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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE DARLINGTON COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen, Circuit Court Judge

DOCKET NO: 2025-CP-16-00961

Michael L. Cherry, Petitioner,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Applicant, Michael L. Cherry, through undersigned court-appointed post-conviction relief counsel, appeals the Order of the Honorable Carmen T. Mullen, filed on or about August 3, 2026. Undersigned counsel was appointed to represent Applicant based on his indigency and received notice of the Order on September 2, 2026.

Respectfully Submitted,

s/Kindle K. Johnson

Kindle K. Johnson, S.C. Bar No. 72926

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September 28, 2026

Opposing Counsel:

D. Russell Barlow, II

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STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

Michael L. Cherry, #273673,

Applicant,

v.

State of South Carolina,

Respondent.

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

) CASE NO. 2025-CP-16-00961
)

**ORDER OF DISMISSAL
WITH PREJUDICE**

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

2026 AUG -3 P 2:35

FILED

Presiding Judge: Hon. Carmen T. Mullen
Applicant's Attorney: Kindle K. Johnson, Esq.
Respondent's Attorney: MacKinnon Westraad, Esq.
Plea Counsel: John M. Ervin, III, Esq.
Date of Hearing: May 26, 2026

This matter comes before this Court by way of Michael L. Cherry's (Applicant) application for Post-Conviction Relief (PCR) commenced September 30, 2025. Respondent, the State of South Carolina, filed its Return on April 6, 2026, requesting an evidentiary hearing.

On May 26, 2026, an evidentiary hearing was held at the Darlington County Courthouse before the Honorable Carmen T. Mullen. Applicant was present at the hearing and represented by Kindle K. Johnson, Esquire. Assistant Attorney General MacKinnon Westraad appeared on behalf of the Respondent. Applicant proceeded on the allegations within his original PCR application, plus a few additional claims. In support of these claims, Applicant testified on his own behalf. Respondent called John M. Ervin, III, Esquire (Plea Counsel) to testify.

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

Court denies relief and dismisses this action with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Darlington County Clerk of Court. In December of 2024, the Darlington County Grand Jury indicted Applicant for shoplifting, \$2,000 or less (2022-GS-17-0320).

On March 17-19, 2025, Applicant appeared before the Honorable Brian Gibbons. Fourth Circuit Assistant Solicitor Savannah Baxley prosecuted the case. Plea Counsel represented Applicant. After selecting a jury for trial, Applicant pleaded guilty as indicted.¹ Judge Gibbons sentenced Applicant to six (6) years' imprisonment.

Applicant did not appeal his conviction or sentence.

FACTS GIVING RISE TO THE PLEA

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

SOLICITOR BAXLEY: On or about September 2nd in the City of Darlington in Darlington County the defendant, Michael Cherry, entered the Circle K. He unlawfully concealed two bottles of Listerine Mouthwash, one aerosol can of Febreze Spray, two bottles of Dawn Dish Detergent, two aerosol cans of Men's Axe Body Spray, two bags of Tide Pods, two bottles of Liquid Tide Detergent, one bottle of Clorox Spray, one bottle of 409 Cleaning Spray, three cans of Pedigree Dog Food, and two cans of Chef Boyardee Spaghetti and Meatballs all valuing at \$131. This was captured on video surveillance. He stuffed them in his pants and then walked out of the store without providing payment.

(Plea Tr. p. 44).

¹ The State agreed to drop a separate charge in exchange for the plea. (Plea Tr. p. 40).

CURRENT ACTION BEFORE THIS COURT

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

1. Ineffective Assistance of Counsel
 - a. "An insufficient counseling – Jay Ervin III"
 - b. "Public Jay Ervin did nothing for me he didn't even visit me in jail!"
2. Prosecutorial Misconduct
 - a. "The Solicitor lied about how many convictions + insubordination"
3. "I was wrongfully charged and sentenced + My Constitution Rights was violated"
 - a. "The Judge lied about his hands is tied – perjury for sure!"

At his PCR hearing, Applicant raised the following additional allegations:

1. Ineffective Assistance of Counsel
 - a. Failure to investigate
 - b. Failure to review discovery
 - c. Failure to object to the solicitor's statements
2. Involuntary Guilty Plea

Applicant requests relief in the form of "charge dismiss + time dismiss 6 years for 1 shoplifting charge and warrant was edit, tampered with, altered before sent to grand jury."

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

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act² 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;

² S.C. Code Ann. §§ 17-27-10 to -160.

4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), 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 v. Washington to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687–88; accord. Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required

showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable." (citation and internal quotation marks omitted)).

Regarding the deficiency prong of the Strickland analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. Butler, 286 S.C. at 442. When analyzing counsel's performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for rebutting that presumption "by proving that his attorney's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy." Kimmelman v. Morrison, 477 U.S. 365, 384 (1986); cf. Cullen v. Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation).

Furthermore, the reviewing court will scrutinize counsel's performance in a highly deferential manner, make every effort "to eliminate the distorting effects of hindsight," and "evaluate the conduct from counsel's perspective at the time" in light of then-existing circumstances. Strickland, 466 U.S. at 689. In order to establish counsel's performance was deficient, the applicant must demonstrate that "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 687. Accordingly, counsel's performance will be considered deficient only when it was objectively incompetent under prevailing professional norms and *not* when it simply "deviated from best

practices or most common custom." Harrington v. Richter, 562 U.S. 86, 105 (2011).

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the burden of establishing prejudice in order to be entitled to relief as "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691. To meet this burden, counsel's deficient performance must have prejudiced the applicant to such an extent, there is a reasonable probability the result of the proceeding would have been different but for counsel's unprofessional errors. Cherry, 300 S.C. at 117–18; see Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) ("To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel's representation fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been different.").

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel." Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel's performance was deficient; and second, evidence that counsel's deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. Hill, 474 U.S. 52.

The analysis of counsel's performance under the first prong of Strickland remains unchanged—the applicant must show counsel's representation fell below the objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59; accord

Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his plea ... was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the range of competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56.

The second, or "prejudice" prong, however, "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Id. at 58–59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59. This inquiry "focuses on a defendant's decision making" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. 357, 137 S. Ct. 1958, 1966, 198 L. Ed. 2d 476 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

Surmounting Strickland's high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." Lee, 582 U.S. at 368–69 (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 58 ("[R]equiring a showing of 'prejudice' from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.'"). Reviewing "[c]ourts should not upset a plea solely because of *post hoc*

assertions from a defendant about how he would have pleaded but for his attorney's deficiencies. Lee, 582 U.S. at 369. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences." Id. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the plea and the evidence presented at the Evidentiary hearing. Harres v. State, 282 S.C. at 134, 318 S.E.2d at 361 (1984).

Finally, the Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90. Courts must be wary of second-guessing counsel's tactics, and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant's burden of proving both Strickland components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility. See, e.g., State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) ("In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment."); Clemons v. Mississippi, 494 U.S. 738, 766 (1990) (Blackmun, J.,

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

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), 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, 286 S.C. at 442 (“The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.”).

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

INITIAL FINDINGS

This Court finds applicable the strong presumption that at all stages of Plea Counsel's representation of Applicant he rendered adequate assistance and exercised reasonable professional judgment in his representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that “every effort be made to eliminate the distorting effects of hindsight” and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

This Court makes the following findings from the record: 1. Applicant understood the potential sentence he faced at his plea hearing and was given extra time to discuss it with Plea

Counsel (Plea Tr. pp. 36-37, 39, 41); 2. Applicant himself informed Plea Counsel he wanted to plead guilty in court after selecting a jury (Plea Tr. p. 36); 3. Applicant clearly indicated he was satisfied with Plea Counsel and had a chance to discuss everything with him (Plea Tr. pp. 42-43); 4. Applicant understood he was waiving his right to a jury trial (Plea Tr. p. 41); 5. Applicant had the opportunity to provide background of his criminal history and his own version of the facts (Plea Tr. pp. 36, 44-46); 6. The plea court accepted Applicant's version of the facts for his plea (Plea Tr. p. 46); 7. Applicant indicated no promises or threats were made to him to plead guilty, and that he was not under the influence of any substance (Plea Tr. pp. 42-43).

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS ON THE MERITS

- Allegation:** Plea Counsel was ineffective for failing to meet with him sufficiently.
- Allegation:** Plea Counsel was ineffective for failing to review discovery.
- Allegation:** Plea Counsel was ineffective for failing to investigate.

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)).

PCR Evidentiary Hearing

On direct examination, Applicant testified that for months, Plea Counsel went back and forth with the solicitor to obtain evidence, and that they pushed the case to trial with no evidence. Applicant testified that Plea Counsel should have investigated and he would have known there was no evidence and the case could have been dismissed. Applicant testified that Plea Counsel visited him, brought the discovery but not the video, and walked out the door after five minutes without discussing anything. Applicant testified that on March 18, the day before trial, the solicitor showed Applicant the video of him concealing the items in his pants. Applicant testified that he would have gone to trial if he had more time to review the video. Applicant testified that Plea Counsel told him the video was "at the office." Applicant testified that he was going to trial until he saw the video in the courtroom, at which point he decided to plead guilty. Applicant testified that the video did not show him stealing any items, only that he was talking to the clerk and walking out.

On direct examination, Plea Counsel testified that he had met with Applicant several times but could not recall the exact number. Plea Counsel testified that they probably talked three or four times. Plea Counsel testified that he went over the discovery with Applicant, which included the warrants and a police report. Plea Counsel testified that Applicant argued the video did not show him stealing, which they discussed, and Plea Counsel showed Applicant still shots of him in the store. Plea Counsel testified that they also discussed Applicant's argument that the store clerk knew Applicant was stealing the items. Plea Counsel testified that he was prepared for trial and that the case was not complicated. Plea Counsel

testified that he reviewed the police reports, spoke with Investigator Melton, and reviewed the video. Plea Counsel testified that he argued to the court that the clerk seemed to allow Applicant to steal the items.

Findings

This Court finds from the combination of the record and Plea Counsel's testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." *Ard v. Catoe, supra*. This Court finds that Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. *See Butler, supra*. Applicant first testified that he would have gone to trial if he had more time to review the video, but then testified that he *was* going to trial until he saw the video, after which he decided to plead guilty. However, Applicant also claimed that the video did not show him stealing any items. Applicant did not explain how additional time reviewing the video would have led him to continue taking the case to trial. This Court finds Applicant **not credible**.

Further, Plea Counsel **credibly** testified that he met with Applicant several times and that they went over the discovery, as well as Applicant's arguments that he raised in his application. This Court finds that Plea Counsel's performance was not deficient. Even if Plea Counsel did not show Applicant the video earlier, Applicant failed to prove that he suffered any resulting prejudice, especially when Plea Counsel showed him stills from the video. Applicant alleged that if Plea Counsel had investigated, he would have known there was no evidence and the case would be dismissed. This is seemingly based on the claim that the clerk allowed him to leave with the items, which the plea court correctly determined would still constitute shoplifting under the

statute.³ Plea Counsel explained this assertion to the plea court, so this Court finds Plea Counsel not deficient.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel, or any prejudice flowing therefrom. Thus, these allegations must be **DENIED** and **DISMISSED** with prejudice.

Allegation:	Plea Counsel was ineffective for failing to object to the solicitor's statements
Allegation:	Prosecutorial Misconduct

Applicant alleges prosecutorial misconduct by the solicitor for misstating his criminal history and for warrant/indictment discrepancies. Additionally, Applicant alleges that Plea Counsel's representation was constitutionally ineffective for failing to object to the solicitor's alleged misstatements. This Court finds these allegations are without merit.

"An ineffective assistance claim based on a failure to object is tied to the admissibility of the underlying evidence." Hough v. Anderson, 272 F.3d 878, 898 (7th Cir. 2001). "If evidence admitted without objection was admissible, then the complained of action fails both prongs of the Strickland test: failing to object to admissible evidence cannot be a professionally 'unreasonable' action, nor can it prejudice the defendant against whom the evidence was admitted." Id.; see Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); 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). Also, "[a]n error by counsel, even if professionally

³ Plea Tr. pp. 45-46; See S.C. Code § 16-13-110(A)(1) ("A person is guilty of shoplifting if he takes possession of, carries away, transfers from one person to another or from one area of a store or other retail mercantile establishment to another area, or causes to be carried away or transferred any merchandise displayed, held, stored, or offered for sale by any store or other retail mercantile establishment with the intention of depriving the merchant of the possession, use, or benefit of the merchandise without paying the full retail value").

unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691.

Plea Hearing

The following colloquy occurred between Applicant and the Court:

MR. CHERRY: Can I add too to the fact that they gave me my criminal record, right?

THE COURT: Yes, sir.

MR. CHERRY: Thirty-four years. From 1991 to 2025, I got 40 charges on my record. Twenty-seven of them I'm not guilty of. That's - that's the facts.

THE COURT: Okay.

MR. CHERRY: Twenty-seven charges I'm not guilty of. So I wonder what they talking about.

THE COURT: Okay.

MR. CHERRY: You can look at my criminal record.

THE COURT: All right. Well, I ---

MR. CHERRY: Twenty-seven charges I'm not guilty of and I tased and all that by police and threw that out, threw that out four years later.

THE COURT: I understand that. But what I'm telling you now is I'm -- if the State does it -- the State could object to you pleading guilty. The State can go forward with trial if they want.

MR. CHERRY: True.

(Plea Tr. pp. 38-39).

PCR Evidentiary Hearing

On direct examination, Applicant testified that the solicitor provided two different warrants that were altered. Applicant testified that he brought his issues with the warrant to the plea court's attention. Applicant testified that the solicitor lied, claiming he had fifteen convictions when he only had ten, and Plea Counsel did not object to that, so Applicant had to stand up and try to represent himself. Applicant testified that the judge at his plea also lied because he said the warrant was fine.

On direct examination, Plea Counsel testified that there was another earlier warrant, not

one for the case they were going to trial on, but Applicant was aware of that.

Findings

This Court finds from the combination of the record and Plea Counsel's testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court finds that Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Applicant himself testified that he told the plea court about the solicitor mischaracterizing his record. The record also reflects that Applicant's issue with the warrant and indictment was raised and ruled on by the court prior to the jury being selected.⁴ This Court finds that Applicant failed to prove prejudice where his issues with the solicitor's conduct and Plea Counsel's failure to object were raised to the plea court. Further, Applicant did not provide this Court with evidence that there was a discrepancy in the number of convictions stated by the solicitor, nor did he provide this Court with evidence of an incorrect or altered warrant.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel, or any prejudice flowing therefrom. Thus, these allegations must be **DENIED** and **DISMISSED** with prejudice.

Allegation 2: Involuntary Guilty Plea

Applicant alleges his guilty plea was involuntary. Specifically, Applicant alleged that he was not fully informed before entering his guilty plea and that he believed he was pleading to time served. This Court finds this allegation is without merit.

⁴ Plea Tr. p. 13-18.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a complete understanding of the consequences of the plea and the charges against him or her. Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991); see also Boykin v. Alabama, 395 U.S. 238, 244 (1969) (Courts must make sure defendants have “a full understanding of what the plea connotes and of its consequences. When the judge discharges that function, he leaves a record adequate for any review that may be later sought and forestalls the spin-off of collateral proceedings that seek to probe murky memories.”). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as the evidence presented at the PCR hearing. See Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984) (finding the voluntariness of a guilty plea “is not determined by an examination of the specific inquiry made by the sentencing judge alone but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.”).

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

PCR Evidentiary Hearing

On direct examination, Applicant testified that he was innocent and that the only reason he pleaded guilty was Plea Counsel. Applicant testified that he knew of others with the same

charge who pleaded guilty to time served, so he wanted to plead guilty to time served as well. Applicant testified that he did not believe he was fully informed at the time he pleaded guilty.

On direct examination, Plea Counsel testified that Applicant told him he wanted to plead guilty, and Plea Counsel said they would still proceed with the trial if Applicant wanted. Plea Counsel testified that he never forced Applicant to plead guilty. Plea Counsel testified that another shoplifting charge was dropped in exchange for this plea. Plea Counsel testified that he went over everything with Applicant as early as February, including that there was no negotiated sentence in this case, that the court could impose any sentence within the range, and that the solicitor was asking for active time, which would be more than time served. Plea Counsel testified that Applicant was aware it was a straight-up plea throughout the process, and that the solicitor was not making a recommendation; it was up to the court. Plea Counsel testified that he was not aware of any plea offers for time served at any point.

Findings

This Court finds that the record refutes Applicant's allegations 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). Applicant picked a jury for trial before electing to plead guilty in exchange for one of his charges being dropped, and he was facing up to ten years in prison. The evidence against Applicant included video footage of him committing the crime. Applicant received the benefit of the bargain by pleading guilty.

Moreover, the plea colloquy cured any alleged deficiency regarding Plea Counsel's advice. The plea transcript reflects that Applicant entered his plea knowingly and voluntarily, engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the plea court's questions. This Court finds the combination of the record and Plea Counsel's credible testimony at the evidentiary hearing provides Applicant knew the nature of the charge against him, the terms of the plea, and the consequences of pleading guilty pursuant to the requirements of Boykin v. Alabama, 395 U.S. 238 (1969) and Roddy v. State, 339 S.C. 29 (2000). Applicant testified that he was pleading guilty to time served, but the plea court clearly explained to him that it did not work that way, and that if he pleaded guilty, he could be sentenced up to ten years.⁵ The plea court then gave Applicant more time to discuss the plea with Plea Counsel, and then Applicant stated he still wished to give up his right to a trial and plead guilty.⁶ Thus, based on the evidence presented at the plea proceeding and the evidentiary hearing, this Court finds Applicant freely, knowingly, and voluntarily pled guilty.

⁵ Plea Tr. pp. 36-39.

⁶ Plea Tr. pp. 39-43.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

[CONCLUSION & SIGNATURE PAGE FOLLOWS]

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 27th day of July, 2026.



CARMEN T. MULLEN,
Presiding Judge
Fourth Judicial Circuit

Beaufort, South Carolina

FILED
2026 AUG -3 P 2:15
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
CHARLINGTON COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON
IN THE COURT OF COMMON PLEAS FOR THE FOURTH JUDICIAL CIRCUIT

MICHAEL L. CHERRY

Applicant,

v.

STATE OF SOUTH CAROLINA,

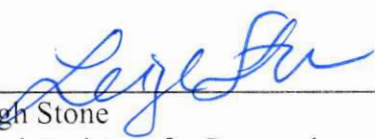
Respondent.

AFFIDAVIT OF SERVICE

The undersigned hereby certifies that a true copy of the filed Order of Dismissal with Prejudice has been served upon the applicant by mailing one copy in the United States mail, postage prepaid, addressed to:

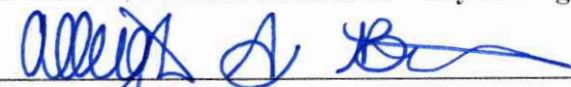
Ms. Kindle K. Johnson
K. Johnson Law Firm, LLC
215 East Bay St, Ste 201K #3208
Charleston, SC 29401

This 11th day of August, 2026.



Leigh Stone
Legal Assistant for Respondent

SWORN to before me this 11th day of August, 2026.



Notary Public for South Carolina.

My Commission Expires: 10/10/2035