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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Cherokee County

Honorable Walton J. McLeod, IV, Circuit Court Judge

TIMMY L. DOUGLAS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2026-001654

APPENDIX

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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA — IN GENERAL SESSIONS
COUNTY OF CHEROKEE — 7th JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,

Plaintiff,

vs. CASE NO. 2022-GS-11-00155

TIMMY LEE DOUGLAS,

Defendant.

HEARING BEFORE: HONORABLE J. MARK HAYES, II

DATE: August 21, 2023

TIME: 2:07 PM

LOCATION: Cherokee County Courthouse
125 E. Floyd Baker Blvd
Gaffney, SC 29340

REPORTED BY: LORA L. McDANIEL,
Registered Professional Reporter

APPEARANCES:

ATTORNEYS FOR THE PLAINTIFF
KIM LESKANIC, SOLICITOR

ATTORNEYS FOR THE DEFENDANT
CHRIS BAIN, ESQ.

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(STATE EXH. 8, Hospital report, was marked for identification.)

(STATE EXH. 9, Criminal history, was marked for identification.)

THE CLERK: Timmy Douglas.

Raise your right hand.

TIMMY LEE DOUGLAS

being first duly sworn, testified as follows:

THE COURT: You are Mr. Timmy Douglas?

MR. DOUGLAS: Yes, sir.

THE COURT: Mr. Douglas, we are making a recording of everything that happens. The lady sitting way down there is a court reporter. I tell you that because I need you to really speak up today so that both she and I can hear you because if we can't hear you, I cannot accept your plea. Likewise, Mr. Douglas, if ever during this process you can't hear me or one of the lawyers, immediately let us know, and we will speak up as well; okay?

MR. DOUGLAS: Yes, sir.

THE COURT: Thank you, sir. Mr. Douglas, please listen to the Solicitor. She is going to announce the case for us.

MR. DOUGLAS: Yes, sir.

MS. LESKANIC: Thank you, Your Honor. May it please The Court. Before you is Timmy Lee Douglas. He is pleading guilty on indictment 2022-GS-11-155. That is a true-billed indictment on Count 1 for attempted murder. He is pleading guilty as indicted without negotiation or recommendation.

He is also pleading guilty on the same indictment under Count 2 for possession of a weapon during the commission of a violent crime. That plea is also being offered without further negotiation or recommendation.

He is represented by Chris Bain. Will let The Court know that the victim in this case, Robert Christopher, is

present. I do not believe he wants to address you. I would like to check back with him at the appropriate time.

THE COURT: Mr. Douglas, it is your intent to enter a plea to the two charges that was just announced by the Solicitor?

MR. DOUGLAS: Yes, sir.

THE COURT: How old are you?

MR. DOUGLAS: Forty-four.

THE COURT: How far did you go in school?

MR. DOUGLAS: I think about the tenth grade.

THE COURT: Did you ever obtain a GED?

MR. DOUGLAS: No, sir.

THE COURT: Presently, are you married, single, divorced, widowed?

MR. DOUGLAS: Single.

THE COURT: Do you have children?

MR. DOUGLAS: Yes, sir.

THE COURT: How many?

MR. DOUGLAS: Five, and a step-daughter.

THE COURT: How old is your oldest child?

MR. DOUGLAS: Twenty-eight.

THE COURT: And your youngest?

MR. DOUGLAS: Four.

THE COURT: And prior to your arrest, did you have a job outside of the home?

MR. DOUGLAS: Prior what, sir?
THE COURT: Did you have a job outside of the home?
MR. DOUGLAS: Yes, sir.
THE COURT: What were you doing?
MR. DOUGLAS: Construction.
THE COURT: Ever served in the military?
MR. DOUGLAS: No, sir.
THE COURT: Within the last 24 hours, have you consumed any type of substance that's adversely affecting your ability to understand what we're doing today?
MR. DOUGLAS: No, sir.
THE COURT: In the past, have you ever been treated for any type of substance abuse issue for drug or alcohol problem?
MR. DOUGLAS: I was treated ATU in '96 or '98.
THE COURT: Was that for a drug problem, alcohol or both?
MR. DOUGLAS: I guess it was for the drug charge I had.
THE COURT: When you finished that program back in '96 or '98, did you think it was successful at the time?
MR. DOUGLAS: No, sir.
THE COURT: Are you satisfied with the work that your lawyer has done for you?
MR. DOUGLAS: Yes, sir.

THE COURT: Has anybody perhaps threatened you in any way or promised you anything in order to get you to make the decision to enter these pleas today?

MR. DOUGLAS: No, sir.

THE COURT: Your decision to enter these pleas today is a free and voluntary decision on your part?

MR. DOUGLAS: Yes, sir.

THE COURT: Mr. Douglas, I need for you to understand, under the law, you are presumed innocent of both of these charges. You do have a right to a jury trial on either or both of these charges.

At any jury trial that would take place, it would be the State has the burden of proof. They would have to convince all 12 members of a jury that you're, in fact, guilty beyond a reasonable doubt of these charges. Do you understand you have a right to that jury trial?

MR. DOUGLAS: Yes, sir.

THE COURT: Do you wish to have a jury trial on either of these charges?

MR. DOUGLAS: No, sir.

THE COURT: Sir, I need you to understand that there are other very important Constitutional rights that you are entitled to but that you have to give up in order to enter these pleas. You have to give up your right to confront and cross-examine the State's witnesses. You also have to give up

your right to present evidence, which you or your lawyer might feel establish a defense. You have to give up your right of subpoena, right to remain silent. Sir, do you understand all those rights?

MR. DOUGLAS: Yes, sir.

THE COURT: Do you wish to give up all those rights and go forward with both of these pleas?

MR. DOUGLAS: Yes, sir.

THE COURT: Thank you, Mr. Douglas, for answering those questions.

Mr. Douglas, please listen to the Solicitor again. She is going to provide us with the facts behind these cases.

MR. DOUGLAS: Okay, thanks.

THE COURT: Thank you.

MS. LESKANIC: Thank you, Your Honor. May it please The Court. This incident occurred on August 18, 2021 at 780 Shady Grove Road. That is located here in Cherokee County. That is the home of Betty Jo Moss. Ms. Moss has a child, at least one, with the Defendant, Mr. Douglas.

They had been living together at this residence. And based on what the Defendant told police, he had been gone from the residence, and they had been broken up for about two-and-a-half to three months prior to this incident.

Ms. Moss had begun a relationship with Robert Christopher, the victim in this case. She called him Chris, by

his last name, because she works at Bar City Square, and he would order food from there and they would use part of his last name. She was one of the few people that called him Chris, which becomes important in just a moment.

On this particular evening, it was about 9:45 at night. It was dark outside. The Defendant is at the home of Betty Jo Moss. No one is aware of that. He has come to that home on foot without a vehicle in the driveway.

And Mr. Christopher pulls into the driveway to visit his girlfriend. The victim pulls in to visit his girlfriend at 780 Shady Grove Road. When he does, he gets out of his white Durango. Betty Jo's van is parked in front of him. He is going to walk into the house like he has done before to visit with his girlfriend.

The Defendant is there, armed with a nine millimeter handgun. He comes out of the darkness and essentially ambushes Mr. Christopher. He says: Hey, Chris, remember me.

And he calls him Chris, which is what no one else does. He has learned his name from Betty Jo and from his daughter and the other kids in the house that's what they call him.

He says: Chris, you remember me. And he fires off three rounds from the nine millimeter handgun at close range. Mr. Christopher has no opportunity to defend himself.

He pops out, immediately says, you remember me, and starts shooting him.

There are three rounds that are found from a nine millimeter handgun. After shooting the victim, the Defendant runs off. Chris is able to make his way to the door of the residence, and he is screaming outside the door for someone to open up and to help.

Ms. Moss' daughter is inside the home. She hears three gunshots before she hears Chris at the door. And she calls 911 to report that there had been shots fired outside of her home. And then she hears the victim outside screaming for help.

She's afraid to open the door because she doesn't know what has happened, whether a gunman is still out there. Judge, there are multiple children inside this home when this shooting took place.

She gets her mom, Betty Jo. She had been in the shower. Betty Jo goes to the door. They are able to get Mr. Christopher inside to the couch. EMS and police are called.

The victim immediately reported that it was the Defendant who had shot him. They had one prior encounter where they did not see each other but they had words.

Mr. Christopher was actually at Betty Jo's house. The Defendant came over when he was in the bathroom, had words

with him between the bathroom door. Mr. Christopher told them he recognized his voice. He also got a good look at him because he has LED lights on his white Dodge Durango. He was able to see the shooter.

I don't believe Mr. Douglas believed that he was going to be alive to be able to identify him. Thankfully he was.

He immediately told Betty Jo, police, EMS, everyone who had shot him. He was taken to the hospital by helicopter.

Police did respond to the scene. They called out, first of all, the bloodhounds. And the bloodhounds were able to track around the back of the house in the same direction in which Mr. Christopher stated that the Defendant fled after shooting him.

I would like, so that you can look at what we have, Your Honor, State's Exhibit 1, several photos from the scene. This is going to show the victim's home or Betty Jo's home, his white Durango. Then you will see markers where there were shell casings that were located as well as items of clothing that the victim dropped.

State's Exhibit 2 is a two-page crime scene diagram labeled what was found on scene.

States's Exhibit 3 is the bloodhound report showing where the bloodhound tracked behind the house in the same location that Mr. Christopher had stated that the Defendant ran

after shooting.

As I stated, officers were also able to locate the three rounds from a nine millimeter handgun. Those were collected. They were sent to SLED, and it was determined that all of the cartridge casings that were located were all fired from the same weapon. That is State's Exhibit 4.

Police then go to the hospital to interview the victim. When they first went to the hospital, he had been heavily sedated. I will tell The Court he wasn't able to initially pick the Defendant out of a line-up. He didn't have his glasses. His glasses had been lost when he was shot. He does wear glasses. And so he did not make any selection that day; heavily sedated and not able to see.

Detective Ward went back and interviewed him a second time. He did have his glasses at that point. He was able to immediately at that time pick the Defendant out of a six-person lineup, and I have that marked as State's Exhibit 5.

The Defendant, since his name was immediately given, Detective Ward with Gaffney -- with the Cherokee County Sheriff's Department was able to make contact with him. He came in for an interview. It was a little after midnight. Detective Ward did a gunshot residue kit on the Defendant. That was after he told Detective Ward that he had not handled or fired a gun.

As you will see from State's Exhibit 6, there were

particles of gunshot primer residue found on his hand. He also told Detective Ward during that interview that he had lost his phone and that he was on Fourth Street at the time of the shooting. He gave an alibi as to where he was.

Detective Ward looked into that. They did a search warrant for the Defendant's phone. They were able to get the number that he had been using to contact family. After getting those records, the records were shared with Special Agent Matthew Wild of the FBI, who performed a cellular analysis with cell towers on the location of the phone.

That analysis is State's Exhibit 7 and with that, Your Honor, it will show where the Defendant starts moving towards the incident location. He was on Fourth Street and then he starts moving towards Shady Grove Road.

It also shows that his phone is using one of the towers closest in location to the shooting on Shady Grove Road. It places him essentially at the scene of this shooting.

And then from 9:43 p.m. until 10:19 p.m. all calls to his phone are incoming and immediately routed to voicemail. He's not answering his phone. That's at the time of the shooting and the running away.

The victim in this case was transported to the hospital via helicopter. He arrived as a level one trauma. And I believe I may have already handed you the next exhibit on the back of that page, a hospital record. That, Your Honor,

will show the injuries that Mr. Christopher sustained. They were severe. He was immediately taken in for exploratory surgery.

They had to open his abdomen to examine for life-threatening injuries. He had a liver laceration. There's several things you can read on that exhibit. Mr. Christopher was in the hospital from August 18th until August 27th, ten days in the hospital. He had two entrance wounds; one in his abdomen that then exited his abdomen. He had another entrance wound in his thigh that then also exited. He had four wounds. He was shot twice.

And the Defendant did everything he could to kill him, Your Honor. Thankfully EMS arrived. The helicopter took him to the hospital, and a skilled surgeon was able to operate on him. Otherwise he would not be with us today.

Those would essentially be the facts that we would present before a jury.

THE COURT: Sir, do you believe, as the Solicitor presented the facts to me, that she is substantially correct with those facts?

MR. DOUGLAS: Oh, okay. Yes. Yes, sir.

THE COURT: Sir, do you understand that, on the attempted murder charge, I can sentence you between zero to 30 years on this charge and that I cannot suspend any sentence and I cannot give probation?

MR. DOUGLAS: Yes, sir.

THE COURT: You also understand that the attempted murder charge that you're pleading to today, it is classified as both a violent and also as a most serious offense under the law?

MR. DOUGLAS: Yes, sir.

THE COURT: You have been able to talk to your lawyer as to the consequences and ramifications of that offense being classified as both violent and most serious on that charge?

MR. DOUGLAS: Yes, sir.

THE COURT: With that understanding of classification and violent and most serious potential, you still wish to enter that plea to the attempted murder?

MR. DOUGLAS: Yes, sir.

THE COURT: Do you understand on the possession of a firearm during the commission of a violent crime, that I'm required to sentence you to five years on that charge?

MR. DOUGLAS: Say that again, sir.

THE COURT: Do you understand on the possession of firearm during the commission of a violent crime, I'm required to issue a sentence of five years?

MR. DOUGLAS: Yes, sir.

THE COURT: With that understanding, you still wish to enter that plea as well?

MR. DOUGLAS: Yes, sir.

THE COURT: Are you, in fact, guilty of the attempted murder charge?

MR. DOUGLAS: Yes, sir.

THE COURT: Are you also guilty of the possession of firearm during the commission of a violent crime charge?

MR. DOUGLAS: Yes, sir.

THE COURT: Have all of your answers to my questions today so far been truthful and honest?

MR. DOUGLAS: Yes, sir.

THE COURT: Discovery shared with the defense?

MS. LESKANIC: Yes, Your Honor.

THE COURT: Any prior record?

MS. LESKANIC: Yes, sir. I have a typed up copy for Mr. Bain and will post it on the record. I have a copy for The Court.

1996, trafficking in crack cocaine, between ten and 28 grams. Unlawful carrying of a handgun. Possession of marijuana. Speeding, and driving under suspension.

1998, failure to stop for blue lights. Possession of crack cocaine. Assault and battery.

2000, criminal domestic violence. Driving under suspension. Possession with intent to distribute cocaine. Probation violation.

2004, resisting arrest, possession with intent to

distribute cocaine.

2017, false information to police.

THE COURT: Will you check with the victim to see if, in fact, he wishes to address The Court?

Sir, just need to let you know, the lady right here in front of you, she's a court reporter. She's taking down everything that's said. When you speak, speak up loud enough so that both she and I can hear you. If you would, start by giving us your full name.

MR. CHRISTOPHER: Robert Christopher.

THE COURT: Yes, sir, Mr. Christopher. Be more than happy to hear from you anything you want me to know.

MR. CHRISTOPHER: I don't understand. Like I honestly want to ask him why did he do it. I don't understand why he did it. He didn't have to do it. Like I said, like I'm saying, I got eight kids. My kids worried about me when I got shot. And I'm the only thing that they got.

If he was a man, I wouldn't did that over no woman, you know what I'm saying. It all boils down to over a woman. I just, you know, I think that, you know, by his, you know -- I done broke the law myself. I learned from it before it got to a serious -- to this point right here to what he did.

And, you know, I think that, you know, he should be accountable for what he done. If I would've done it, I wouldn't went through all this to hide from the law and say I

didn't do it. Just stuff like that 'cause I stood up and I did what I did. So I had to suffer the consequences of what I did, of my actions. And, you know, I think he should get what he deserves to get, you know what I'm saying.

Whatever The Court give him, that's what he needs to get. I think that he should learn that he just can't go around doing things like that 'cause he a grown man. It bothers me, you know, because it did in the beginning. I rode around, heard, you know, people come towards me, like his family say, you do this, I pay you this or you come to court, something will happen to your family.

Like and, you know, I wasn't worried about it, but you know. It just like he didn't want to stand up for what he done, still try to attack me for no reason. And I ain't did nothing. That's all I want to say.

THE COURT: Thank you, Mr. Christopher.

Anything else from the State?

MS. LESKANIC: Not at this time, Your Honor.

THE COURT: I do have -- your exhibit 5 was the medical records.

MS. LESKANIC: Thank you.

THE COURT: Yes, sir, Mr. Bain.

MR. BAIN: Thank you, Your Honor. May it please The Court. Your Honor, these are difficult cases for The Court. Mr. Douglas is an ideal client during my entire

representation. He's met with me several times. Stayed in communication. He's able to assist me in his defense, going through the evidence. In fact, when me and him kind of went through it again on Friday, he said: Hey, there's that video, I want to see it.

I actually took it over there today and watched together, just to make sure that he had all the information and all the evidence against him.

Your Honor, you've already heard a little bit of background. He has six kids, four teenagers to adults. He's a single man. He has strong community ties. He has a bunch of friends and family, supporting him on the front row. I'll ask them to stand briefly. Your Honor, he has a lot of support, had a lot of support throughout this case.

Y'all can have a seat. Thank you.

Your Honor, Mr. Douglas knows he's going to prison today. The victim is right. The night of the crime, he did not accept responsibility. I've watched that interview. Mr. Douglas was under the influence of alcohol that evening, which I think also caused him to commit this act. That's out of character for him.

Your Honor, you heard his record. Outside of the false information in 2017, for about 19 years he had stayed out of trouble.

Your Honor, he is here today accepting

responsibility. At the appropriate time he is going to issue an apology to the victim through The Court, Your Honor. That's something he's been wanting to do for a while. In fact, Mr. Douglas and I have been discussing a plea since my early representation once he got out on house arrest.

Your Honor, what really caused it to get this far without him entering a plea, I was waiting on the FBI cell phone records to be complete and to speak with the FBI agent because I didn't feel like Mr. Douglas could adequately enter a plea without that information. That and GSR was strong evidence for the State.

There's other things in this case that create triable issues. I think Ms. Leskanic would agree that we had this scheduled in front of Judge Kelly. Both of us agreed not to call it for trial. This would be a very complex case that involved the FBI, possibly involved different phone carriers. It would involve people from SLED.

Your Honor, there was a gun recovered that could've been tied to this crime that was found on a totally different person, who's currently incarcerated in April. And all these witnesses would've had to come and be a several week trial.

At that time we agreed for Mr. Douglas to either accept or reject the 20-year offer that the State offered. At that time he rejected it. He's here today pleading straight up, understanding that he has to receive five, and he could

receive up to 30.

On behalf of my client we had a lot of discussions. He's asking me to ask for a ten-year sentence on this, Your Honor. We certainly want something under 20. Like I said, he is here accepting responsibility. He's here not having to hold the State to their burden, Your Honor.

I just think about ten years. I took myself back to 2014 to put this in perspective. I've gotten married, I've gone through medical stuff. Just recently had a child. A lot has happened in ten years. I've lost loved ones, I've been to weddings.

All of that stuff Mr. Douglas is going to walk out of here today and miss. That's if you sentence him to what we're asking, ten years. Certainly, if Your Honor goes above that ten years, that increases all he's going to miss.

He's been very emotional in my office. He's cried about this. He knows today, walking out of this courtroom, he's going to get a substantial amount of time.

Your Honor, I will let you know that, from August 23, 2021 when this crime was committed, to August 21, 2023, today, that's a total of 728 days he's actively incarcerated on house arrest. We would ask for credit for that entire time, Your Honor. His actual time in the detention center was 165 days.

Your Honor, he's just here asking for The Court's

mercy. He's asking that you take into consideration that he accepts responsibility for this crime. I know it took a while, almost two years. I know the victim waiting on this apology he's going to issue.

We ask you go on the lower end he's facing. Give him all the credit he's entitled to, Your Honor. I also have one person, Shantay Belk wants to speak on his behalf. I believe only friend or family to address The Court at the appropriate time.

THE COURT: Mr. Douglas, do you agree with the statements made by your lawyer?

MR. DOUGLAS: Yes, sir.

THE COURT: You do have someone you wish to address The Court?

MR. BAIN: Yes, Your Honor. Ms. Belk.

THE COURT: Ma'am, just come up here, stand beside Mr. Bain. Just to let you know we are making a recording of everything that happens. Please speak up loud enough so that both the court reporter, the lady down there, and I both can hear you. Just start by giving us your full name, if you would.

MS. BELK: Shantay Belk.

THE COURT: Yes, ma'am. More than happy to hear from you, Ms. Belk.

MS. BELK: I've been friends with Timmy and his

family for over 30 years. And he did have a growth patch growing up. He has been an outstanding citizen for a long time now. I think alcohol really got involved. It made him commit this crime. I don't think he would've did it if he wasn't drunk. I just feel like he needs a second chance, be at home with his family and his kids.

THE COURT: Thank you, ma'am.

Mr. Douglas, is there anything else that you would like to say or want me to know or consider?

MR. DOUGLAS: Yes, I would like to say something, sir.

THE COURT: Yes, sir. More than happy to hear from you.

THE DEFENDANT: If it please The Court, I think that first thing, the most important thing I should say I'm very remorseful and want to apologize for an accident that happened that it placed me in front of you today. I wrote this in my bed just, you know.

It is with a clear mind that I stand here and admit to you that, in my heart, I know that what I did was wrong. It also from same clear mind and also heavy heart that I pray you hear my reason and have mercy on me.

When all this took place, my thoughts, Your Honor, was my family. And I have two daughters in that home. And it is my children's safety that I was concerned with. Matter of

fact, protecting the daughter. Looking back, I do realize that it was a matter to be taken to a law enforcement official, Your Honor. I feel that I was wrong.

I have not been in any trouble in over 15 years. I have also seen more serious charges get less than 20 years offered to me. I'm here to accept responsibility for my action, ask Your Honor give me a sentence you believe is appropriate. I admit I have to receive punishment for my crime. I only ask that the victim have forgiveness in his heart. And I know myself, Your Honor, I am a father who loves his children. Thank you, Your Honor, and The Court.

THE COURT: Thank you, sir.

(A pause transpired).

THE COURT: I find that there is a substantial factual basis for the plea. On the attempted murder case, that will be a 20-year sentence at the state department of corrections; run concurrent with the other charge; credit for 728 days. That will run concurrent with a five-year sentence on the possession of a firearm during the commission of a violent crime, receive credit for 728 days.

I have also executed a restitution order as indicated by the executed restitution order. If you have any questions about anything that we've done today, please speak with your lawyer. He'll be able to answer those. I wish you the best of luck.

MR. BAIN: Thank you, Your Honor.

MS. LESKANIC: Thank you, Your Honor.

(STATE EXH. 1, Photographs (8), was entered into evidence.)

(STATE EXH. 2, Diagram, was entered into evidence.)

(STATE EXH. 3, Bloodhound search report, was entered into evidence.)

(STATE EXH. 4, Forensic lab report, was entered into evidence.)

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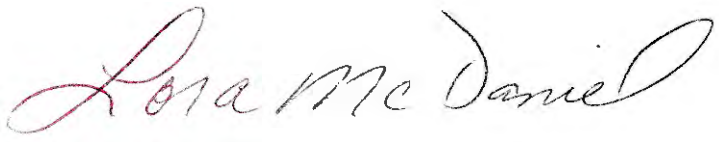
(The hearing was concluded at 2:36 p.m.)

CERTIFICATE OF REPORTER

I, Lora McDaniel, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to, nor counsel for, any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 23rd day of July, 2025 at Spartanburg, Spartanburg County, South Carolina.



Lora L. McDaniel,
Registered Professional Reporter
My Commission expires:
August 9, 2026

WITNESSES

Cherokee County Sheriff's Office

Brandon Dunn

ARREST WARRANT NUMBER

2021A1110100934 – Count 1

2021A1110100935 – Count 2

ACTION OF GRAND JURY

Cathy Herrin

Foreperson of Grand Jury

Date: 2-14-2022

VERDICT

TRUE BILL

TRUE BILL

Foreperson of Petit Jury

Date:

DOCKET NO. 22-GS-11- 00155

The State of South Carolina

County of Cherokee

Barry Barnette, *Solicitor*

COURT OF GENERAL SESSIONS

February 14, 2022 TERM

THE STATE

vs.

TIMMY LEE DOUGLAS

Indictment for

ATTEMPTED MURDER-COUNT ONE AND POSSESSION OF A WEAPON DURING COMMISSION OF A VIOLENT CRIME-COUNT TWO

SC Code: 16-3-0029, 16-23-490
CDR Code: 3410, 0549
Class FEL-A, FEL/F

FILED IN OFFICE OF CLERK OF COURT CHEROKEE COUNTY, S.C

2022 FEB 14 AM 10: 54

BRANDY W. MCBEE

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

INDICTMENT

At a Court of General Sessions, convened on February 14, 2022, the Grand Jurors of Cherokee County present upon their oath:

ATTEMPTED MURDER-COUNT ONE

That Timmy Lee Douglas did in Cherokee County on or about August 18, 2021, with malice aforethought either expressed or implied, attempt to kill Robert D. Christopher, by shooting the victim, with the intent to kill the victim, in violation of §16-03-029, *OF THE CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

POSSESSION OF A WEAPON DURING COMMISSION OF A VIOLENT CRIME-COUNT TWO

That Timmy Lee Douglas did in Cherokee County on or about August 18, 2021, possess a firearm during the commission of a violent crime as defined in Code §16-1-60, to wit: Attempted Murder, in violation of Code §16-23-490, *CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

DEPUTY SOLICITOR

The South Carolina Court of Appeals

The State, Respondent,

v.

Timmy Lee Douglas, Appellant.

Appellate Case No. 2023-001393

ORDER

Appellant has failed to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules (SCACR). Accordingly, this matter is dismissed, and the remittitur will be sent as required by Rule 221(b), SCACR.

Jan B. Bromell Holmes

FOR THE COURT

Columbia, South Carolina

cc:
Alan McCrory Wilson, Esquire
Mark Reynolds Farthing, Esquire
Kimberly Lewis Leskanic, Esquire
Christopher Michael Bain, Esquire
Robert Michael Dudek, Esquire

FILED
Oct 11 2023

FORM 5 24CP-110205

STATE OF SOUTH CAROLINA)
)
County of CHEROKEE)
)
Timmy Lee Douglas, #303818)
Full name and prison number (if any) of Applicant)
)
v.)
)
)
State of South Carolina)
)
_____)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS – READ CAREFULLY

In order for this application to receive consideration by the Court, is shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Turbeville Correctional Institution, 1578 Clarence Coker Highway, Turbeville, South Carolina 29162
2. Name and location of Court which imposed Cherokee County Court of General Sessions; Cherokee, South Carolina
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
   (a) 2022-GS-11-00155; Attempted Murder

(b) 2022-GS-11-00155; Possession of a Weapon during the Commission of a Violent Crime

~~(c)~~

5. The date upon which sentence was imposed and the terms of the sentence:

(a) August 21, 2023; Twenty (20) years

(b) August 21, 2023; Five (5) years

~~(c)~~

6. Check whether a finding of guilty was made:

(a) after a plea of guilty √

(b) after a plea of not guilty

(c) after a plea of nolo contendere

7. Did you appeal from the judgment of conviction or the imposition of sentence?

The Applicant did not appeal from judgment of conviction.

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. NOT APPLICABLE

~~ii.~~

~~iii.~~

(b) the result in each such Court to which you appealed:

i. NOT APPLICABLE

~~ii.~~

~~iii.~~

(c) the date of each such result:

i. NOT APPLICABLE

~~ii.~~

~~iii.~~

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. NOT APPLICABLE

~~ii.~~

~~iii.~~

24CP-110205

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) Applicant was unaware that he could have appealed his conviction or sentence.

~~(b)~~

~~(c)~~

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Denial of Effective Assistance of Plea Counsel

~~(b)~~

~~(c)~~

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) 1. Counsel failed to conduct an investigation into the facts of the case

2. Counsel failed to inform me of critical information regarding facts that should have been brought to my attention

~~(b)~~

~~(c)~~

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? No

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. NOT APPLICABLE

~~ii.~~

~~iii.~~

~~iv.~~

(b) the name and location of the Court in which each was filed:

i. NOT APPLICABLE

ii.

iii.

iv.

(c) the disposition thereof:

i. NOT APPLICABLE

ii.

iii.

iv.

(d) the date of each such disposition:

i. NOT APPLICABLE

ii.

iii.

iv.

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. NOT APPLICABLE

ii.

iii.

iv.

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No, they have not.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. NOT APPLICABLE

ii.

iii.

(b) the proceedings in which each ground was raised:

i. NOT APPLICABLE

ii. ~~———————————————————————————————~~

iii. ~~———————————————————————————————~~

16. If any ground set forth in (10) has not been previously presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) (10)(a); First Collateral Attack.

(b) ~~———————————————————————————————~~

(c) ~~———————————————————————————————~~

17. Were you represented by an attorney at the time during the course of:

(a) your arraignment and plea? Yes, I was

(b) your trial, if any? NOT APPLICABLE

(c) your sentencing? Yes, I was

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NOT APPLICABLE

(e) preparation, presentation or consideration ofr any petitions, motions or applications with respect to this conviction, which you filed? NOT APPLICABLE

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and addresses of each attorney who represented you:

i. Christopher M. Bain, 221 E. Floyd Baker Blvd., Gaffney, South Carolina 29340

ii. ~~———————————————————————————————~~

~~———————————————————————————————~~

iii. ~~———————————————————————————————~~

~~———————————————————————————————~~

(b) the proceedings at which each such attorney represented you:

i. Plea and Sentencing

ii. ~~———————————————————————————————~~

~~———————————————————————————————~~

iii. ~~———————————————————————————————~~

~~———————————————————————————————~~

24CP-11-02205

APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, Timmy Lee Douglas, #303818, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Timmy Douglas

SWORN TO and **SUBSCRIBED TO** before
Me this 12 day of March, 20__.

Brudget Jolleen-Depent
Notary Public for South Carolina

My Commission Expires: March 15, 2031

2-CP-11[illegible]205

19. State clearly the relief you seek in filing this application:

Applicant seeks relief from his conviction and sentence

20. Are you now under sentence from any other court that you have not challenged?

Applicant is not under sentence from any other court.

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of CHEROKEE)

I, Timmy Lee Douglas, #303818, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Timmy Douglas

SWORN TO and **SUBSCRIBED TO** before
Me this 12 day of March, 2024.

Bridget Tollison-Durant
Notary Public for South Carolina

My Commission Expires: March 15, 2031

STATE OF SOUTH CAROLINA COUNTY OF CHEROKEE	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
Timmy L. Douglas, SCDC #303818, Applicant, v. State of South Carolina, Respondent.	)	CASE NO. 2024-CP-11-00205 **RETURN AND PARTIAL MOTION TO DISMISS** (Counsel Appointed)

In response to the application for post-conviction relief (PCR) filed by Timmy L. Douglas (Applicant) on March 19, 2024[1], Respondent, the State of South Carolina, makes the following Return[2] and Partial Motion to Dismiss:

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections (SCDC) serving a twenty-year sentence. During its February 2022 term, the Cherokee Grand Jury indicted

[1] Applicant's PCR Application was filed on March 19, 2024, with the Cherokee County Clerk of Court and was received by Respondent on February 24, 2025.

[2] Respondent's return was due to be filed within 60 days of service. See Rule 12(a), SCRCP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial."). Now, having completed the return and in light of no demonstrable prejudice to Applicant, Respondent respectfully asks this Court to accept this return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing the Court may fix the time in which the State must respond); Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the time limit prescribed by the statute is not mandatory but discretionary with the circuit court, and the circuit court may extend the time for filing).

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Applicant for Attempted Murder (2022-GS-11-00155 – Count I) and Possession of a Firearm During a Violent Crime (2022-GS-11-00155 – Count II).

On August 21, 2023, Applicant appeared before the Honorable J. Mark Hayes, II and pled guilty as indicted to Attempted Murder and Possession of a Firearm During a Violent Crime. Applicant was represented by Christopher M. Bain, Esquire (Plea Counsel). Deputy Solicitor of the Seventh Circuit Solicitor's Office Kimberly L. Leskanic represented the State. Judge Hayes sentenced Applicant to a sentence of twenty years for Attempted Murder and five years for Possession of a Firearm During the Commission of a Violent Crime to run concurrently. Applicant was given credit for 728 days' time served.

A timely notice of appeal was filed on Applicant's behalf by Plea Counsel on August 30, 2023. On October 11, 2023, the Court of Appeals dismissed Applicant's direct appeal for Applicant's failure to provide a sufficient explanation as required by SCACR 203(d)(1)(B)(iv). The remittitur was issued November 6, 2023.

In his PCR application, Applicant alleges he is being held in custody unlawfully for the following reasons:

CURRENT APPLICATION

I. Ineffective Assistance of Plea Counsel
   a. "Counsel failed to conduct an investigation into the facts of the case."
   b. "Counsel failed to inform me of critical information regarding facts that should have been brought to my attention."

II. White[3] Claim
   a. Counsel failed to advise of right to an appeal.[4]

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[3] White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

[4] The response to answer number nine on Applicant's PCR application stated, "Applicant was unaware that he could have appealed his conviction or sentence." Respondent construes this as an allegation that Plea Counsel failed to advise Applicant of his right to a direct appeal.

As relief, Applicant states, "Applicant seeks relief from his conviction and sentence."

Attached to this Return and incorporated by reference are the Cherokee County Clerk of Court records of the subject conviction, Applicant's records from the South Carolina Department of Corrections, the guilty plea hearing transcript, and the records of this PCR action. Respondent reserves the right to amend this Return upon receipt of additional relevant materials.

PARTIAL MOTION TO DISMISS ALLEGATION II(A) – WHITE CLAIM

Respondent requests that Applicant's claims regarding ineffective assistance of counsel for failing to advise of the right to a direct appeal be dismissed for failure to state a cognizable claim under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

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 [was] 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.

Here, Applicant alleges that his Plea Counsel was ineffective for failing to inform him of his right to a direct appeal. However, the record shows that Applicant did pursue a direct appeal of his conviction and sentence through Plea Counsel, and the notice of appeal was timely filed with the South Carolina Court of Appeals on August 30, 2023, after Applicant's conviction on

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August 23, 2023. Following Applicant's failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules, the Court of Appeals dismissed Applicant's direct appeal on October 11, 2023. The record clearly shows that Plea Counsel properly filed a direct appeal on Applicant's behalf, and the Court of Appeals properly dismissed the appeal after determining there were no meritorious issues from which Applicant could recover. Therefore, this claim should be dismissed as there is no possible relief available for Applicant.

For these reasons and pursuant to Rule 12(b)(6), SCRCP, the Court should dismiss this claim of ineffective assistance of counsel for failing to state a cognizable claim for which relief can be granted under the Post-Conviction Relief Act.

RESPONSE TO CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL

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, 685 (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. 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).

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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. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); Rule

71.1(e), SCRCP. 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. 466 U.S. at 687. First, the applicant must show that counsel's performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong – constitutional deficiency – is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117 – 118, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, "does not guarantee perfect representation [--] only a reasonably competent attorney." Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is "no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities." Harrington, 562 U.S. at 110.

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Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential [,as] it is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved

unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 8 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.") Unlike a later reviewing court, the attorney observed the relevant proceedings; knew the materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690).

Thus, a fair assessment of attorney performance requires every effort to be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Id. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Reviewing courts "must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Strickland, 466 U.S. at 690. An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment." Id. The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." Id.

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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 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver or forfeiture and raise issues not presented at trial). Even under de novo review, the standard for judging counsel's representation is a most deferential one. Harrington, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of the materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms", **not** whether it deviated from the best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. Thus, it is not enough "to show the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to deprive the defendant of a fair trial." Id. at 687 (emphasis added).

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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. cf. Padilla, 559 U.S. at 373 (recognizing that 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 to 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. at 52.

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, the 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

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still advised him or her 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 368-369 (1967) (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 58 ("[R]equiring a 'prejudice' showing 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 PCR hearing. Harres, 282 S.C. at 134, 318 S.E.2d at 361.

The performance and prejudice standards, however, "do not establish mechanical rules[;] ... [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." Id. at 696. Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Strickland, 466 U.S. at 697. The court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies." Id. If it is easier to dispose of an ineffectiveness claim on the grounds of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

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In the present case, Applicant has asserted that Plea Counsel provided ineffective assistance of counsel for failing to investigate Applicant's case and failing to adequately advise him. Because the allegations likely raise questions of fact not conclusively refuted by the record, the State requests an evidentiary hearing to fully resolve the issues. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983) ("Where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.").

RESPONSE TO ALLEGATION OF FAILURE TO INVESTIGATE

Applicant alleges that Plea Counsel was constitutionally ineffective by failing to conduct an adequate investigation into the facts of Applicant's case.

"[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 690-91. "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary". Id. at 691. "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Id.

"The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Id. "Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant." Id. "In particular, what investigation decisions are reasonable depends critically on such information." Id.

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"In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered 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)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498 S.E.2d 538, 540 (1995)).

Accordingly, Respondent submits Applicant cannot satisfy the requirements of Strickland or Hill. However, the record likely does not refute or disprove Applicant's allegations regarding Applicant's various claims of ineffective assistance of counsel. Therefore, the State requests an evidentiary hearing to fully resolve the issues. See Sharper, 279 S.C. at 265, 305 S.E.2d at 248 (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

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ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY

Respondent requests Applicant specify any claims he intends to raise in advance of the hearing. Respondent reserves the right to request a continuance based upon any amendments withheld until the last minute. Respondent further requests all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent before the hearing. Likewise,

Respondent requests all potential evidence and a witness list be sent to Respondent before the hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that result in undue prejudice to the State.

[CONCLUSION AND SIGNATURE PAGE FOLLOWS]

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CONCLUSION

WHEREFORE, Respondent requests that Applicant's White claim be dismissed, and requests an evidentiary hearing on Applicant's claims of ineffective assistance of counsel.

Respectfully Submitted,

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Attorney General

DONALD J. ZELENKA
Deputy Attorney General

D. RUSSELL BARLOW, II
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January 26, 2026

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2026 JAN 30 PM 3:41
BRANDY W. MCBEE

STATE OF SOUTH CAROLINA **TRANSCRIPT OF RECORD**

COUNTY OF CHEROKEE CASE NO.:2024-CP-11-00205

***** TRANSCRIPTION OF DIGITAL COURTROOM *****

March 2, 2026

BEFORE: The Honorable Walton J. McLeod, IV

TIMMY LEE DOUGLAS,

Plaintiff,

vs.

STATE OF SOUTH CAROLINA,

Defendant.

APPEARANCES:

Rodney Wade Richey, Esq.
Appearing for the Plaintiff.

McConnell Harrison, Esq.
Appearing for the Defendant/State.

Recorded by: Digital Courtroom

Transcriber: Natalie Dahl, RPR
SC Official Court Reporter

NOTE: ***Pursuant to Rule 607 (H)(1)(B), SCACR "A Court REPORTER SHALL RECEIVE THE FEE OF $1.00 PER PAGE FOR FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT." All requests for a copy of the enclosed transcript shall be sent to: ndahl@sccourts.org***

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EXHIBITS

(NONE)

Transcript Legend

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
Phonetic (ph)	Indicates a phonetic word
(Inaudible)	Indicates word(s) are not discernable due to audio recording quality
(sic)	Word(s) said but may be incorrect

P R O C E E D I N G S

THE COURT: All right. Who are we going to start with this morning?

MS. HARRISON: Timmy Douglas, Your Honor.

THE COURT: Very well. Okay. Ready for you to call the case whenever you are ready.

MS. HARRISON: May it please the Court?

THE COURT: Yes, ma'am.

MS. HARRISON: McConnell Harrison on behalf of the State of South Carolina. This is the PCR matter of Timmy Douglas versus the State, Case No. 2024-CP-42-00205 out of Cherokee County. During its February 2022 term, the Cherokee County Grand Jury indicted Applicant for attempted murder and possession of a firearm during a violent crime. That's Case No. 2022-GS-11-0015, Counts One and Two.

On August 21, 2023, Applicant appeared before the Honorable J. Mark Hayes the Second, and pled guilty as indicted to attempted murder and possession of a firearm during a violent crime. Applicant was represented by Christopher M. Bain, and Kimberly Leskanic prosecuted the case.

Judge Hayes sentenced Applicant to 20 years for attempted murder, and five years for possession

of a firearm, to run concurrently. Applicant was given credit for 728 days time served.

The timely notice of appeal was filed on Applicant's behalf by Mr. Bain on August 30, 2023. On October 11, 2023, the Court of Appeals dismissed Applicant's appeal, and the remittitur was issued November 6, 2023.

In his PCR application, Applicant alleges he is being held in custody unlawfully on the following grounds: Ineffective assistance of counsel for failing to conduct an investigation into the facts of the case, failing to inform me of critical information regarding the facts, and a White claim.

Respondent filed its return and partial motion to dismiss requesting that the allegation regarding the White claim, failing to inform of the right to direct appeal, be dismissed because Applicant did, in fact, pursue a direct appeal that was ultimately dismissed.

Applicant then amended his PCR application to include additional claims of ineffective assistance of counsel for failing to explain the plea deal with a cap of 20 years versus zero to 30, and failing to inform of a person with a gun in the

jail.

As relief, Applicant requests relief from his conviction and sentence, and at this time I would ask Mr. Richey to indicate for the record which allegations he intends to move forward with.

MR. RICHEY: Thank you, Your Honor. We'll go forward with the issues that the Attorney General raised. We're ready to proceed.

THE COURT: Anything you wish to say before we call your first witness?

MR. RICHEY: No, sir. We're ready to go forward.

THE COURT: All right. You may call your first witness.

MR. RICHEY: We call Mr. Bain.

(CHRISTOPHER BAIN, having been duly sworn, testified as follows:)

DIRECT EXAMINATION

BY MR. RICHEY:

Q Can you state your name, please?

A Christopher Michael Bain.

Q Mr. Bain, do you remember representing Timmy Douglas?

A Yes.

Q And did you represent him in Cherokee County?

A That's correct.

Q And did you represent him on the charges that the Attorney General outlined to the Court?

A I did.

Q And in your practice, do you -- how much criminal defense practice have you done?

A So I believe around 2014 I started with the Solicitor's Office in Spartanburg County. I was there for about a year. Then I was moved to Gaffney, where I prosecuted there approximately -- I think four to five years. In Gaffney, we divide up cases by alphabet, so not by particular crimes; therefore, I prosecuted criminal sexual conduct, attempted murders, murders, during my time in Gaffney.

I will say when I represented Mr. Douglas, he was one of my first clients when I went into private practice. At the time it was (inaudible) and Roden. We have since changed our name to Parker and Bain. So I think I started representing him in 2022, 2023, around there. He would have been one of my first cases as a defense attorney; however, I had several years of experience in criminal practice. And currently I've practiced law for approximately 12 years, and during that

time I have practiced in criminal law the entire time.

Q And in your representation of him, were the facts -- I'll just try to summarize them. This is a case where an individual shot another individual, but the individual who shot him, that was the boyfriend of his ex-girlfriend, correct?

A That's correct, from my recollection.

Q And that the person that shot him was at the house prior to the boyfriend and all of them getting there; is that a correct statement?

A That's correct. I believe that the alleged victim had just parked his car and gotten out of the car right before the shooting. I don't even believe he made it inside the house.

Q And you talked to Mr. Douglas about his participation or non-participation in the case, correct?

A I did.

Q And based off of your conversations with him, did you believe that it was in his best interest to plead guilty or to go to trial?

A I believe it was in his best interest to plead guilty.

Q Okay. And you got a series of offers from

the State; is that correct?

A I recall one offer. I actually pulled up my records. I believe it was in June of 2023 where the State offered a 20-year sentence with no credit for home detention.

Q Okay. And was that -- was that a cap of 20 or a negotiated 20?

A I believe that would have been either a recommendation or negotiated sentence that the State offered.

Q And do you know whether there was a cap or was it a negotiated? Was it a 20-year cap?

A It was not a 20-year cap. It was a 20-year sentence, from my recollection.

Q Okay. And you know that -- do you know what he pled to, ultimately?

A He pled to one count of attempted murder and one count of possession of a weapon by a -- one count of possession of a weapon during a violent crime, and he pled without any recommendations or negotiations.

Q Okay. And so if -- if he's offered a cap of 20 versus zero to 30, which one of them would be the better offer do you think?

A Well, a cap of 20 would be a better offer

than the zero to 30; however, on July 31st, I sent a counteroffer of 12 years to the State that Ms. Leskanic rejected. Also, just by reading her e-mail, 20 years without credit for house arrest. I believe that she was asking for a hard 20 years. And in my discussions with her, that was my understanding, is that the offer was 20 years, not a cap.

Q Okay. And did you discuss that with Mr. Douglas?

A I did. We discussed it, and that's why we relayed the counteroffer of 12.

Q Did Mr. Douglas tell you that he was not involved in this situation?

A At certain times, yes, he told me he was not involved in the shooting.

Q Okay. And did he have any reason to believe that he would get ten years out of it?

A I believe in the plea we asked for 10, and strategically we were hoping that the judge would fall somewhere in between the 10 and 20 that the State had offered, because we kind of let it be known to the judge that 20 years was the State's offer prior to pleading without negotiations or recommendations.

Q And during the investigation of the case, there was an individual that was in jail at some point that had the weapon, the murder weapon, that actually killed the person; is that correct?

A That's correct. And I actually reviewed the transcript where I specifically said to the judge that a gun was found on a totally different person in jail that was possibly used in the crime, and that was discussed with Mr. Douglas prior to the plea. I believe at that -- they were able to track the guns back to maybe some Limestone students, but that is kind of where the tracking-back stopped from the State's perspective.

Q So could that have been an issue you could have used at trial?

A Certainly. That, and the photo lineup were the two issues that we discussed that I believe were good facts for us. From my recollection, the cops took the photo lineup to the victim at the hospital the first go-around. At that time, the victim was not able to pick out Mr. Douglas. They then took it back a few days later, and that is when he picked out Mr. Douglas. So the photo lineup was a good piece of evidence for us at trial.

Also, certainly the potential gun that was used being found on a totally different person was a good piece of evidence at trial.

Q So you discussed that with Mr. Douglas?

A I discussed both of those issues with Mr. Douglas, and I believe that the photo lineup issue was even brought up in his bond hearing in an attempt to get him bond to show that the State had major issues in the case at that time.

Q So it -- so was it his decision to plead knowing all this? Did he -- did he know it before the plea?

A He knew all of that. And we also discussed the evidence that the State would have presented against him, and we weighed the potential of going to trial and the risk.

Q Okay. And was he ever served with a Notice to Seek Life?

A He was not. There are two traffickings on his record, but he was never served with LWOP by Ms. Leskanic. Certainly, as a defense attorney, that is not something you go and ask the State during your representation, because possibly the State missed it or didn't realize it, or maybe they didn't believe he was LWOP eligible, but there were

two traffickings on his criminal record, which would be -- sorry, there was one trafficking that was a serious offense, and then there was a PWID second, and by carrying zero to 30 years, that qualifies a serious under South Carolina law.

Q And did you tell him if he went to trial he would be subject to a life sentence?

A I believe I told him that I believe there was a potential that the State could serve the LWOP, but at the time he entered the plea, there was no Life Without Parole issued on Mr. Douglas.

Q Okay.

MR. RICHEY: One moment, Your Honor, please.

(A brief pause in the proceedings.)

MR. RICHEY: That is all I have.

THE COURT: Cross examination?

CROSS EXAMINATION

BY MS. HARRISON:

Q Just have a few questions. You said you have been practicing law about 12 years?

A Yes.

Q All criminal, mostly?

A I do family and probate for our firm, but I've always had a criminal docket either as a solicitor or on the defense side.

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Q Do you recall, roughly, how many times you met with the Applicant prior to his plea?

A It was several times. I don't remember specifically, but I know we had a meeting at the jail. We had a meeting after he hired me. We had a meeting after his bond hearing. I believe there were two or three meetings in my office while he was out on bond. From my recollection, his bond was revoked, and then I went and met with him at the jail a few more times. I do specifically recall meeting with him when we got the -- I believe the interview back from where the gun was recovered. They interviewed the individual in jail where the gun was found, and I remember specifically talking about that prior to the plea, which is why I specifically brought it up during the plea in front of the Honorable Judge Hayes.

Q Okay. You said you explained the strengths and weaknesses of the State's case to him?

A That's correct.

Q Did you explain to him the elements of the crimes he was charged with?

A I did.

Q Did he seem to understand your discussions with him?

A Yes. Every interaction I had with Mr. Douglas was very positive. I mean, he was a very ideal client.

Q Did you have a strategy in place if he wanted to go forward with trial?

A We did.

Q Could you elaborate a little bit?

A So as I alluded to on direct, the photo lineup was an issue. Just watching the first video created, in my mind, doubt whether this victim knew Mr. Douglas.

There was also testimony or -- sorry, not testimony, but in the incident report in my investigation of the body cams, there was also some indication that the victim had never met Mr. Douglas, that he only knew his voice. So if he only knew his voice, how could he pick him out of a photo lineup? They take the photo lineup back a few days later where, in my opinion, maybe the victim could have figured out who he was through social media, through whoever had visited him, and that is when he was picked out of the photo lineup.

Once we get past the photo lineup, that's kind of where the facts kind of turn against us. First and foremost, there was gunshot residue on

his hand that I did not believe could be adequately explained away at a trial.

Secondly, there was an FBI cellular tower analysis. I remember as a prosecutor I went to a training at the Spartanburg County Sheriff's Office where those analysis had gotten so good that there was an individual who was contemplating taking their own life, and they were able to track that person to a parking garage while they were on the phone.

I actually called the analyst and spoke to the analyst, because this was probably the strongest piece of evidence that the State had. I realize people shoot people, not phones; however, it was my understanding that the FBI agent, beyond a reasonable doubt, would be able to show that Mr. Douglas' phone that was associated with him was at the area of the crime at the time of the shooting. They were actually able to track it to the location.

What was problematic about saying he didn't have the phone or something like that was that phone calls were made to individuals, whether it be to family members or whatnot. And from my recollection, if those individuals had testified he

was making the calls, it would have been hard to explain away the phone. The phone was also left on scene for a little bit period of time, and then recovered on the backend. I think Mr. Douglas had possession of that phone after the shooting as well. Meaning, if the phone was left there for a period of time, someone would have had to go back and get it, and then that phone ended up in my client's possession.

Those were just very bad things to -- bad facts for us if we were to go to trial where my client's facing 30 years. You couple that with the photo lineup, and all of a sudden the circumstantial evidence gets fairly strong.

The gun was recovered, like I said, by someone in jail. We didn't conduct an investigation to go all the way back to track that gun; however, during my representation, if we had completed that, I'm not sure that would have been a beneficial result for my client, based off of my representation and my understanding of the case. But we did track it, and I think the guy had said maybe some Limestone students had given him the gun that was used in the shooting.

But the FBI cellular data was very

overwhelming. And I remember talking to that FBI agent and, quite frankly, was quite impressed with his testimony. I'm not even sure how I could have cross-examined him. It was kind of like DNA, it was challenged for years, but now it's kind of accepted. That's how far cellular data has come.

Q Okay. And last question: Do you stand by your representation of the Applicant?

A I do.

MS. HARRISON: Thank you very much.

THE COURT: Redirect?

MR. RICHEY: Couple more.

REDIRECT EXAMINATION

BY MR. RICHEY:

Q If the guy that had the gun, do you think it was possible that he owned a cell phone? Do you think that's possible?

A I don't.

Q The guy that had the gun that owned the cell phone --

A From my recollection -- and we had discussions -- that phone could be tied to Mr. Douglas through testimony prior to the shooting and potentially after the shooting.

Q No. No. No. That's not what I'm saying.

I'm saying something totally different. The guy in jail, not the phone -- not the phone that was pegged, but do you believe it was reasonable for the guy in jail at some point to have owned a cell phone?

A Oh, I don't know the guy, but I believe he certainly could have owned a cell phone, yes.

Q And that cell phone, it could have reasonably been checked with the same cellular information, correct?

A Yes.

Q And if that cellular information came back that he was at that location, would that have been good evidence for Mr. Douglas, or bad evidence?

A Certainly would have been good evidence.

MR. RICHEY: Thank you.

THE COURT: Recross?

MS. HARRISON: Beg the Court's indulgence.

(A brief pause in the proceedings.)

MS. HARRISON: No further questions.

THE COURT: All right. Witness may step down.

THE WITNESS: Thank you, Your Honor.

(A brief pause in the proceedings.)

THE COURT: Okay. Yes, sir.

MR. RICHEY: We call Plaintiff Douglas.

THE COURT: Very well.

(TIMMY DOUGLAS, having been duly sworn, testified as follows:)

THE COURT: Sir, state your name.

THE WITNESS: My name is Timmy Douglas.

DIRECT EXAMINATION

BY MR. RICHEY:

Q And are you currently in the Department of Corrections?

A Yes, sir.

Q What are you in there for?

A Attempted murder and possession of a firearm.

Q And you were convicted in Cherokee County; is that correct?

A Yes, sir.

Q And who represented you on those charges?

A Christopher Bain.

Q And you filed an application for post-conviction relief because you believed that he did not effectively represent you; is that correct?

A Yes, sir.

Q And you believe that you were harmed by that, correct?

A Yes, sir.

Q Let me go into just some initial things. You received a 20-year sentence; is that correct?

A Yes, sir.

Q And what was the maximum sentence in the case, do you recall?

A The max that I could get for the sentence, for my charges?

Q Yeah.

A 30 years for the attempted murder, and five years for the possession with a firearm.

Q Okay. And you are asking this Court to grant you a new trial; is that correct?

A Yes.

Q And you know that at a new trial that you would start over from the beginning, meaning you go back to the County?

A Yes, sir.

Q Do you understand that?

A Yes, sir.

Q And you understand that you could get less or you could get more?

A Yes, sir.

Q I guess you could get 15 years more, right?

A Yes, sir.

Q And in this case you were given a good amount

of time on house arrest, 700-odd days, correct?

A Yes, sir.

Q And you know that those -- the time that you are incarcerated, you understand that you would get credit if you went back, right?

A Yes, sir.

Q But the house arrest, you may not. You understand that?

A Yes, sir.

Q Okay. And knowing all of that, you still want to go forward with your case, right?

A Yes.

Q Let me ask you a couple of questions here. Were you told about a cap of 20 years in this case?

A I was -- Mr. Bain told me about a 20-year cap. Then he came twice and said Kim wouldn't go down, or whatever. And then the last time he came to me -- the last time he came to me, he says zero to 30 years. Hold on. Let me rephrase that. Okay. He came -- he kept coming to me. He asked me -- he said, I was surprised Kim didn't serve the life sentence papers, and she just tried to go 20 years. And I said I can't do no 20 years. So he said, Well, I'll go back and check and see. I'll go tell her what you said and see if she goes down.

So he came back, I say, a week or two, probably a week or two later. I was still in county jail. He said, No, Kim ain't biting. Kim ain't going for it. So I said, Well, I can't do no 20 years.

Q When you say "Kim," you are referring to the prosecutor?

A Kim Leskanic, yes, sir.

Q Prosecutor. Okay. Go ahead.

A So I end up getting out of jail on bond. Me and Mr. Bain met several times, and we talked again about the 20 years. So I said, I can't do it. He said, Well, I'll go ask Kim at least 12 years. So she wasn't going for that. So I end up revoking my house arrest. I go back to the county jail. Mr. Bain come back to me. He say, Well, only thing Kim say is we can open plea zero to 30. He did say that. I said, Man, I was just thinking -- I said -- he also said, Now, zero to 30 means you can get five years, you can get two years. He was talking to me like that. He say, It don't guarantee you get 30 years, but I'm going to ask my judge for 10 years. You know what I'm saying? He did say that. He said, I'll ask my judge for 10 years. He said, This is a good judge. This is the

kind of judge I look to go up in front of. You know what I'm saying? He's a victim judge, such and such like that. I said, Okay.

So he said, Now, if you go to trial, you know Kim is going to push for a life sentence. Now I know that I couldn't even have received no life sentence even if I went to trial, because I don't have no two strikes.

Q Okay. And so the charges that -- the trafficking and possession with intent to distribute, second, it is your position that those are not charges that can enhance your sentence?

A No. I had -- the paperwork that I got is neither one of them are most serious.

Q That's what I'm saying. So that's your position, you could not -- they could not enhance it to life? That is your position, correct?

A Oh, yes. Yes. Yes. Yes.

Q Okay. And what -- did you actually believe that you could get 10 years? Is that based off of what you and the lawyer communicated? Tell me what he said to make you think you would get 10 years? What did he say?

A He said -- he said, This is the kind of lawyer (sic) I like to go in front of, because he's

my lawyer (sic), and if I ask for 10 years, I think he'll go for it. But he also said I might get such and such. But he said, This is my lawyer (sic), I might get you 10 years. He did ask for the 10 years in court.

Q And in terms of this gentleman at the jail with the gun, when did you find out about that?

A Okay. To be honest with you, Mr. Bain did come to me and say that a detective talked to two college students. He did tell me that, but I didn't know that -- only thing he told me is that they questioned them saying that they know me, and both of them said, No. But when I went to court to plead guilty, that is when I found out that it was someone in jail in possession of the gun.

Q So kind of give me the time. When did he tell you that he talked to -- that the cops talked to a college student? Was that a week before the plea? Two weeks? The day before? When was that?

A I can't recall. I ain't going to say nothing -- I know it wasn't no week before or no two weeks. It was probably -- I say like three or four months before then.

Q It was what?

A Like three or four months before I went to

court.

Q So it was a good while?

A It was a good while before I went to court. He did come to me, yes, he did.

Q And so the issue with the person at the jail, you got that, when?

A When I went to court, I didn't know he was locked up -- the person was locked up with the gun until I went to court. That day I went to court, he spoke up and told the judge, when he was talking to the judge.

Q Had you known that, would you have pled guilty if you had known that someone else is caught with a gun?

A No, I wouldn't have pled guilty. I mean, the -- the only reason why I did plead guilty is because he said that Kim was going to push for a life sentence, and I didn't want to do no life sentence. I mean, I got kids.

Q So was that life sentence thing, was that what got you to plead, I mean?

A That got me to plead.

And, then, also, if I knew about that gun, that would have been another reason. That someone got caught with the gun, that would have been

another reason I wouldn't have pled guilty.

Q You wouldn't have pled if you knew that another guy got caught with the gun?

A Huh-huh. No, sir.

Q And -- and you did not shoot this guy, right?

A No, sir.

Q Okay. Thank you.

MR. RICHEY: Answer questions the Attorney General may have.

THE COURT: Cross examination?

CROSS EXAMINATION

BY MS. HARRISON:

Q Good morning, Mr. Douglas.

A Good morning.

Q I just have a couple of questions. Did you tell Mr. Bain that you wanted to take a plea deal, or did you tell him that you wanted to go to trial?

A Well, I told him -- well, we talked over about the case, and when he told me about the life sentence, that is when I say, Man, I can't do no life sentence. I rather go ahead and take -- plead guilty to zero to 30. Yes, I did say that. Yes, ma'am, I did.

Q Okay. Do you recall Mr. Bain informing the Court prior to you entering your guilty plea about

the gun?

A Say that again?

Q Do you recall Mr. Bain informing the Court about the gun prior to you entering your guilty plea, at your plea hearing?

A No, I don't -- the only time I remember him saying something about that gun, that someone was in possession of that gun, that is in jail, is when I went to -- when I pled guilty.

Q But you don't recall the fact that you hadn't pled guilty yet?

A I don't remember -- to be honest, I don't remember if he said it at first before I pled guilty, or after I pled guilty. I don't remember how it went that day in court.

Q Do you recall telling the Court that you were satisfied with Mr. Bain's representation?

A Yes, I did.

Q And do you recall informing the Court that you understood you were waiving your rights to establish a defense and present evidence at trial?

A Say that one more time, ma'am?

Q Do you recall informing the Court that you understood that you were waiving your rights to establish a defense and present evidence at trial?

A Yes. I was being told to say "yes" to certain questions, ma'am, by Mr. Bain.

Q Okay. And do you recall informing the Court that you need to receive punishment for your crime, and asking the judge to sentence you however he deems appropriate?

A Yes. I was -- I was -- I was told to say "yes" to certain things by Mr. Bain, yes, ma'am.

Q And do you recall informing the Court that you were, in fact, guilty?

A Did I say to the Court I was guilty?

MS. HARRISON: No further questions, Your Honor.

THE COURT: Hold on, ma'am. I think that was a question.

A Yeah. Yeah. Yeah. Ask that question again, ma'am.

Q **(BY MS. HARRISON)** I'm so sorry.

Do you recall informing the Court that you were, in fact, guilty of those charges?

A Yes.

THE COURT: All right. Redirect?

MR. RICHEY: No other questions.

THE COURT: You may have a seat, sir. You can head back to your seat.

Next witness.

MR. RICHEY: No other witnesses.

THE COURT: Does the State wish to call any other witnesses?

MS. HARRISON: Nothing further, Your Honor.

THE COURT: Anything in summation?

MR. RICHEY: Your Honor, it's our position in this case -- the issue that we raise, we're not waiving anything. So I'll focus on one of them, and that issue is that at the time this happened, another gentleman was in jail with the gun that was associated with it. It is our position that an investigation should have been done as to who he was and whether he actually had a phone. Because if he had a phone, and the State came back, and it could be connected near the crime scene, then there is another suspect.

So it's our position that that guy with the gun in jail should have been investigated to determine who he was, whether he had a cell phone, or anything. And, you know, maybe that's -- if he had a cell phone, it could have been traced back to the incident location. So that is our position that Counsel was ineffective for not doing that investigation as to that phone, and we believe that

Mr. Douglas was prejudiced by that, because the gentleman did have the gun that shot the guy.

Thank you, Your Honor.

THE COURT: So you're -- just to be clear, so I understand, you are stating that Counsel should have investigated another person in the county jail who -- what was the connection with the gun again?

MR. RICHEY: Who was in possession of the gun that was believed to have shot the victim. And so it's our position that Counsel should have known the name, who, what, whether he had a cell phone, because that is a critical witness in the case. I mean, he's got the gun, and I think it should be determined what his involvement was, if any, in the shooting. I don't think you can have a guy saying he got the gun that shot the person and just say, Fine. No. I think you have got to know the guy's name, his record, potentially what was his involvement in it, okay.

Thank you, Your Honor.

THE COURT: All right. Attorney General?

MS. HARRISON: Your Honor, the State would pretty much just rest on the record and the testimony presented today to show that the Applicant has not met his burden of proof. If he

took issue with what Mr. Bain said regarding the gun at his plea hearing, he could have decided not to go forward with his plea and go to trial. He, instead, took the benefit of taking the plea. And I would argue that the record does show his plea was entered voluntarily. So we would rest on the record and the testimony presented today that he has not met that burden.

THE COURT: I'll take it under advisement, review the file, and come up with a decision.

Thank you.

(Whereupon, the hearing concluded.)

CERTIFICATE OF TRANSCRIBER

Case Name: Timmy Douglas v. State of S.c.

Case No.: 2024-CP-11-00205

Date of Hearing: March 2, 2026

****

I, Natalie Dahl, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording.

I do further certify that I am neither of kin, counsel, nor have interest to any party hereto.

Natalie Dahl, RPR

_____

STATE OF SOUTH CAROLINA COUNTY OF CHEROKEE	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
Timmy L. Douglas, #303818, Applicant	)	CASE NO. 2024–CP–11–00205
v.	)	**ORDER OF DISMISSAL WITH PREJUDICE**
State of South Carolina, Respondent.	)	

Presiding Judge:	Hon. Walton J. McLeod, IV.
Applicant's Attorney:	Rodney W. Richey, Esq.
Respondent's Attorney:	O. McConnell Harison, Esq.
Plea Counsel:	Christopher M. Bain, Esq.
Solicitor:	Kimberly L. Leskanic, Esq.
Date of Hearing:	March 2, 2026

This matter comes before the Court by way of Timmy L. Douglas' (Applicant) application for post-conviction relief (PCR) filed on March 19, 2024[1]. On January 30, 2026, Respondent filed its Return and Partial Motion to Dismiss. Applicant subsequently amended his application to add additional claims of ineffective assistance of counsel.

On March 2, 2026, an evidentiary hearing was held at the Spartanburg County Courthouse before the Honorable Walton J. McLeod, IV. Applicant was present and represented by Rodney W. Richey, Esquire. Assistant Attorney General O. McConnell Harison represented Respondent. Applicant proceeded on the claims in his PCR application and amended application. In support of these claims, Applicant testified on his own behalf. Respondent presented testimony from Christopher M. Bain (Plea Counsel).

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[1] Applicant's PCR application was filed on March 19, 2024, with the Cherokee County Clerk of Court and was received by Respondent on February 24, 2025.

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 (SCDC), serving a twenty-year sentence. During its February 2022 term, the Cherokee Grand Jury indicted Applicant for Attempted Murder (2022-GS-11-00155 – Count I) and Possession of a Firearm During a Violent Crime (2022-GS-11-00155 – Count II).

On August 21, 2023, Applicant appeared before the Honorable J. Mark Hayes, II, and pled guilty as indicted to Attempted Murder and Possession of a Firearm During a Violent Crime. Applicant was represented by Christopher M. Bain, Esquire (Plea Counsel). Deputy Solicitor of the Seventh Circuit Solicitor's Office Kimberly L. Leskanic represented the State. Judge Hayes sentenced Applicant to a sentence of twenty years for Attempted Murder and five years for Possession of a Firearm During the Commission of a Violent Crime to run concurrently. Applicant was given credit for 728 days' time served.

A timely notice of appeal[2] was filed on Applicant's behalf by Plea Counsel on August 30, 2023. On October 11, 2023, the Court of Appeals dismissed Applicant's direct appeal for Applicant's failure to provide a sufficient explanation as required by SCACR 203(d)(1)(B)(iv). The remittitur was returned on November 6, 2023.

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FACTS GIVING RISE TO CONVICTION

The following facts were articulated by the solicitor at Applicant's guilty plea hearing:

[2] The State v. Timmy L. Douglas, Appellate Case No. 2023-001393.

This incident occurred on August 18, 2021, at 780 Shady Grove Road. That is located here in Cherokee County. That is the home of Betty Jo Moss. Ms. Moss has a child, at least one, with the defendant, Mr. Douglas. They had been living together at this residence. And based on what the defendant told police, he had been gone from the residence, and they had been broken up for about two-and-a-half to three months prior to this incident. Ms. Moss had begun a relationship with Robert Christopher, the victim in this case. She called him Chris, by his last name, because she works at Bar City Square, and he would order food from there and they would use part of his last name. She was one of the few people that called him Chris, which becomes important in just a moment. On this particular evening, it was about 9:45 at night. It was dark outside. The defendant is at the home of Betty Jo Moss. No one is aware of that. He has to come to that home on foot without a vehicle in the driveway. And Mr. Christopher pulls into the driveway to visit his girlfriend at 780 Shady Grove Road. When he does, he gets out of his white Durango. Betty Jo's van is parked in front of him. He is going to walk into the house like he has done before to visit with his girlfriend. The defendant is there, armed with a nine-millimeter handgun. He comes out of the darkness and essentially ambushes Mr. Christopher. He says: Hey, Chris, remember me. And he calls him Chris, which is what no one else does. He has learned his name from Betty Jo and from his daughter and the other kids in the house that's what they call him. He says: Chris, you remember me. And he fires off three rounds from the nine-millimeter handgun at close range. Mr. Christopher had no opportunity to defend himself. He pops out, immediately says, you remember me, and starts shooting him. There are three rounds that are found from a nine-millimeter handgun. After shooting the victim, the defendant runs off. Chris is able to make his way to the door of the residence, and he is screaming outside the door for someone to open up and help. Ms. Moss' daughter is inside the home. She hears three gunshots before she hears Chris at the door. And she calls 911 to report that there had been shots fired outside her home. And then she hears the victim outside screaming for help. She's afraid to open the door because she doesn't know what happened, whether a gunman is still out there. Judge, there are multiple children inside this home when the shooting took place. She gets her mom, Betty Jo. She had been in the shower. Betty Jo goes to the door. They are able to get Mr. Christopher inside to the couch. EMS and police are called. The victim immediately reported that it was the defendant who shot him. They had one prior encounter where they did not see each other but they had words. Mr. Christopher was actually at Betty Jo's house. The defendant came over when he was in the bathroom, had words with him between the bathroom door. Mr. Christopher told them he recognized his voice. He also got a good look at him because he has LED lights on his white Dodge Durango. He was able to see the shooter. I don't believe Mr. Douglas believed that he was going to be alive to

> identify him. Thankfully he was. He immediately told Betty Jo, police, EMS, everyone who had shot him. He was taken to the hospital by helicopter. Police did respond to the scene. They called out, first of all, the bloodhounds. And the bloodhounds were able to track around the back of the house in the same direction which Mr. Christopher stated that the defendant fled after shooting him.

(Plea Tr. pp. 8 – 11).

CURRENT APPLICATION BEFORE THIS COURT

In his PCR application, Applicant alleged that he is being held in custody unlawfully on the following grounds:

I. Ineffective Assistance of Counsel
   a. Counsel failed to conduct an investigation into the facts of the case.
   b. Counsel failed to inform me of the critical information regarding facts that should have been brought to my attention.
   c. White[3] Claim – Counsel failed to inform of right to direct appeal.[4]

Applicant subsequently amended his PCR application, through PCR Counsel, to include the following allegations:

I. Ineffective Assistance of Counsel
   a. Failing to explain plea deal with cap of 20 years versus 0 – 30 years.
   b. Failing to inform of person with gun in jail.
   c. Erroneously informing applicant that he was eligible for a life sentence.

Before this Court are the Cherokee County Clerk of Court records regarding the subject convictions and sentences, Applicant's appellate records, Applicant's records from the South Carolina Department of Corrections, Applicant's guilty plea transcript, and the records of the current PCR action.

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[3] White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

[4] Respondent moved to dismiss this claim in the Return and Partial Motion to Dismiss, as Applicant did pursue a direct appeal that was ultimately dismissed by the South Carolina Court of Appeals on October 11, 2023.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act[5] (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).

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

[5] 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—**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 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), 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 facts 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); 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.").

This Court makes the following findings from the record: Applicant stated it was his intent to enter guilty pleas to the charges of attempted murder and possession of a weapon during a violent crime (Plea Tr. p. 4); Applicant indicated that he had not consumed any type of substance in the last 24 hours that would adversely or negatively affect his ability to understand the process

of his hearing (Plea Tr. p. 6); Applicant indicated that he was previously treated for substance abuse issues, and indicated he thought it was for the drug charge he previously had acquired (Plea Tr. p. 6); Applicant indicated that he was satisfied with counsel's representation (Plea Tr. p. 6); Applicant indicated that nobody had threatened him or promised him anything in exchange for his guilty plea (Plea Tr. p. 7); Applicant indicated that his decision to enter the pleas to the charges was a free and voluntary decision on his part (Plea Tr. p. 7); Applicant indicated that he understood his right to a jury trial and the burden of proof being on the State to prove guilt beyond a reasonable doubt, and then Applicant stated he did not wish to have a jury trial (Plea Tr. p. 7); Applicant indicated he understood that pleading guilty would waive his rights to confront and cross-examine witnesses, to present a defense, subpoena, and remain silent. Applicant stated that he wished to give up all these rights and go forward with both of his pleas (Plea Tr. p. 8). Applicant agreed that the solicitor was substantially correct in her recitation of the facts of the case (Plea Tr. p. 14). Applicant indicated that he understood that he could be sentenced to zero to thirty years on the attempted murder charge and that the judge could not suspend the sentence or give probation. (Plea Tr. p. 14). Applicant indicated he understood the charges against him were both violent and most serious classifications of charges and indicated that he had spoken to his lawyer as to the consequences of those classifications. (Plea Tr. p. 15). Applicant indicated that even with understanding the classifications, he intended to plead guilty to attempted murder and the weapon charge. (Plea Tr. p. 15). Applicant stated to the court that he was in fact guilty of both charges and indicated that all of his answers to the court had been truthful and honest. (Plea Tr. p. 16).

ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

Allegation:	**Failure to Conduct Investigation into Facts of Case**
Allegation:	**Failure to Inform Applicant of Critical Information Regarding Facts**
Allegation:	**Failure to Inform of Person with Gun in Jail**

Applicant alleges that his Plea Counsel was ineffective for failing to investigate the facts of his case and inform him of critical information regarding the facts of his case. Specifically, this claim surrounds Applicant's belief that an unidentified incarcerated person had ties to the weapon in Applicant's case. This Court finds this allegation to be without merit.

"[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 690–91. "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Id. at 691. "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Id. "The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Id. "Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant." Id. "In particular, what investigation decisions are reasonable depends critically on such information." Id.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered 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)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997)).

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Skeen v. State, 325 S.C 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Guilty Plea Hearing

During mitigation at Applicant's guilty plea hearing, Plea Counsel informed the Court, "Mr. Douglas is an ideal client during my entire representation. He's met with me several times. Stayed in communication. He's able to assist me in his defense, going through the evidence. In fact, when me and him kind of went through it again on Friday, he said: Hey, there's that video. I want to see it. I actually took it over there today and watched together, just to make sure that he had all the information and all the evidence against him." (Plea Tr. pp. 18 – 19). Plea Counsel highlighted the fact that evidence of cell tower data was taking a while to complete, and that he wanted to make sure everything was received and reviewed with Applicant prior to moving forward with a plea, because he did not feel Applicant could adequately enter a plea without all information. (Plea tr. p. 20).

Plea Counsel also informed the plea court regarding the gun when discussing the triable issues in this case, stating, "There's other things in this case that create triable issues. I think Ms. Leskanic would agree that we had this scheduled before Judge Kelly. Both of us agreed not to call it for trial. This would be a very complex case involving the FBI and possibly different phone carriers. It would involve people from SLED. Your Honor, there was a gun recovered that could've been tied to this crime that was found on a totally different person, who's currently incarcerated in April. And all these witnesses would've had to come and be a several week trial." (Plea Tr. p 20, ll. 12 - 21).

PCR Evidentiary Hearing

On direct examination at his evidentiary hearing, Applicant testified that Plea Counsel informed him the detective in the case spoke to two college students about their interactions with and knowledge of the Applicant. Applicant testified he was informed that these college students told the detective they did not know Applicant. Applicant testified that Plea Counsel came to him with this information three to four months prior to his set trial date. Applicant then testified that he was unaware of the information surrounding the incarcerated individual with a gun until the day of his plea hearing.

On direct examination, Plea Counsel testified that the case had bad facts, considering they could not explain away the gunshot residue nor the cell tower data evidence against Applicant. Plea Counsel further testified that the FBI cell tower data analyst had very good testimony, and that he would have been unsure how to unravel that portion of the case on cross-examination. Plea Counsel testified that his strategy would have been surrounding the photo lineup considering the victim stated he only knew the Applicant's voice. Regarding the gun, Plea Counsel testified that he discovered this information surrounding an incarcerated individual potentially being linked to the gun months prior to Applicant's plea hearing and discussed it with him, stating that it could have been used at trial along with the photo-lineup issue.

Findings

This Court finds 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, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland). This Court additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that

alleged deficiency. See Butler, *supra*. Based upon the record before this Court, it is clear that Plea Counsel was prepared and provided representation that satisfies the Strickland deferential standard. See Mazzell v. Evatt, 88 F.3d 263, 269 (4th Cir. 1996) (declining "to allow an ineffective assistance of counsel claim to create a situation where post-conviction attorneys stroll in with the full benefit of hindsight to second-guess trial lawyers who professionally discharge their duties to their clients under the manifold pressures of a state trial").

Plea Counsel credibly testified that he investigated the facts in Applicant's case and pursued leads provided to him to craft a defense for trial. Plea Counsel further credibly testified that he and Applicant had extensive discussions regarding discovery and the facts of Applicant's case throughout his representation. The record shows Plea Counsel elaborated at the plea hearing on the complexity of Applicant's case should it have gone to trial with the ample evidence involved including evidence from the FBI and SLED, cell tower data, and gunshot residue evidence.

Plea Counsel stated that he was waiting for discovery to be available to review with Applicant before entering a plea, as he wanted his client to be adequately informed to make that decision. Plea Counsel highlighted how often he and Applicant would meet to review the facts of his case, and how Applicant assisted him in his defense. At the PCR hearing, Plea Counsel testified that the evidence against Applicant was strong and that the case had bad facts, including the inability to explain away the gunshot residue evidence and the cell tower evidence. Plea Counsel's testimony shows that he adequately investigated Applicant's case and had crafted a defense to attempt to rebut the strong evidence against Applicant by highlighting the fact that the victim only knew Applicant's voice, should they have proceeded with trial.

Regarding the issue of the gun, Plea Counsel's credible testimony establishes that Applicant was informed of this being a potential trial defense months before entering his guilty

plea. Further, Plea Counsel's statement to the plea court regarding the gun was placed on the record directly in front of Applicant, and Applicant was given the opportunity to inform the plea court of anything else he would want the court to consider. Applicant did not reference any issue surrounding the person in jail with the gun, but rather expressed his remorse and apologized to the victim. A combination of the record and Plea Counsel's testimony tends to show that Applicant was aware of the details surrounding the gun prior to the day of his plea. Even if Applicant was not aware of the information prior to the acceptance of his plea, Plea Counsel highlighted it on the record at Applicant's guilty plea, where Applicant had the opportunity to further speak with Plea Counsel and also could have decided to move forward with trial. Therefore, Applicant cannot establish that Plea Counsel was constitutionally ineffective in his representation for failing to conduct an adequate investigation and inform him of the facts of his case, nor can he establish that he would have proceeded with trial but for this alleged deficiency.

Based on the foregoing, this Court finds the 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—that he was prejudiced by Trial Counsel's performance.

This Court finds through the combination of the record and Plea Counsel's testimony that Applicant has failed to meet the burden of showing Plea Counsel 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: Failure to Explain Plea Deal with 20 Year Cap Versus 0 – 30

Allegation: Erroneously Informed Applicant that he was eligible for a life sentence

Applicant alleges that Plea Counsel was constitutionally ineffective for failing to explain the specifics and consequences of his plea offer. Specifically, Applicant alleges that Plea Counsel failed to explain the difference in a plea offer with a twenty-year cap versus a sentencing range of zero to thirty years and erroneously informed the Applicant that he was eligible for a life sentence. This Court finds this allegation to be without merit.

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 conclusive 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)). To establish that a guilty plea is voluntarily and knowingly entered into, the record must demonstrate that the applicant had a full understanding of the consequences of their plea and the charges against them. See Boykin v. Alabama, 395 U.S. 238, 243 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). (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.")

When determining guilty plea issues, it is proper to consider both the guilty plea transcript and the evidence presented at the PCR hearing. See Harres v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984). An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation

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

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)); see also Lafler v. Cooper, 566 U.S. 156, 169–70 (2012) (rejecting proposition that a fair trial wipes clean any deficient performance by defense counsel during plea bargaining). 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, 566 U.S. at 164). 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.

Guilty Plea Hearing

During Applicant's plea hearing, the plea court asked him, "Sir, do you understand that, on the attempted murder charge, I can sentence you between zero to 30 years on this charge and that I cannot suspend any sentence and I cannot give probation?", to which Applicant answered affirmatively. (Plea Tr. p. 14).

During mitigation, Plea Counsel explained the timeline of his discussions with Applicant regarding plea offers and whether to proceed with trial, stating, "Your Honor, he is here today accepting responsibility. At the appropriate time he is going to issue an apology to the victim through The Court, Your Honor. That's something he's been wanting to do for a while. In fact, Mr. Douglas and I have been discussing a plea since my early representation once he got out on house arrest." (Plea Tr. pp. 19 – 20, ll. 25 – 5). Plea Counsel stated that the case took so long to enter a guilty plea because Plea Counsel was waiting for the FBI cell phone records to be completed and received, and for Plea Counsel to have time to speak with the FBI agent following receipt of those records. Plea Counsel elaborated that he didn't feel Applicant could adequately enter a plea without all the information and evidence before him. Plea Counsel stated that the cell tower data and gunshot residue evidence were strong evidence for the State. (Plea Tr. p. 20).

Plea Counsel stated that he and the solicitor agreed at that point that Applicant could either accept or reject the State's offer of a twenty-year term, and Applicant rejected that plea offer. He stated that Applicant understood that he must be sentenced to at least five years due to the weapon charge and that he understood his maximum sentence he faced was thirty years. Plea Counsel told the plea court that Applicant was requesting a ten-year sentence, and that they certainly wanted a sentence under twenty years. (Plea Tr. pp. 20 - 21).

PCR Evidentiary Hearing

On direct examination at his evidentiary hearing, Applicant testified that he believed the maximum sentence he was facing was thirty years for attempted murder and five years for the weapons charge. Applicant testified that Plea Counsel discussed the possibility of a twenty-year sentence cap with him, and that Plea Counsel told him he was surprised the solicitor did not serve him with notice of life in prison without the possibility of parole. Applicant informed Plea Counsel that he did not want to serve twenty years, and that Plea Counsel went again to meet with the solicitor to try to obtain a more favorable plea offer. Applicant testified that he was released on bond for a period of time and then ended up returning to jail. Applicant testified that at this point, the offer was an open plea of zero to thirty years, and that Plea Counsel informed him he would ask the judge for ten years because Plea Counsel knew the judge. Applicant testified that Plea Counsel informed him if he went to trial, the solicitor would be pushing for a life sentence even though he didn't have two strikes against him. Applicant stated that Plea Counsel did in fact ask the Court for a ten-year sentence, but he was ultimately sentenced to twenty years.

On cross-examination, Applicant testified that he informed Plea Counsel that he wanted to plead guilty because he couldn't serve a life sentence. When asked about telling the plea court that he was satisfied with his attorney, Applicant stated that he was being told to answer "yes" to certain questions.

On direct examination, Plea Counsel testified that one plea offer was extended to Applicant in June of 2023. Plea Counsel testified that he recalls the offer being a twenty-year negotiated sentence or recommendation, but he does not recall it being a twenty-year cap. Plea Counsel testified that he presented the offer to Applicant. Plea Counsel testified that Applicant rejected this

offer and then counteroffered for a 12-year sentence. Plea Counsel testified that the solicitor would not accept a plea offer of less than 20 years.

Findings

This Court finds 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, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland). This Court additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Based upon the record before this Court, it is undoubtedly clear that Plea Counsel provided representation that satisfies the Strickland deferential standard. See Mazzell v. Evatt, 88 F.3d 263, 269 (4th Cir. 1996) (declining "to allow an ineffective assistance of counsel claim to create a situation where post-conviction attorneys stroll in with the full benefit of hindsight to second-guess trial lawyers who professionally discharge their duties to their clients under the manifold pressures of a state trial").

The record shows that Applicant had expressed his desire to enter a guilty plea to these charges since the early stages of Plea Counsel's representation, and that Applicant was actively engaged in discussions with Plea Counsel regarding the plea offers he would potentially accept. At the PCR hearing, Applicant testified that he was aware of the potential sentence range he faced and that the only reason he pleaded guilty was that he couldn't serve a life sentence. Plea Counsel credibly testified that he recalled discussing a twenty-year negotiation or recommendation with Applicant, and that Applicant refused to accept the offer. The record and Plea Counsel's testimony at the PCR hearing establish that he and Applicant had discussions regarding extended plea offers, including the offer of a twenty-year recommendation or negotiation, that Applicant ultimately

refused because he wanted to receive less time. There is no evidence of Plea Counsel erroneously informing Applicant of the potential sentences he was facing nor the plea offers extended to him, and there is nothing to show that Plea Counsel erroneously informed Applicant that he would be facing a life sentence. Following Applicant's refusal of the extended offer, Applicant decided to enter an open guilty plea under the range of zero to thirty years because he did not want to face a potential life sentence by proceeding with a trial. Therefore, Applicant cannot establish that Plea Counsel was constitutionally ineffective for failing to explain the sentencing range to Applicant. Applicant also cannot establish that, but for this alleged deficiency, he would have proceeded to trial, as he testified to the court that he took the plea to avoid a life sentence.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

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

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

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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 21 **day of** July **, 2026.**

WALTON J. MCLEOD, IV
Presiding Judge
Seventh Judicial Circuit

Cherokee, South Carolina.

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHEROKEE COUNTY
Court of General Sessions

J. Mark Hayes II, Circuit Court Judge

Case No(s).: 2022-GS-11-00155, 2022-GS-11-00155A

The State of South Carolina, Respondent.

v.

Timmy Lee Douglas Appellant.

NOTICE OF APPEAL

Timmy Lee Douglas appeals his conviction and sentence in this case. The sentence was imposed by the Honorable J. Mark Hayes, II on August 21, 2023.

Date: August 30, 2023

Christopher M. Bain, Bar # 101488
Parker & Bain
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Gaffney, SC 29340
Attorney for Appellant
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Other Counsel of Record:
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THE STATE OF SOUTH CAROLINA
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APPEAL FROM CHEROKEE COUNTY
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J. Mark Hayes II, Circuit Court Judge

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The State of South Carolina, Respondent.

v.

Timmy Lee Douglas Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by personally delivering a copy of it to its attorney of record, Kim Leskanic, Deputy Solicitor, at her office at the Cherokee County Courthouse, Gaffney, South Carolina, 29340 on August 30, 2023.

I further certify that on August 30, 2023 an original Notice of Appeal in the above captioned case was filed with the Cherokee County Clerk of Court.

Date: August 30, 2023

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Other Counsel of Record:
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STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
)	INDICTMENT NOs.: 2022-GS-11-00155
COUNTY OF CHEROKEE)	2022-GS-11-00155A
State of South Carolina)	
)	
Plaintiff,)	
)	
v.)	**ACCEPTANCE OF SERVICE**
)	
Timmy Lee Douglas,)	
)	
Defendant.)	

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ACCEPTANCE of the within **Notice of Appeal** is hereby received this 30 day of August, 2023.

Cleria O Moore
On behalf of State of South Carolina

Address: 125 E Floyd Baker Blvd
Gaffney, SC 29340