994) ("Under the separation of powers doctrine, which is the basis for our form of government, the Executive Branch is vested with the power to decide when and how to prosecute a case. Both the South Carolina Constitution and South Carolina case law place the unfettered discretion to prosecute solely in the prosecutor's hands. . . . Prosecutors may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they can simply decide not to prosecute the offense in its entirety."). As Plea Counsel credibly testified, A.S. Wellman was a strict solicitor who threatened to withdraw the plea deal if Applicant had not accepted it on the day of the guilty plea

² Criminal Sexual Conduct – Second Degree, the crime to which Applicant pleaded, is statutorily classified as a violent crime. See S.C. Code Ann. § 16-1-60.

hearing. Therefore, this Court finds that Plea Counsel was not deficient on these issues and that no prejudice resulted from any alleged deficiencies.

This Court finds through the combination of the record, and Plea Counsel's credible testimony that Applicant has failed to meet the burden of showing Plea Counsel's representation 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 1c: Plea Counsel Failed to Assert a Defense.**
- Allegation 1ci: Plea Counsel Failed to Challenge the Reason for the Stop.**
- Allegation 1cii: Plea Counsel Failed to Argue That There Was No DNA Evidence.**
- Allegation 1ciii: Plea Counsel Failed to Argue That Victim Was Not Injured.**

Applicant alleges Plea Counsel's representation was constitutionally ineffective for failing to assert a defense. Specifically, Applicant avers that Plea Counsel failed to challenge the reason for the stop, failed to argue that there was no DNA evidence, and failed to argue that Victim was not injured. This Court finds that these allegations are without merit.

Trial

The following colloquy between the plea court and Applicant occurred at the guilty plea hearing:

- THE COURT:** All right. Well, I just want to make sure we're clear. The indictment charges that he did intrude -- intrude his penis however slightly into the anus of the victim. So there was a penetration is what's alleged and that's what you're pleading guilty to, Mr. Lytes. Do you understand that?
- APPLICANT:** Yes, sir.

(Plea Tr. p. 9).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Plea Counsel "[c]ould have raised more points that he had in the motion," specifically, that no DNA was found on Victim. (PCR Tr. pp. 6–7). Applicant also testified that he wanted Plea Counsel to use the fact that he was walking down and crossing the street to determine if law enforcement had probable cause to stop and search him. (PCR Tr. p. 7). Applicant testified that he wanted Plea Counsel to at least mention or talk about Victim not being injured. (PCR Tr. pp. 7–8).

On direct examination, Plea Counsel testified that he and Applicant discussed the issue of whether probable cause for the stop existed and that Applicant would have to proceed to trial to explore that issue. (PCR Tr. p. 15). Concerning this issue, Plea Counsel testified that Applicant did match the description of the suspect, who was a tall, shirtless black male; Plea Counsel also testified that Applicant was down the road from the crime scene and that it was unusual for people to go shirtless in October. (PCR Tr. p. 15). Plea Counsel also testified that Applicant's ID was left at the crime scene after his fanny pack was ripped off by Victim's partner during a struggle, which would have been an independent ground for law enforcement to discover Applicant's identity. (PCR Tr. pp. 15–16). Plea Counsel testified that they had not yet received the results of the DNA test or confirmation whether the DNA belonged to Applicant. (PCR Tr. p. 16). Plea Counsel testified that an injury was not an element of either charge Applicant was facing. (PCR Tr. p. 16).

On cross-examination, when asked whether he could conceive of any defenses in Applicant's case, Plea Counsel testified that "you can always try something," but that Applicant had left his ID at the crime scene. (PCR Tr. p. 21). Plea Counsel testified that Applicant had discussed being under the influence during the crime by unlawful intoxication after potentially

being drugged, but that Plea Counsel had no evidence of such intoxication. (PCR Tr. p. 21). Plea Counsel testified that he told Applicant that if he pleaded guilty, he would have to admit that he committed the crime and was in his right mind when he did so. (PCR Tr. p. 21).

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, 372 S.C. at 331, 642 S.E.2d at 596 (citing Strickland, 466 U.S. 668). As an initial matter, this Court finds Plea Counsel's testimony **credible** on this issue. Most notably, Applicant voluntarily, knowingly, and intelligently pleaded guilty, thereby waiving his right to present defenses at trial. See Rivers v. Strickland, 264 S.C. 121, 124, 213 S.E.2d 97, 98 (1975) ("The general rule is that a plea of guilty, voluntarily and understandingly made, constitutes a waiver of nonjurisdictional defects and defenses, including claims of violation of constitutional rights prior to the plea."). Because Applicant waived his right present defenses at trial, Plea Counsel was not deficient for failing to assert any defenses. Although Plea Counsel had no duty to asset any defenses, this Court will still address each defense in turn, as Applicant's allegations and testimony at the evidentiary hearing are unclear whether Applicant wanted Plea Counsel to argue these defenses as part of mitigation³.

As for failing to challenge the reason for the stop, Plea Counsel **credibly** testified that law enforcement had probable cause to stop Applicant because he fit the description of the suspect and was near the scene of the crime when he was stopped. Furthermore, Plea Counsel **credibly** testified that Applicant left his ID at the scene, which would have provided an independent basis

³ This Court finds it unlikely that Applicant intended these allegations to include mitigation because Applicant raised other allegations specifically concerning mitigation.

to identify Applicant. Therefore, Plea Counsel cannot be deemed deficient for failing to make an argument where there are no meritorious grounds to challenge the stop.

As for failing to argue that there was no DNA evidence, contrary to Applicant's testimony that no DNA was found on Victim, Plea Counsel credibly testified to the existence of such evidence and that they had not received the results at the time of the plea. Therefore, there was nothing for Plea Counsel to argue, and he cannot be deemed deficient for failing to do so.

As for failing to argue that Victim was injured, whether Victim was injured is not an element of Criminal Sexual Conduct. Every degree of Criminal Sexual Conduct requires sexual battery, which is defined in relevant part as "*any intrusion, however slight*, of any part of a person's body or of any object into the genital or anal openings of another person's body[.]" S.C. Code Ann. § 16-3-651(h) (emphasis added). Because there was an intrusion in this case, which Applicant indicated to the plea court that he understood, Applicant's claim that Victim was not injured carries no weight. Therefore, Plea Counsel cannot be deemed deficient for failing to argue that Victim was not injured.

To the extent that Applicant alleges that Plea Counsel should have argued these defenses during mitigation, these arguments are meritless, and Applicant has presented no credible evidence showing that there was a reasonable probability that he would have received a lighter sentence had these arguments been made. Therefore, this Court finds that Plea Counsel was not deficient for failing to argue these defenses and that no prejudice resulted from any alleged deficiency.

This Court finds through the combination of the record, and Plea Counsel's credible testimony that Applicant has failed to meet the burden of showing Plea Counsel's representation 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 1e: Plea Counsel Failed to Obtain a Continuance.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to obtain a continuance. This Court finds this allegation is without merit.

PCR Evidentiary Hearing

On direct examination, Applicant testified that he wanted Plea Counsel to continue his case and that doing so would have given Plea Counsel more time to look at the motion. (PCR Tr. p. 8). Applicant testified that Plea Counsel had a lot going on and that Applicant did not know whether Plea Counsel fully understood his case or had time to focus on it. (PCR Tr. pp. 8–9).

On direct examination, Plea Counsel testified that he received Applicant's case sometime in mid-October and that Applicant pleaded guilty at the end of May. (PCR Tr. pp. 13, 14). Plea Counsel testified that he received the plea deal in early May, so Applicant had several weeks to consider it. (PCR Tr. p. 14). Plea Counsel testified that he reviewed the discovery with Applicant in January. (PCR Tr. p. 14). Plea Counsel testified that he received the offer, reviewed it with Applicant, reviewed discovery again, and discussed the pros and cons of the plea offer in early May. (PCR Tr. pp. 14–15). Plea Counsel testified that he and Applicant discussed his case, including whether to take the plea deal, on the day of the guilty plea hearing. (PCR Tr. p. 15). Plea Counsel testified that A.S. Wellman, who was a "pretty strict solicitor," stated on the day of the guilty plea hearing that if Applicant did not take the plea deal, it would be withdrawn. (PCR Tr. p. 14).

Plea Counsel testified that he discussed with Applicant the potential DNA results and their effect on the plea offer, and that Applicant chose to plead guilty. (PCR Tr. p. 16). Plea Counsel

testified that he did not recall whether Applicant ever communicated that he wanted to get his guilty plea continued, but that Plea Counsel did tell Applicant that the State talked about withdrawing the offer, in which case there would be no plea offer and Applicant would be getting at least fifteen years' imprisonment if he pleaded guilty to First-Degree Burglary or was convicted of that charge at trial. (PCR Tr. p. 17).

On cross-examination, when questioned whether he ever saw the need for a continuance, Plea Counsel testified that Applicant was the one who decided to plead guilty and could have refrained from pleading guilty. (PCR Tr. p. 21).

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, 372 S.C. at 331, 642 S.E.2d at 596 (citing Strickland, 466 U.S. 668). As an initial matter, this Court finds Plea Counsel's testimony **credible** on this issue. Applicant testified that had Plea Counsel obtained a continuance, then Plea Counsel could have had time to review the discovery. Applicant also testified that he was unsure whether Plea Counsel understood his case. Applicant, however, does not state exactly what else Plea Counsel could have reviewed in the discovery and how it would have changed the outcome of his case. Plea Counsel **credibly** testified that he had the discovery well in advance of the plea hearing and reviewed it multiple times with Applicant.

Also, Applicant failed to show that had Plea Counsel filed a motion for continuance, then it would have been granted and that doing so would have changed the outcome of his case. With all things considered, had Plea Counsel moved for and obtained a continuance, it would not have worked in Applicant's favor; and the outcome of Applicant's case would have been worse. Plea

Counsel credibly testified that they had not received the DNA results. Given the facts of the case, the likelihood is substantial that the DNA results would have inculpated Applicant. Furthermore, Plea Counsel credibly testified that A.S. Wellman was intending to withdraw the plea deal if Applicant did not plead guilty. The plea deal was for a limited duration, and Plea Counsel credibly testified that Applicant had several weeks to consider the deal. As Plea Counsel credibly testified, had Applicant wanted a continuance, he could have simply refrained from pleading guilty. Therefore, this Court finds that Plea Counsel was not deficient for not moving for and obtaining a continuance and that no prejudice resulted from any alleged deficiency.

This Court finds through the combination of the record, and Plea Counsel's credible testimony that Applicant has failed to meet the burden of showing Plea Counsel's representation 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 1f: Plea Counsel Failed to Properly Mitigate the Sentence.

Allegation 1fi. Plea Counsel Failed to Argue That Applicant Was Under the Influence During Mitigation.

Applicant alleges Plea Counsel's representation was constitutionally ineffective for failing to properly mitigate the sentence. Specifically, Applicant avers that Plea Counsel failed to argue that Applicant was under the influence. This Court finds these allegations are without merit.

Guilty Plea Hearing

During mitigation at the guilty plea hearing, Plea Counsel informed the plea court that Applicant "had an issue with the methamphetamine" and that he "attribute[d] a little bit of not being in his right mind that way as part of the cause of this." (Plea Tr. pp. 10–11).

PCR Evidentiary Hearing

On direct examination, Applicant testified that he wanted Plea Counsel to have done a better job of mitigating the sentence. (PCR Tr. p. 9). When questioned specifically on what he wanted Plea Counsel to tell the plea court that could have given him a lesser sentence, Applicant testified that "[t]here really ain't nothing he could have said except spoken on the facts and the motion a little bit more." (PCR Tr. p. 9).

On direct examination, when questioned what his mitigation strategy was, Plea Counsel testified that "it was a little difficult" because Applicant had "something of a record," which included a prior sexual crime of Indecent Exposure and a charge of Assault and Battery of a High and Aggravated Nature, for the latter of which Applicant was still on community supervision. (PCR Tr. p. 18). Plea Counsel testified that he did what he could during mitigation. (PCR Tr. p. 18). Plea Counsel testified that Applicant received a "very good" sentence considering the facts of his case: Applicant broke into a house and sexually assaulted Victim. (PCR Tr. p. 18).

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, 372 S.C. at 331, 642 S.E.2d at 596 (citing Strickland, 466 U.S. 668). As an initial matter, this Court finds Plea Counsel's testimony **credible** on this issue. Although Applicant testified that he wanted Plea Counsel to have done a better job of mitigating the sentence, Applicant merely testified that Plea Counsel should have spoken on the discovery and the facts, which this Court notes were unfavorable to him. Regardless, Applicant failed to present any credible evidence of what Plea Counsel specifically could have argued during mitigation, or that such mitigation would have resulted in a different sentence from the plea court.

Jm/19

Notably, Plea Counsel mentioned during mitigation that Applicant was under the influence while committing the crime. Notably, with a sentencing range of twenty years, the plea court imposed a term of ten years, suggesting that Plea Counsel's mitigation was successful to some extent. This Court finds that Plea Counsel was not deficient during the mitigating phase of sentencing and that no prejudice resulted from any alleged deficiency.

This Court finds through the combination of the record, and Plea Counsel's credible testimony that Applicant has failed to meet the burden of showing Plea Counsel's representation 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 1g: Plea Counsel Failed to Move to Reconsider the Sentence.

Applicant alleges Plea Counsel's representation was constitutionally ineffective for failing to move to reconsider Applicant's sentence. Specifically, Applicant avers that Plea Counsel failed to. This Court finds this allegation is without merit.

PCR Evidentiary Hearing

On direct examination, Applicant testified that he wanted Plea Counsel to file a motion to reconsider the sentence, which he did not think Plea Counsel did. (PCR Tr. p. 9). Applicant testified that he would have rather had a reconsideration instead of post-conviction relief because it would be "less of a hassle." (PCR Tr. p. 9).

On direct examination, Plea Counsel testified that he did not recall whether Applicant had requested that he file a motion to reconsider the sentence, but that he would have done so had Applicant asked. (PCR Tr. pp. 17–18).

On cross-examination, Plea Counsel testified that he typically files a motion to reconsider if his client requests it. (PCR Tr. p. 22). Plea Counsel testified that he tells his clients that a reconsideration of the sentence is usually based on new information, not going back to the judge to review the same information. (PCR Tr. p. 22). Plea Counsel testified that Applicant's sentence was "very good" considering the facts of his case and his prior record. (PCR Tr. p. 22).

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, 372 S.C. at 331, 642 S.E.2d at 596 (citing Strickland, 466 U.S. 668). As an initial matter, this Court finds Plea Counsel's testimony credible on this issue. Although he could not recall whether Applicant requested that he file a motion to reconsider, Plea Counsel credibly testified that he would have filed such a motion had Applicant asked him, which Plea Counsel typically does. Regardless, Plea Counsel had no reason to think that one needed to be filed, as he credibly testified that a reconsideration of the sentence is based on new information. Plea Counsel was not deficient for failing to file a motion to reconsider where there was no reason to file one.

Applicant failed to show how he was prejudiced from the alleged deficiency. Specifically, Applicant failed to show that, had a motion to reconsider been filed, the plea court would have granted it and imposed a lesser sentence. Sentencing is within the plea court's discretion. See State v. Warren, 392 S.C. 235, 237–38, 708 S.E.2d 234, 235 (2011) ("The authority to change a sentence rests solely and exclusively within the discretion of the sentencing judge.") (citing State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981)). Applicant failed to show that there was a reasonable probability that but for Plea Counsel's alleged deficiency, the plea court would have

granted Applicant's motion to reconsider. Furthermore, Applicant presented no credible evidence that, had the motion to reconsider been granted, the plea court would have then given him a lighter sentence. Notably, given a sentencing range of twenty years, the plea court sentenced Applicant to ten years. Applicant has presented no credible evidence showing that the plea court would have given him a lighter sentence if it were to reconsider its sentence. Therefore, this Court finds that Plea Counsel was not deficient for failing to file a motion to reconsider and that no prejudice resulted from any alleged deficiency.

This Court finds through the combination of the record, and Plea Counsel's credible testimony that Applicant has failed to meet the burden of showing Plea Counsel's representation 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 1h: Plea Counsel Failed to File an Appeal.

Applicant alleges Plea Counsel's representation was constitutionally ineffective for failing to file an appeal. Specifically, Applicant avers that Plea Counsel failed to file an appeal after Applicant requested one. 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).

PCR Evidentiary Hearing

On direct examination, Applicant testified that he asked Plea Counsel to file an appeal when he wrote to him the day after the guilty plea hearing, telling him that he was not pleased and asking him to see what he could do concerning an appeal. (PCR Tr. p. 9). Applicant testified that he never received an appeal. (PCR Tr. p. 9).

On direct examination, Plea Counsel testified that he did not recall whether Applicant had requested that he file a notice of appeal, but that he would have done so had Applicant asked. (PCR Tr. pp. 17–18).

On cross-examination, Plea Counsel testified that he did not recall Applicant ever asking him to file an appeal. (PCR Tr. pp. 22–23). Plea Counsel testified that Applicant never indicated that he was or would have been interested in appealing when he pleaded guilty, which was the last communication that Plea Counsel had with Applicant. (PCR Tr. p. 23). Plea Counsel testified that he could not recall at the moment, but that if Applicant had sent him letters, then he probably received them after the ten-day timeframe had expired, at which point there was nothing that Plea Counsel could have done. (PCR Tr. p. 23).

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, 372 S.C. at 331, 642 S.E.2d at 596 (citing Strickland, 466

U.S. 668). As an initial matter, this Court finds Plea Counsel's testimony credible on this issue. Plea Counsel credibly testified that in his last communication with Applicant, Applicant never indicated that he was interested in appealing when he pleaded guilty. Applicant has presented no credible evidence showing that he reasonably demonstrated an interest in appealing or that a rational defendant in his place would have wanted to appeal.

Furthermore, although Applicant testified that he sent a letter to Plea Counsel requesting an appeal, Plea Counsel testified that if Applicant had sent him a letter, he probably received it after the ten-day filing period had expired. Notably, Plea Counsel testified that he could not recall whether Applicant had requested an appeal, but if Applicant had, he would have filed one on his behalf. This Court finds that, had Plea Counsel received any correspondence from Applicant within the ten-day timeframe requesting him to file an appeal, then Plea Counsel would have done so. Therefore, this Court finds that Plea Counsel was not deficient for not filing an appeal for Applicant and that no prejudice resulted from any alleged deficiency.

This Court finds through the combination of the record, and Plea Counsel's credible testimony that Applicant has failed to meet the burden of showing Plea Counsel's representation 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 1i: Plea Counsel Failed to Argue for Probation Instead of Conceding Applicant Should Get Active Time.

Applicant alleges Plea Counsel's representation was constitutionally ineffective for failing to argue for probation instead of conceding that Applicant should get active time. This Court finds this allegation is without merit.

Guilty Plea Hearing

The following colloquy occurred among the plea court, Plea Counsel, and Applicant:

THE COURT: This is a serious charge. Let me tell you this. I have never in the twenty or thirty years that I've been a judge not sent someone to prison who pleads to a charge like this, so you're going to prison if you plead guilty to this charge. Do you understand that?

APPLICANT: (Nods head.)

PLEA COUNSEL: We've discussed that, Your Honor.

THE COURT: I understand that the law says that I could put you on probation, but my sentencing guidelines don't allow for that. You know, I've done this for a long time and I've never not sent someone to prison who pled guilty to criminal sexual conduct in the second degree. So you're going to prison if you plead guilty. You understand that?

APPLICANT: Yes, sir.

THE COURT: What do you want to do?

PLEA COUNSEL: We discussed that, Your Honor. We discussed it's not a probation case at all.

THE COURT: Okay. Well, I don't -- I thought maybe it was, but anyway, it isn't. You're going to prison. Do you understand that?

APPLICANT: Yes, sir.

THE COURT: So how do you wish to plead? Guilty or not guilty?

APPLICANT: Guilty.

THE COURT: I'm sorry?

APPLICANT: Guilty.

(Plea Tr. pp. 5–7).

During the mitigation phase of sentencing, Plea Counsel informed the plea court that Applicant understood that this case was not a probation case. (Plea Tr. p. 11).

PCR Evidentiary Hearing

On direct examination, Applicant testified that the plea court, which opposed Applicant receiving probation, could sentence him to probation and that Plea Counsel "was throwing that option out the window and not give the judge a chance to, if that was an opinion, to give me that option." (PCR Tr. p. 10). Applicant testified that he did not know what his sentence would be if he pleaded guilty, but that he knew he was going to receive prison time, "so it really ain't matter."

(PCR Tr. p. 10). Applicant testified that he had just finished a prison sentence and did not want to go back to prison, but that was "totally up to the judge." (PCR Tr. p. 10).

On direct examination, Plea Counsel testified that he wanted Applicant to have "no illusion at all" that he would receive a probationary sentence, given the nature of the crime and the fact that Applicant was on community supervision at the time of the crime. (PCR Tr. pp. 18–19). When questioned whether he ever considered asking the judge for a probationary sentence, Plea Counsel testified that he took the better course of being realistic about Applicant's case; Plea Counsel testified that some judges, even though they know an attorney is advocating for his client, will think negatively of an attorney who is asking for a sentence that is not realistic and will give a harsher sentence. (PCR Tr. p. 19).

On cross-examination, Plea Counsel testified that he had explained to Applicant that his case was not a probation case based on the facts and Applicant's prior record. (PCR Tr. p. 23).

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, 372 S.C. at 331, 642 S.E.2d at 596 (citing Strickland, 466 U.S. 668). As an initial matter, this Court finds Plea Counsel's testimony credible on this issue. Plea Counsel credibly testified that he explained to Applicant that his case was not a probation case; Plea Counsel also informed the plea court that he explained this to Applicant. Plea Counsel articulated a valid reason for employing his strategy of not requesting a probationary sentence: Plea Counsel credibly testified that he took the "better course" of not asking the plea court for an unrealistic sentence. See Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) ("[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed

JM/26

ineffective assistance of counsel."). Therefore, Plea Counsel was not deficient in failing to request a probationary sentence.

Additionally, Applicant has not presented any credible evidence that the plea court would have imposed a probationary sentence. Notably, during its colloquy with Applicant, the plea court emphatically instructed Applicant that it would not grant him probation and that Applicant would receive a prison sentence. Being fully aware of the certainty of prison time, Applicant indicated to the plea court that he wished to plead guilty. Furthermore, there was nothing in the plea court's colloquy to suggest that the plea court would have entertained Plea Counsel's argument that Applicant should be given probation instead of imprisonment. The plea court made it clear to Applicant that he had never given and was not going to give a probationary sentence for Applicant's charge. Applicant himself testified that he knew he would be sentenced to prison. Therefore, this Court finds that Plea Counsel was not deficient in failing to request a probationary sentence and that no prejudice resulted from any alleged deficiency.

This Court finds through the combination of the record, and Plea Counsel's credible testimony that Applicant has failed to meet the burden of showing Plea Counsel's representation 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**.

INVOLUNTARY GUILTY PLEA ALLEGATIONS

Allegation: Involuntary Guilty Plea
Allegation 2: Applicant Was Coerced into Pleading
Allegation 3: Applicant Thought That, by Pleading, He Would Receive a Sentence Under Ten Years.
Allegation 1d: Plea Counsel Failed to Explain to Applicant That He Was Pleading to a Violent Offense.

Applicant alleges Plea Counsel's representation was constitutionally ineffective and that his guilty plea was involuntary. Specifically, Applicant alleges that he was coerced into pleading and that he believed he would receive a sentence of less than ten years by pleading. Applicant also avers that Plea Counsel failed to explain that he was pleading to a violent offense. This Court finds these allegations are 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). 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.

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

Guilty Plea Hearing

The following colloquy occurred between the plea court and Applicant:

THE COURT:	So how do you wish to plead? Guilty or not guilty?
APPLICANT:	Guilty.
THE COURT:	I'm sorry?
APPLICANT:	Guilty.
THE COURT:	Has anybody promised you anything or threatened you in any way to get to you plead guilty?
APPLICANT:	No.
THE COURT:	Are you pleading guilty then on your own free will?
APPLICANT:	Yes.

(Plea Tr. pp. 6–7).

After mitigation and before sentencing, Plea Counsel stated that the crime Applicant was pleading guilty to was "a violent crime and . . . a most serious strike. If he gets another strike, they could strike him out." (Plea Tr. p. 12).

PCR Evidentiary Hearing

On direct examination, when questioned on if he wanted to go to trial, Applicant testified that, based on the evidence, he may have had a chance if he had gone to trial, but Plea Counsel had just lost a trial, and Applicant did not want "to get hit across the head." (PCR Tr. p. 8).

Applicant testified that he did not know that he was pleading to a violent offense and that he was not sure whether his charge was violent or nonviolent until he got to court. (PCR Tr. p. 8). When questioned on how discovery of the charge's classification shaped his decision to plead, Applicant testified that "I really wanted to go ahead and get it over with. The 10-year cap⁴ made it a little more comfortable versus the zero to 20 so I told him I'd go ahead and do it." (PCR Tr. p. 8). Applicant testified that he did not think that he would get a ten-year sentence. (PCR Tr. p. 10).

On *sua sponte* examination by this Court, when questioned whether he was still unsatisfied with his sentence, Applicant testified that he was "[n]ot really upset" and that he did not know that the classification would be violent and that he wished he would have requested Plea Counsel to negotiate a nonviolent sentence. (PCR Tr. p. 12). When questioned whether he understood that the statute determines whether the classification is violent or nonviolent, Applicant testified "not really." (PCR Tr. p. 12). When informed by this Court that classification is based on the charge and is not in the judge's discretion, Applicant indicated that he understood. (PCR Tr. p. 12).

⁴ Applicant testified that his plea deal was initially a sentence cap of twenty years and that he told Plea Counsel that was "a big gap," and Plea Counsel returned with a plea deal with a sentence cap of ten years. (PCR Tr. p. 8).

On direct examination, Plea Counsel testified that there was no ten-year sentencing cap; instead, the range was zero to twenty years. (PCR Tr. p. 13). Plea Counsel testified to the plea negotiations in Applicant's case:

Initial offer that the solicitor did was plea to CSC first for a cap of 20, and dismiss the burglary, but by the time we got to court she just did an indictment for second degree, figuring six of one and half a dozen on the other. Pretty much the same penalty-wise and collateral consequences-wise.

(PCR Tr. p. 14).

Plea Counsel testified that there was nothing he could have done to obtain a better deal from A.S. Wellman, who was a "pretty strict solicitor." (PCR Tr. p. 14). Plea Counsel testified that A.S. Wellman stated on the day of the guilty plea hearing that if Applicant did not accept the plea deal, it would be withdrawn. (PCR Tr. p. 14). Plea Counsel testified that he received the plea deal in early May, so Applicant had several weeks to consider it. (PCR Tr. p. 14). Plea Counsel testified that he and Applicant also discussed his case and whether to take the plea deal on the day of the guilty plea hearing. (PCR Tr. p. 15). Plea Counsel testified that he and Applicant discussed the pros and cons of taking his case to trial, including Applicant's statements to law enforcement and the DNA results, which they had not yet received. (PCR Tr. p. 16). Plea Counsel testified that A.S. Wellman informed him that she was only making the plea offer for a limited time because she wanted to move Applicant's case, and that if the results showed the DNA belonged to Applicant, she would make the plea offer much worse. (PCR Tr. p. 16). Plea Counsel testified that he told Applicant that the State talked about withdrawing the offer, in which case there would be no plea offer, and that Applicant would receive at least fifteen years' imprisonment on First-Degree Burglary if he was convicted at trial or entered another plea containing that charge. (PCR Tr. p. 17). Plea Counsel testified that he discussed the potential DNA results and the negative

effect it could have on the plea offer and that Applicant opted to plead guilty, a decision that was ultimately Applicant's. (PCR Tr. p. 16, 19).

Plea Counsel testified that he informed Applicant that he was pleading to a violent offense and that the classification was based on the charge. (PCR Tr. p. 17). Plea Counsel testified that he explained to Applicant that the plea court would not reduce the charge from eighty-five percent. (PCR Tr. p. 17).

On cross-examination, Plea Counsel testified that he discussed going to trial with Applicant and that Applicant was worried about what sentence he would receive. (PCR Tr. pp. 19–20). Plea Counsel testified that ultimately Applicant decided to plead guilty after they weighed the pros and cons of the evidence. (PCR Tr. p. 20). Plea Counsel testified that he never promised Applicant a sentence of less than ten years if he pleaded guilty. (PCR Tr. p. 23). Plea Counsel testified that he told Applicant the plea court had the discretion to sentence him between zero to twenty years and that they would hopefully receive the lightest sentence possible. (PCR Tr. pp. 23–24).

Findings

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, 345 S.C. at 20, 546 S.E.2d at 419; see also Richardson, 310 S.C. at 362, 426 S.E.2d at 797. As an initial matter, this Court finds Plea Counsel's testimony **credible** on this issue. This Court further 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 maximum penalty, 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). 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. Applicant has presented no valid reason why he should be able to depart from the statements made during his guilty plea as provided *supra*. See Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975), overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir. 1985) (finding that the accuracy and truth of an accused's statements at a guilty plea proceeding are "conclusively" established unless he makes some reasonable allegation why this should not be so).

Concerning Applicant's allegation that he believed he would receive a sentence less than ten years, Plea Counsel credibly testified that he did not promise Applicant that he would receive such a sentence by pleading guilty. Plea Counsel also credibly testified that he informed Applicant of the twenty-year sentencing range and that the sentence was in the plea court's discretion. The plea court also informed Applicant of the possible penalty of twenty years' imprisonment, which Applicant indicated to the plea court that he understood. (Plea Tr. p. 4). Furthermore, Applicant did not think he would receive a ten-year sentence despite being aware that the maximum penalty was twenty years and believing that the sentencing cap was ten years. See Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997) ("Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made."). Additionally, Plea Counsel credibly testified that he explained to Applicant that the plea court would not reduce the charge from eighty-five percent. Therefore, Plea Counsel was not deficient in advising Applicant of what sentence he could receive by pleading guilty, and no prejudice

resulted from any alleged deficiency⁵.

Concerning Applicant's allegation that Plea Counsel failed to inform him that he was pleading to a violent charge, Applicant was aware that he pleading guilty to such a charge, as Plea Counsel credibly testified that he informed Applicant that the crime was a violent offense. In addition, Plea Counsel also informed the plea court that the charge was a violent offense. Although Applicant testified that he did not know that his charge was violent until the guilty plea hearing, he had the opportunity to reject the plea but chose not to because, as he testified, he wanted to get it over with. Therefore, Plea Counsel was not deficient for advising Applicant on the classification of the charge he pleaded guilty to, and no prejudice resulted from any alleged deficiency.

Concerning Applicant's allegation that he was coerced into pleading guilty, Applicant informed the plea court that nobody promised him anything or threatened him to get him to plead guilty and that he was doing so on his own free will. Plea Counsel credibly testified that the decision to plead guilty was Applicant's, which he made after weighing the pros and cons of the evidence, including the potential DNA results. Furthermore, Plea Counsel credibly testified that Applicant had several weeks to consider the plea offer, which the State contemplated withdrawing, a fact of which Plea Counsel made Applicant aware. Plea Counsel also made Applicant aware that without the plea offer, he could face a minimum of fifteen years if convicted of First-Degree Burglary. Furthermore, Applicant presented no credible evidence that he was coerced into

⁵ To the extent that Applicant misunderstood the plea deal, this Court finds that through the plea court's colloquy and Plea Counsel's credible testimony of his advice to Applicant, any alleged erroneous advice to Applicant was cured. See Holden v. State, 393 S.C. 565, 575, 713 S.E.2d 611, 616 (2011), abrogated by Smalls, 422 S.C. 174, 810 S.E.2d 836 (concluding that any alleged deficiency in plea counsel's representation was cured by plea colloquy); see also Wolf, 326 S.C. at 164, 485 S.E.2d at 370 (finding that any possible misconceptions regarding sentencing were cured by the colloquy during the actual guilty plea hearing); Richardson, 310 S.C. 360, 426 S.E.2d 795 (1993) (grant of PCR was inappropriate where after having heard incorrect information concerning guilty plea, applicant's misimpressions were corrected by accurate information).

pleading guilty. 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 PAGE FOLLOWS]

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 27 day of July, 2026.


JENNIFER B. MCCOY
Presiding Judge
Eleventh Judicial Circuit

Charleston, South Carolina



ALAN WILSON
ATTORNEY GENERAL

August 11, 2026

The Honorable Lisa M. Comer
Lexington County Clerk of Court
205 East Main Street, Suite 128
Lexington, SC 29072

Re: Terrell D. Lytes v. State of South Carolina
2024-CP-32-04303

Dear Ms. Comer,

Enclosed please find the original Order of Dismissal with Prejudice signed by the Honorable Jennifer B. McCoy, in the above-captioned case, for filing in your office. In addition, please forward proof of service and a time stamped copy back to our office for our file.

If you have any questions regarding this matter, please let me know.

Sincerely,

Jordan B. Killough
Assistant Attorney General

JBK/jh
Enclosure

cc: Chelsey F. Marto, Esquire