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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT
APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
The Honorable Roger Young, PCR Action Judge
2024-CP-32-01651

PAUL RICHARD, #100656,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Paul Richard appeals the denial of his post-conviction relief application. The post-conviction relief action was heard and denied by the Honorable Roger Young, circuit court judge, on April 23, 2026, and was denied by written order issued filed on September 10, 2026. Applicant received notice of the judgement on September 10, 2026.

/s Chelsey F. Marto
Chelsey F. Marto, Esquire
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STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)	IN THE COURT OF COMMON PLEAS FOR THE ELEVENTH JUDICIAL CIRCUIT
Paul L. Richard, Jr., #100656, Applicant, v. State of South Carolina, Respondent.	)	CASE NO. 2024–CP–32–01651 **ORDER OF DISMISSAL WITH PREJUDICE**

FILED
2026 SEP 10 AM 7:46
LISA COMER
CLERK OF COURT
LEXINGTON SC

Presiding Judge:	Hon. Roger M. Young, Sr.
Applicant's Attorney:	Chelsey F. Marto, Esq.
Respondent's Attorney:	D. Russell Barlow, II, Esq.
Trial Counsel:	David M. Mauldin, Esq.
Date of Hearing:	April 23, 2026
Court Reporter:	Stacy S. Johnson

This matter comes before the Court by way of Paul Lewis Richard, Jr's (Applicant) application for post-conviction relief (PCR) filed on April 16, 2024. Respondent, the State of South Carolina, made its return and motion for a more definite statement on September 23, 2024. On April 9, 2026, Applicant, through counsel, amended his PCR application.

On April 23, 2026, an evidentiary hearing was held before the Honorable Roger M. Young, Sr., at the Lexington County Courthouse. Applicant was present and represented by Chelsey F. Marto, Esquire (PCR Counsel). Senior Assistant Deputy Attorney General D. Russell Barlow, II, represented Respondent. At the hearing, Applicant proceeded forward on the allegations within his amended application. In support of these claims, Applicant testified on his own behalf and presented the testimony of David M. Mauldin (Plea Counsel).

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any

constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. During its February and March 2023 terms, the Lexington Court of General Sessions indicted Applicant for first-degree burglary (2023-GS-32-00931). Assistant Solicitor Angela Martin prosecuted the case on behalf of the Eleventh Circuit Solicitor's Office. Applicant was represented by Plea Counsel.

On October 31, Applicant appeared before the Honorable Walton J. McLeod, IV, and pleaded guilty to the lesser included offense of second-degree burglary.[1] Judge McLeod sentenced Applicant to 13 years imprisonment.

Applicant did not appeal his conviction and sentence.

FACTS GIVING RISE TO THE CONVICTION

On January 23, 2023, Applicant knocked on the door of the Navarro family home. Inside the house was the homeowner's child. (Plea Tr. p. 5). The child did not answer the door, upon which the Applicant forcefully tried to gain entrance into the house. (Plea Tr. p. 5). The child screamed, and the Applicant left the scene. (Plea Tr. p. 6). The same day, law enforcement was investigating a home invasion. (Plea Tr. p. 6). Law enforcement was able to recover security camera footage showing the suspect's car. (Plea Tr. p. 6). The car was found to be registered to the Applicant's wife. (Plea Tr. p. 6). Applicant was found using facial recognition software from a prior arrest photograph in Berkeley County. (Plea Tr. p. 6).

[1] Applicant was eligible for life without parole under SC Code Ann. § 17-25-45

CURRENT ACTION BEFORE THIS COURT

In his original PCR application, Applicant alleges he is being held unlawfully based on the following:[2]

(1) Involuntary Guilty Plea
    (a) "Deficient communication"

On April 9, 2026, Applicant, through PCR Counsel, amended his PCR application with the following allegations:

(2) Ineffective Assistance of Plea Counsel
    (a) Failure to effectively communicate with Applicant and to explain the plea, charges, elements of the charge, and discovery to Applicant.
    (b) Failure to subject the State to adversarial testing, to examine and challenge the State's evidence, and to show the Court how the facts did not fit the elements of the charge.
    (c) Failure to withdraw the guilty plea.
    (d) Failure to request the Court consider a lesser sentence and or telling Applicant not to make a statement at the plea hearing.
    (e) Failure to investigate mental health issues and the facts and circumstances surrounding the case, including the arrest.
    (f) Failure to object to Applicant's 2013 guilty pleas being utilized for enhancement purposes.
(3) Involuntary Guilty Plea

Applicant requests relief as follows: "resentence"

RECORDS BEFORE THIS COURT

The records before this Court are as follows:

(1) Guilty Plea Transcript of October 31, 2023
(2) PCR Transcript of April 23, 2026
(3) Records of the Lexington County Clerk of Court
(4) Pertinent records of the South Carolina Department of Corrections

[2] Unless quoted, Applicant's allegations have been summarized for clarity.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act[3] (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based upon the following types of allegations:

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

S.C. Code Ann. § 17-27-20(A).

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

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

[3] S.C. Code Ann. §§ 17-27-10 to -160.

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

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

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

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

This inquiry "focuses on a defendant's decision making" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. 357, 367 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty— 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).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The matters before the Court were two-fold: (1) Whether Applicant was entitled to a belated direct appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974); and (2) whether Applicant's case should be remanded to the General Sessions court to determine if Applicant's kidnapping charge was sexual in nature. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility. See, e.g., State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) ("In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment."); Clemons v. Mississippi, 494 U.S. 738, 766 (1990) (Blackmun, J., concurring in part

and dissenting in part) ("The trial judge who hears the witnesses live, observes their demeanor and in general smells the smoke of the battle is by his very position far better equipped to make findings of fact which will have the reliability that we need and desire.").

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), 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).

This Court makes the following findings from the record: 1. Applicant understood the potential sentence he faced at his plea hearing (Plea Tr. p. 3); 2. Applicant affirmed that he waived his constitutional rights to remain silent and the right to a jury trial (Plea Tr. p. 3–4); 3. Applicant affirmed he had discussed his case with Plea Counsel, Plea Counsel answered all his questions, and he was satisfied with Plea Counsel's representation (Plea Tr. p. 4); 4. Applicant understood that the charge was second-degree burglary, and it was a violent offense (Plea Tr. p. 4); 5. Applicant affirmed he was pleading guilty freely, voluntarily, and intelligently (Plea Tr. pp. 4–5); 6. Applicant denied that anyone forced, threatened, or coerced him to plead guilty (Plea Tr. p. 5); 7. Applicant indicated no promises were made to him to plead guilty (Plea Tr. p. 5); 8. Applicant understood he had ten days to appeal (Plea Tr. p. 5); 9. Applicant agreed with the facts as read into the record by the prosecution (Plea Tr. pp. 5–7); and 10. Applicant's guilty plea was accepted as freely, voluntarily, knowingly, and intelligently made. (Plea Tr. p. 8).

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS ON THE MERITS

Allegation (2)(a): Failure to effectively communicate with Applicant and to explain the plea, charges, elements of the charge, and discovery to Applicant.

Applicant alleges Plea Counsel's representation was constitutionally ineffective for failing to investigate, meet with him sufficiently, and adequately review discovery with him prior to his plea. This Court finds these allegations are without merit.

Federal case law holds that there is no constitutional minimum number of meetings between attorneys and their clients to satisfy competency. Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) (no constitutional minimum number of meetings to satisfy competency); United States v. Olson, 846 F.2d 1103, 1108 (7th Cir. 1988) (reciting that there is no constitutional minimum number of meetings between attorney and client and observing that an experienced

attorney may get more out of a single meeting than a neophyte). "Brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980) (holding it is not enough to merely show that counsel only met with his client twice before trial as long as counsel devoted sufficient time to ensure an adequate defense and to become thoroughly familiar with the facts of the case and the law applicable to the case, and holding the record revealed that counsel was so prepared.).

South Carolina case law has established that even if Trial Counsel only met with his client very briefly, that alone does not establish that he was unprepared or ineffective at trial. See Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing Easter) ("First, there is no question that counsel met with [Applicant] on several occasions prior to the first trial. Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation."). An applicant must present evidence to show how additional time spent in consultation would have resulted in a different outcome; mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Smith v. State, 404 S.C. 493, 500-01, 745 S.E.2d 378, 382 (Ct. App. 2012) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998); Skeen v. State, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997)).

In order to prevail upon a claim that counsel did not adequately prepare, investigate, or review discovery in a case, an applicant must present evidence to show how additional time spent in consultation regarding discovery would have resulted in a different outcome or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). The applicant must further present evidence

demonstrating how the discoverable matters or defenses would have resulted in a different outcome. Id. Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Findings

This Court finds from the combination of the record and Plea Counsel's credible testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court finds that Applicant has failed to overcome his burden in proving that Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*.

At the plea hearing, Applicant affirmed under oath that he had discussed the case with Plea Counsel, that Plea Counsel had answered all his questions, and that he understood the nature of the charge and the rights he was waiving. (Plea Tr. pp. 3–5).

At the evidentiary hearing, Plea Counsel credibly testified that he met with Applicant on multiple occasions, with the initial meeting covering court procedures, charges, elements, and penalties. (PCR Tr. pp. 24, 30–31). Plea Counsel credibly testified that he provided Applicant with a complete copy of the paper discovery and discussed it with him, including the specific weaknesses in the State's identification evidence, the non-positive six-pack lineup, and potential trial issues regarding the search warrants. (PCR Tr. pp. 25–28, 33.) Plea Counsel credibly testified that he explained the original first-degree burglary charges, the LWOP exposure under S.C. Code § 17-25-45, the negotiated reduction to second-degree burglary violent, and the zero-to-fifteen-

year range. (PCR Tr. pp. 24–25, 28–29, 32). Plea Counsel credibly testified that the final plea offer was conveyed three to four days before the October 31, 2023, plea. (PCR Tr. p. 25).

This Court further finds that Applicant's contrary claims, that counsel never discussed the case, never explained the elements or the "violent" designation, and provided only incomplete "Rule 5" materials, are rejected as not credible. (PCR Tr. pp. 6–11, 16–17).

Moreover, to whatever extent Applicant was not entirely satisfied with the amount of time spent in consultation with Plea Counsel, he was presented with 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 the negotiated plea and avoid LWOP.

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 reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland as laid out in Hill—that but for Plea Counsel's deficient performance, Applicant would have gone to trial and not pled guilty.

Accordingly, this Court finds that Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED**.

Allegation (2)(b): **Failure to subject the State to adversarial testing, to examine and challenge the State's evidence, and to show the Court how the facts did not fit the elements of the charge.**

Applicant alleges Plea Counsel's representation was constitutionally ineffective for failing to subject the State to adversarial testing, to examine and challenge the State's evidence, and to

show the Court how the facts did not fit the elements of the charge. This Court finds these allegations are without merit.

Findings

This Court finds from the combination of the record and Plea Counsel's credible testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court finds that Applicant has failed to overcome his burden in proving that Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*.

At the plea hearing, the solicitor placed on the record a factual basis that satisfied the elements of second-degree burglary: entering a dwelling without consent with intent to commit a crime therein. (Plea Tr. pp. 5–7). Plea Counsel did not object because the factual basis was legally sufficient and the plea was knowing and voluntary.

At the evidentiary hearing, Plea Counsel credibly testified that he reviewed the discovery, identified potential trial issues, and discussed those issues with Applicant. (PCR Tr. pp. 26–28, 33). Plea Counsel successfully negotiated a reduction from two counts of first-degree burglary, with mandatory LWOP exposure, to a single count of second-degree burglary violent. (PCR Tr. pp. 24–25; Plea Tr. p. 6).

Applicant's claim that "there was no evidence" placing him at the scene and that the facts "did not fit the elements" is rejected as not credible and contradicted by the record before this Court and Plea Counsel's credible testimony. (PCR Tr. pp. 13–14, 16–17, 26–27).

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 reasonably

effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland as laid out in Hill—that but for Plea Counsel's deficient performance, Applicant would have gone to trial and not pled guilty.

Accordingly, this Court finds that Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED.**

Allegation (2)(c): Failure to withdraw the guilty plea.

Applicant alleges Plea Counsel's representation was constitutionally ineffective for failing to withdraw his guilty plea. This Court finds this allegation to be without merit.

When there is reason to think a rational defendant would want to withdraw his plea, or when the defendant reasonably demonstrates an interest in so withdrawing his plea, plea counsel may be constitutionally obliged to move to terminate a plea proceeding or otherwise move to withdraw his client's guilty plea. See, e.g., Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000) (finding counsel ineffective for failing to move to withdraw a plea after the state reneged on its plea agreement); Smith v. State, 407 S.C. 270, 754 S.E.2d 900 (Ct. App. 2014) (same); Jordan v. State, 297 S.C. 52, 374 S.E.2d 683 (1988) (same); Rolen v. State, 384 S.C. 409, 683 S.E.2d 471 (2009) (finding counsel ineffective for failing to move to withdraw a plea after client repeatedly asserted his innocence during the plea hearing); cf. Turner v. State, 380 S.C. 223, 224-25, 670 S.E.2d 373, 374 (2008) (comparable standard in the context of failure to appeal from a guilty plea). Where a defendant seeks to withdraw his guilty plea, whether to permit such withdrawal is within the sound discretion of the trial judge. State v. Riddle, 278 S.C. 148, 150, 292 S.E.2d 795, 796 (1982).

Findings

This Court finds from the combination of the record and Plea Counsel's credible testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court finds that Applicant has failed to overcome his burden in proving that Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*.

At the evidentiary hearing, Plea Counsel testified that after sentencing, Applicant told him that he wanted to withdraw the plea because he "got too much time." Plea Counsel testified that he declined, and advised Applicant that sentence length alone is not a valid ground for withdrawal. (PCR Tr. pp. 31–32). Plea Counsel further credibly testified that Applicant never claimed the plea was involuntary, unknowing, or the product of coercion at the time of his request to withdraw the plea. Id.

This Court further finds that Plea Counsel's refusal to file a meritless motion to withdraw based solely on dissatisfaction with the sentence was not deficient. Strickland does not require counsel to file frivolous motions.

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 reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland as laid out in Hill—that but for Plea Counsel's deficient performance, Applicant would have gone to trial and not pled guilty.

Accordingly, this Court finds that Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED**.

Allegation(2)(d): Failure to request the Court consider a lesser sentence and/or telling Applicant not to make a statement at the plea hearing

Applicant alleges Plea Counsel's representation was constitutionally ineffective for failing to request a lesser sentence and/or telling Applicant not to make a statement at the plea hearing. This Court finds these allegations are without merit.

Findings

As an initial matter, Applicant's claim is refuted by the record before this Court. Plea Counsel did request leniency/mercy and presented mitigation such as: Applicant's age, long-standing alcohol problem rooted in childhood, daytime nature of the offenses, and the fact that Applicant fled when confronted. (Plea Tr. pp. 8–9; PCR Tr. p. 30). The plea court asked whether Applicant wished to speak; Plea Counsel inquired of Applicant, and Applicant did speak, attributing his problems to alcohol and requesting help. (Plea Tr. p. 9).

This Court finds from the combination of the record and Plea Counsel's credible testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court finds that Applicant has failed to overcome his burden in proving that Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*.

This Court further finds Plea Counsel's testimony credible that he never instructed Applicant not to ask for mercy or not to speak. (PCR Tr. pp. 29–30). This Court finds Applicant's contrary claim is rejected. (PCR Tr. pp. 11–12, 21).

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 reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland as laid out in Hill—that but for Plea Counsel's deficient performance, Applicant would have gone to trial and not pled guilty.

Accordingly, this Court finds that Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED.**

Allegation (2)(e): Failure to investigate mental health issues and the facts and circumstances surrounding the case, including the arrest.

Applicant alleges Plea Counsel's representation was constitutionally ineffective for failing to investigate mental health issues and the facts and circumstances surrounding the case, including the arrest. This Court finds this allegation to be without merit.

"Due process of law prohibits the conviction of a person who is mentally incompetent." Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 595 (1992). An accused is competent to stand trial if he or she has sufficient capability to consult with his or her lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings. Id. at 232, 417 S.E.2d at 596. "The focus of a competency inquiry is the defendant's mental capacity; the question is whether he [or she] has the *ability* to understand the proceedings." Garren

v. State, 423 S.C. 1, 14, 813 S.E.2d 704, 711 (2018) (quoting Godinez v. Moran, 509 U.S. 389 (1993)).

As to the deficiency prong under Strickland, an attorney may reasonably rely upon his or her own perceptions of a defendant in determining whether or not their client should be mentally evaluated. Jeter, 308 S.C. at 233, 417 S.E.2d at 596. When establishing Strickland prejudice in the context of counsel's failure to request a mental competency evaluation, the applicant need only show a reasonable probability that he was incompetent at the time of the original proceeding. Garren, 423 S.C. at 12, 813 S.E.2d at 710 (citing Ramirez v. State, 419 S.C. 14, 21, 795 S.E.2d 841, 845 (2017)). As is the case with any other allegation that a defense attorney failed to adequately investigate some matter, an applicant must present some proof of identifiable mental health issues which undermine his or her competency; mere speculation and conjecture by the applicant is insufficient to establish prejudice. Id. at 13-14, 813 S.E.2d at 711.

An applicant alleging incompetence *in fact* must show by a preponderance of the evidence that he was incompetent at the time of his original proceedings. Id., 423 S.C. at 16, 813 S.E.2d 704, 713; Hall v. Catoe, 360 S.C. 353, 358, 601 S.E.2d 335, 338 (2004). If an applicant claims he or she was rendered incompetent due to medication, he or she must show that his or her mental faculties were so impaired by drugs during the original proceedings that he or she was incapable of full understanding of the proceedings. Garren, 423 S.C. at 15, 813 S.E.2d at 712 (quoting United States v. Truglio, 493 F.2d 574, 578 (4th Cir. 1974)). "A PCR court must consider 'objective data' about the nature and effect of the medication the defendant had taken and evaluate whether such medication 'had the capability to produce a sufficient effect on his mental faculties to render him incompetent[.]'" Id. (quoting United States v. Damon, 191 F.3d 561, 565 (4th Cir. 1999)).

Findings

This Court finds from the combination of the record and Plea Counsel's credible testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court finds that Applicant has failed to overcome his burden in proving that Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*.

At the evidentiary hearing, Plea Counsel credibly testified that he had no indication from his interactions with Applicant that Applicant was incompetent or that any mental-health condition rendered him unable to understand the proceedings. Plea Counsel credibly testified that he would have sought an evaluation had such concerns arisen. (PCR Tr. p. 30).

This Court further finds Applicant's claim of severe depression, where he testified to stopping eating for fifteen days and being on medication that clouded his judgment, was not communicated to Plea Counsel and is not supported by any contemporaneous medical evidence in the record. (PCR Tr. pp. 8–9, 16). This Court finds Applicant has presented no credible reasons why Plea Counsel had a duty to investigate his alleged mental health issues.

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 reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland as laid out in Hill—that but for Plea Counsel's deficient performance, Applicant would have gone to trial and not pled guilty.

Accordingly, this Court finds that Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED.**

Allegation (2)(f): Failure to object to Applicant's 2013 guilty pleas being utilized for enhancement purposes.

Applicant alleges Plea Counsel's representation was constitutionally ineffective for failing to investigate mental health issues and the facts and circumstances surrounding the case, including the arrest. This Court finds this allegation to be without merit.

Findings

This Court finds from the combination of the record and Plea Counsel's credible testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court finds that Applicant has failed to overcome his burden in proving that Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*.

This Court finds that a review of the record provides Applicant's prior record included multiple burglary/housebreaking convictions, including Georgia and South Carolina convictions predating 2013, sufficient to enhance the charges to first-degree burglary and to trigger LWOP eligibility under S.C. Code Ann. § 17-25-45. (Plea Tr. p. 7; PCR Tr. pp. 28–29, 34–35). Plea Counsel credibly testified that he reviewed the NCIC and prior record and correctly understood that prior burglaries of any degree can support enhancement to first-degree. (PCR Tr. pp. 28–29). Applicant failed to present any credible evidence that the 2013 convictions were invalid or unavailable for enhancement. Thus, Plea Counsel cannot be deficient for failing to raise a non-meritorious objection. See Vieux v. Pepe, 184 F.3d 59, 64 (1st Cir. 1999) (finding "counsel's

performance was not deficient if he declined to pursue a futile tactic.") (applying Strickland, 466 U.S. at 688, 694 (explaining that, in order to succeed on a claim of ineffective assistance, defendant must demonstrate both deficient performance and cognizable prejudice)); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence).

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 reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland as laid out in Hill—that but for Plea Counsel's deficient performance, Applicant would have gone to trial and not pled guilty.

Accordingly, this Court finds that Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED**.

Allegation (3)(a): Involuntary Guilty Plea

Applicant alleges his guilty plea was involuntary. Specifically, Applicant felt rushed and forced into pleading guilty. This Court finds this allegation is without merit.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a complete understanding of the consequences of the plea and the charges against him or her. Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991); see also Boykin v. Alabama, 395 U.S. 238, 244 (1969) (Courts must make sure defendants have "a full understanding of what the plea connotes and of its consequences. When the judge discharges that function, he leaves a record adequate for any review that may be later sought and forestalls the spin-off of

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collateral proceedings that seek to probe murky memories."). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as the evidence presented at the PCR hearing. See Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984) (finding the voluntariness of a guilty plea "is not determined by an examination of the specific inquiry made by the sentencing judge alone but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.").

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

Findings

This Court finds that the record refutes Applicant's allegation and reflects that Applicant's guilty plea was knowingly and voluntarily entered with a complete understanding of the charge and its consequences. This Court further finds Applicant was fully aware of the minimum and maximum sentencing ranges on the charge that he pleaded guilty to. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively unless an Applicant presents valid reasons why he should be allowed to depart from

the truth of his statements. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir. 1985)).

This Court finds Applicant has failed to show that Plea Counsel's representation fell below an objective standard of reasonableness, and that but for Plea Counsel's alleged errors, Applicant would not have pled guilty and proceeded to trial. See Roscoe v. State, 345 S.C.16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362, 426 S.E.2d 795, 797 (1993). Plea Counsel credibly testified that he final plea offer was conveyed to Applicant three to four days before the plea; trial was scheduled for the following month. (PCR Tr. p. 25). Applicant had multiple opportunities to reject the offer and proceed to trial. At the plea hearing, Applicant affirmatively stated under oath that he was pleading freely, voluntarily, knowingly, and intelligently; that no one had forced, threatened, or coerced him; and that he was pleading because he was guilty. (Plea Tr. pp. 4–5).

Further, this Court finds the plea court conducted a thorough Boykin colloquy covering the nature of the charge, potential sentence, rights waived, and voluntariness. (Plea Tr. pp. 3–5). Applicant's present claim that he felt "rushed" and "forced," and that he only answered "yes" because Plea Counsel told him to "go along," is rejected as not credible in light of his admission that he lied to the plea court and in light of Plea Counsel's credible testimony. (PCR Tr. pp. 6–8, 14–15, 20–22).

Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Additionally, this Court finds that Applicant's plea was entered into voluntarily, intelligently, and knowingly. Thus, this allegation must be **DENIED** and **DISMISSED**.

CONCLUSION

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

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 31st **day of** August**, 2026.**

ROGER M. YOUNG, SR.
Presiding Judge
Eleventh Judicial Circuit

Chesterfield, South Carolina