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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM CHEROKEE COUNTY

Court of Common Pleas

HONORABLE J.C. Maddox, Jr.

2024-CP-11-00462

JAMES E. SPENCER, SCDC# 268111

APPELLANT,

vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

James E. Spencer appeals the denial of his Post-Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable J.C. Maddox, Jr, Circuit Judge on November 18, 2025, an Order issued on May 6, 2026, and filed on May 14, 2026. The Appellant received notice of the judgment on November 5, 2026.

s/Rodney Richey

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STATE OF SOUTH CAROLINA COUNTY OF CHEROKEE	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
James E. Spencer, #268111, Applicant, v. State of South Carolina, Respondent.	)	CASE NO. 2024–CP–11–00462 **ORDER OF DISMISSAL WITH PREJUDICE**

Presiding Judge:	Hon. J. C. Maddox, Jr.
Applicant's Attorney:	Rodney W. Richey, Esq.
Respondent's Attorney:	Jordan Brett Killough, Esq.
Plea Counsel:	N. Douglas Brannon, Esq.
Assistant Solicitor	Kimberly L. Leskanic, Esq.
Date of Hearing:	November 18, 2025
Court Reporter:	Lora L. McDaniel

This matter comes before the Court by way of James E. Spencer's (Applicant) application for post-conviction relief (PCR) filed on July 2, 2024. Respondent, the State of South Carolina, filed its Return on October 29, 2024. On November 14, 2025, Applicant, through counsel, filed his amended PCR application.

On November 18, 2025, an evidentiary hearing was held at the Spartanburg County Courthouse before the Honorable J. C. Maddox, Jr. Assistant Attorney General Jordan Brett Killough represented Respondent. Applicant was present and represented by Rodney W. Richey, Esquire. At the hearing, Applicant proceeded on the claims in his PCR application, his amended application, and additional allegations raised at the hearing. In support of these claims, Applicant testified on his own behalf and presented testimony from N. Douglas Brannon, Esquire. Respondent presented testimony from Assistant Solicitor Kimberly L. Leskanic.

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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). During its June 2020 term, the Cherokee County Grand Jury indicted Applicant for Murder (2020-GS-11-00806). Applicant was represented by N. Douglas Brannon, Esquire (Plea Counsel). Assistant Solicitor Kimberly L. Leskanic (A.S. Leskanic) of the Seventh Circuit Solicitor's Office prosecuted the case.

On October 29, 2021, Applicant appeared before the Honorable J. Mark Hayes, II, circuit court judge, and pled guilty as indicted without negotiation or recommendation to murder. Judge Hayes sentenced Applicant to life imprisonment without the possibility of parole for Murder.

Applicant filed a timely notice of appeal. Applicant's appeal was perfected by Deputy Chief Appellate Defender Wanda H. Carter pursuant to Anders v. California[1] raising the following issue:

> The trial judge erred in accepting [Applicant's] guilty plea because his mental health issues rendered him incapable of pleading guilty voluntarily.

On February 21, 2024, the South Carolina Court of Appeals denied Applicant's appeal. State v. James Eric Spencer, Op. No. 2024-UP-055 (Ct. App. filed February 21, 2024). The Remittitur was returned on March 8, 2024.

[1] 386 U.S. 738 (1967).

FACTS GIVING RISE TO THE CONVICTION

The facts are taken from the guilty plea transcript as articulated by the State:

This incident happened on April 20th of 2020 at [redacted] Lyman Street in Cherokee County. That was the residence of the [Victim]. [Applicant] and [Victim] were in a, I guess, on again/off again relationship. I believe the relationship had been volatile at times based on the information that we received during preparation of this case. On this particular day, Your Honor, we received information that [Applicant] had gone to someone's house to get some drugs. He had also accused that person of sleeping with [Victim], being intimate with her. That person denied it, said I don't know her, nothing has happened. But apparently when he went back to the house at Lyman Street he took [Victim] into the bathroom that is attached to the master bedroom, locked her in the bathroom. And that's where the assault began. There was a five year old child, [Victim's] son, [Minor] who was present in the home. He did not see the assault take place because it was behind the bathroom door. But after this happened he was taken to the Advocacy Center and he told them that he heard [Applicant] saying, what's the truth? He heard his mom scream. And then he saw [Applicant] kind of sneak out of the bathroom door. He had locked the door so that [Minor] could not get in. And he told this five year old that his mommy would wake up soon. And of course. she never did. He left the home. We received video evidence, because it's right near the park in Cherokee County, we received video showing [Applicant] leaving the home, getting into his vehicle and driving away around 7:30 on the 20th. He left [Minor] alone in that home with his mother deceased on that bathroom floor. Continuing to watch that camera, the next morning around 7:30 you can see [Minor] open the front door. He kind of looks out, he goes back in. He does this two times, I'm sure uncertain of what he's supposed to do. And then you see him run across the street actually to [Applicant's] mother's house who was a neighbor and he knew. He begins knocking on her doors. She doesn't answer. And he goes over to another neighbor's house and knocks on her door. She does come outside. He begins to tell her that he thinks his mommy is sick, he has sat outside the bathroom door all night and even tried to push strawberries under the door because he thinks his mom is sick. [redacted], the neighbor, calls 911. Gaffney Police Department comes out to do a welfare check. They go into the house and they have to break down the bathroom door. And that is where they find [Victim] deceased on the bathroom floor. In that 911 call, Your Honor, that I have made State's exhibit 1, you hear [Minor] on the call saying his mom won't let him in the bathroom door and she is sick. And you clearly hear him say [Applicant] beat her up. He was prepared to testify next week. And in that testimony he would state once [Applicant] left the home, his mother never came out of the bathroom and no one else ever came into that home. But State's exhibit 1 is that 911 call, Your Honor. Police came in. What they found with [Victim] on the floor, she was bleeding. She had been beaten. And there were also two yellow bungee cords that were wrapped around her neck, her chin and her mouth. They were tightly wrapped around her. The cause of death was ligature strangulation. This was described by the pathologist as a complex

ligature because there were bungee cords that had been looped and tied in two to three places. It was intentional, it was malicious, and there was no way for [Victim] to get out of this. [Applicant] apparently cut himself during this assault. Police did recover blood droplets inside [Victim's] home that came back to him. Police, after listening to the 911 call, [Applicant] was immediately the suspect based on what the five year old had stated was in the home and that he had beaten his mother. Police was able to find out that he was using [Victim's] credit card right after this happened. They were able to pull video from various locations showing him pulling money out of the ATM. And they were able to see the clothing that he was wearing on the park camera when he left and also on these videos right after he killed her to find out what he was wearing. They began looking in Spartanburg for him because he was using the credit card here in Spartanburg County. They came upon him at the Econo Lodge. They recognized him. They already had a warrant for his arrest. Spartanburg County assisted in that. They were able to apprehend him about 1:30 on April the 21st. They did a search warrant for his 2006 Trail Blazer. And in the backseat they found the shirt that he was wearing when he committed this murder. That shirt was sent to SLED. And it does have [Victim's] blood on it. The bungee cords were also sent to SLED for testing. And those contained both [Victim's] blood and [Applicant's] DNA. Your Honor, I do have State's exhibit 2, which I have shared with [Plea Counsel] and shared with the Court. That includes 13 photographs showing [Victim] in the bathroom in the position that she was left in. I also have included photographs of the blood drops and where they were found inside of her home. One of the pictures, Your Honor, are the two strawberries that [Minor] tried to push under the door for his mother. And the last two -- or two of the photographs show the injury to [Applicant's] hand. And the last photograph is a photograph of the shirt that he was wearing that had [Victim's] blood on it. State's exhibit 3, Your Honor, is the DNA analysis in this case. That included [Victim's] standard as well as the standard from [Applicant] that we obtained through a Schmerber hearing. That shows that blood droplets on [Victim's] floor belonged to the [Applicant]. Her clothing was tested, tested positive for her DNA. Her bra tested positive for both the [Applicant's] DNA and her DNA. And as previously stated, his DNA was on the bungee cords that were used to kill [Victim]. And her DNA is on his shirt. State's exhibit 4, Your Honor, is the pathologist's report from autopsy. I think a special note is that even the pathologist stated that the body is received with a complex ligature apparatus. These are knotted together and looped together in several places forming essentially at least three complete loops about the neck. State's exhibit 5, and [Plea Counsel] may go more into this, had [Applicant] evaluated for competency. He was evaluated by Dr. Frierson. And the opinion was that he did have the capacity to stand trial. And there were also comments in there about [Applicant] malingering. And finally, Your Honor, is State's exhibit 6, his prior criminal history that I have made an exhibit, and I will go into at the appropriate time. Those are essentially the facts that we would present at trial, Your Honor.

(Plea Tr. pp. 11–16).

CURRENT ACTION BEFORE THIS COURT

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

1. Ineffective assistance of counsel:
   a. Failure to Investigate and Prepare:
      i. "Counsel failed to hire an expert to have Applicant evaluated to determine Applicant's state of mind when the alleged homicide occurred."
      ii. "Plea Counsel failed to show and advise Applicant prior to pleading guilty that the State made a plea offer to Applicant for forty-five years if he would pled guilty as indicted."
      iii. "Counsel failed to discuss any defense or trial strategies with Applicant prior to pleading guilty."
      iv. "Counsel failed to advise Applicant that he had a legal right to present a legally insanity defense at the time this alleged homicide occurred."
      v. "Counsel failed to discuss with Applicant that he possibly had a heat of passion case."
   b. Failure to Convey Discovery:
      i. "Counsel failed to timely give Applicant his motion of discovery."
2. Involuntary Guilty Plea:
   a. "Applicant contends if not for counsel's deficient representation, he would not have pled guilty but would have demanded a jury trial."

On November 14, 2025, Applicant, through PCR Counsel, amended his application for post-conviction relief to include the following allegations:

1. Ineffective Assistance of Counsel:
   c. "Counsel was ineffective for failing to investigate Applicant's mental health records;"
   d. "Counsel was ineffective for falling to obtain and fully discuss Applicant's mental records, diagnosis of psychiatrist reports;"
   e. "Counsel was ineffective for not communicating with Applicant prior to his guilty plea that the State made a plea offer;"
   f. "Counsel was ineffective for failing to investigate possible defenses prior to having Applicant's guilty plea;"
   g. "Counsel was ineffective for not counseling Applicant on the laws pertaining to manslaughter;"

Applicant also raised additional allegations at the evidentiary hearing:

1. Ineffective Assistance of Counsel:
   h. Plea Counsel was ineffective for not effectively communicating with Applicant prior to Applicant's guilty plea.

i. Plea Counsel was ineffective for failing to communicate with Applicant a sufficient amount of time to represent him.
j. Plea Counsel failed to inform Applicant that a life sentence would be without parole.
k. Plea Counsel misadvised the plea court concerning Applicant's mental health records.
l. Plea Counsel failed to obtain an independent mental health evaluation.

2. Involuntary Guilty Plea
   b. But for Plea Counsel's deficient representation, Applicant would have received a lesser charge of manslaughter.

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.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act[2] (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).

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

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 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 decisionmaking" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. 357, 367 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—**not** whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999) (emphasis added).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel and a claim of involuntary guilty plea through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility.

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), 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 further finds applicable the strong presumption that at all stages of Plea Counsel's representation of Applicant, he rendered adequate assistance and exercised reasonable professional judgment in his representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at

the time they were made. Strickland, 466 U.S. at 689; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992); 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: 1. Applicant agreed with Plea Counsel's statement that he and Applicant filed a motion to change venue to have his guilty plea hearing heard in Spartanburg County (Plea Tr. pp. 5–6); 2. Applicant indicated that his intent was to enter a plea to the charge of murder (Plea Tr. p. 5; p. 6); 3. Applicant indicated that he had not consumed any type of substance in the last twenty-four hours that was adversely or negatively affecting his ability to understand what they were doing at the hearing (Plea Tr. p. 7); 4. Applicant indicated that he had been treated for substance abuse issues several times, with the last time being for a drug problem (Plea Tr. pp. 7–8); 5. Applicant indicated that he was satisfied with the work that Plea Counsel had done for him (Plea Tr. p. 8); 6. Applicant indicated that he felt that he had enough time to talk with Plea Counsel about the legal elements of the charge, the facts behind his case, and any possible defenses he might have had (Plea Tr. p. 8); 7. Applicant indicated that no one had threatened him in any way or promised him anything in order to make him enter his plea (Plea Tr. p. 9); 8. Applicant indicated that the plea court was correct to conclude that his decision to enter his plea was free and voluntary on Applicant's part (Plea Tr. p. 9); 9. Applicant indicated that he understood that he had a right to a jury trial and indicated that he did not wish to have a

jury trial on the charge (Plea Tr. p. 9); 10. Applicant indicated that he understood his rights to confront and cross-examine the State's witnesses, to present evidence that he or Plea Counsel may feel would establish a defense, to subpoena, and to remain silent; Applicant indicated that he wished to give up those rights and go forward with entering his plea (Plea Tr pp. 9–10); 11. the plea court reviewed the guilty plea affidavit, marked it as Court's exhibit 1, and entered it into evidence (Plea Tr. p. 10); 12. Applicant indicated that he believed that the facts that A.S. Leskanic related to the plea court were substantially correct (Plea Tr. pp. 16–17); 13. Applicant indicated that he understood that the charge of murder carried a potential sentence of thirty years to life and that the charge is classified as both a violent and a most serious offense under the law (Plea Tr. p. 17); 14. Applicant indicated that he had been able to talk to Plea Counsel about the consequences and ramifications of the charge being classified as both a violent and a most serious offense (Plea Tr. pp. 17–18); 15. Applicant indicated that, understanding the consequences and ramifications of the two classifications as well as the possible sentence the plea court could impose, he still wished to enter the plea (Plea Tr. p. 18); 16. Applicant indicated that he was in fact guilty of the charge of murder (Plea Tr. p. 18); 17. Applicant indicated that all of his answers to the plea court's questions up to that point had been truthful and honest (Plea Tr. p. 18); 18. Applicant indicated that he agreed with Plea Counsel's statements to the plea court during mitigation (Plea Tr. p. 30); 19. the plea court found a substantial factual basis for the plea (Plea Tr. p. 31); 20. Applicant's decision to enter the plea was qualified as a free, voluntary, knowing, and intellectual decision (Plea Tr. p. 31); 21. the plea court accepted Applicant's plea (Plea Tr. p. 31).[3]

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[3] Contrary to Applicant's testimony throughout the evidentiary hearing, this Court is not persuaded that Applicant's answers and statements to the plea court were the product of Plea Counsel's instructions to respond in the affirmative.

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS

Allegation:	**Failure to Investigate and Prepare**
Allegation:	**Counsel failed to hire an expert to have Applicant evaluated to determine Applicant's state of mind when the alleged homicide occurred.**
Allegation:	**Counsel was ineffective for failing to investigate Applicant's mental health records.**
Allegation:	**Counsel was ineffective for failing to obtain and fully discuss Applicant's mental records, diagnosis of psychiatrist reports.**
Allegation:	**Plea Counsel failed to obtain an independent mental health evaluation.**

Applicant alleges Plea Counsel was constitutionally ineffective for failing to investigate Applicant's mental health records. Specifically, Applicant avers that Plea Counsel failed to obtain, investigate, and review with Applicant Applicant's mental health records and diagnosis. Applicant avers that Plea Counsel failed to hire an expert to evaluate Applicant to determine his state of mind when the crime occurred. This Court finds this allegation is 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); 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, Plea Counsel informed the plea court about Applicant's mental health issues and records and how they related to the crime. (Plea Tr. pp. 22–26).

PCR Evidentiary Hearing

On direct examination, Plea Counsel testified that he and Applicant talked about mental health in two different directions in Applicant's case, one of which would be proving that Applicant had a diagnosable condition that made him unable to control his actions on the day of the crime. (PCR Tr. p. 9). Plea Counsel testified that the problem with that direction was that he had a two-and-a-half-hour conversation over the phone with Applicant's doctor who was going to testify and that the doctor's testimony would be that the psychosis Applicant had was drug induced. (PCR Tr. p. 9). Plea Counsel testified that the doctor's testimony would have hurt Applicant's case rather than helped. (PCR Tr. p. 9).

Plea Counsel testified that he had access to Applicant's mental health records dating back to when Applicant was either age twelve or sixteen, had boxes of Applicant's medical records, and had "lengthy" conversations with Applicant's mental health provider. (PCR Tr. pp. 6–7). Plea Counsel testified that Applicant was diagnosed with anxiety and that he believed that Applicant was diagnosed with attention-deficit/hyperactivity disorder when he was younger. (PCR Tr. p. 7). Plea Counsel testified that he reviewed a box of records that covered a period of time that showed that Applicant suffered from anxiety. (PCR Tr. p. 9). Plea Counsel testified that he reviewed the medical records with Applicant and discussed the anxiety diagnosis with him as well. (PCR Tr. p. 9). Plea Counsel testified that he was unaware of whether Applicant was diagnosed with schizophrenia. (PCR Tr. p. 7).

Plea Counsel testified that the State evaluated Applicant and deemed him competent. (PCR Tr. p. 7). Plea Counsel testified that he could not say that he believed that getting an independent evaluation would have been helpful. (PCR Tr. pp. 10–11). Plea Counsel testified that he had Applicant's medical records and that he had Applicant's current medical provider, whom he spoke with and who was willing to testify in Applicant's case, but Plea Counsel did not believe it would have been beneficial. (PCR Tr. p. 11).

On cross-examination, Plea Counsel testified that he had been practicing law for twenty-five years, all of which was in criminal law. (PCR Tr. p. 12). Plea Counsel testified that, during his interactions with Applicant, Applicant seemed lucid and able to understand what was happening. (PCR Tr. p. 13). Plea Counsel testified that Applicant assisted him in preparing for the guilty plea. (PCR Tr. p. 13).

On direct examination, Applicant testified that Plea Counsel did not investigate his mental health records, including where and when he got them. (PCR Tr. p. 18). Applicant testified that

Plea Counsel refused to get his mental health records and that his mother was the one who got all of them for him and had to sign to get them. (PCR Tr. p. 18; p. 19). Applicant testified that his mental health records contained Applicant's diagnoses and that Plea Counsel had those records. (PCR Tr. pp. 20–21). Applicant testified that his mental health records contained diagnoses of schizophrenia, bipolar manic depressive, and impulsive control disorder that could have helped him present and defend his case. (PCR Tr. p. 21). Applicant testified that there was a difference between depression and schizophrenia and that he suffered from both, which Applicant discussed with Plea Counsel. (PCR Tr. p. 20). Applicant testified that Plea Counsel had all of his medical records, so Plea Counsel should have known what Applicant was diagnosed with. (PCR Tr. p. 20). Applicant testified that Plea Counsel only stated that he was diagnosed with anxiety, but Applicant had been diagnosed with schizophrenia and bipolar disorder. (PCR Tr. p. 20). Applicant testified that Plea Counsel never spoke to him about his mental health records and that Applicant told Plea Counsel that he was suffering from a mental illness. (PCR Tr. p. 20). Applicant testified that he tried to tell Plea Counsel that he wanted him to use his mental health records and get a lesser charge of manslaughter; Applicant testified that when he spoke with Plea Counsel about this, Plea Counsel told him that he did not think Applicant could get a manslaughter charge and that if Applicant went to trial, then Applicant would get life without parole. (PCR Tr. pp. 21–22).

Applicant testified that he went to Spartanburg Medical Center – Mary Black campus, which is where he was diagnosed with schizophrenia. (PCR Tr. p. 28). Applicant testified that the records for Spartanburg Regional stated that he was diagnosed with schizophrenia. (PCR Tr. pp. 28–29). Applicant testified that Plea Counsel did not talk with him about his schizophrenia diagnosis. (PCR Tr. p. 29). Applicant testified that Plea Counsel "never really spoke to" him about his mental health records and that Plea Counsel probably only spoke with him for an hour

during his entire representation. (PCR Tr. p. 29). Applicant testified that Plea Counsel had a lot of his medical records prior to his trial and that Plea Counsel did not investigate Applicant's records or review them with Applicant. (PCR Tr. p. 29). Applicant testified that he and Plea Counsel did not talk about Applicant's records extensively. (PCR Tr. p. 29). Applicant testified that he believed that he was prejudiced by Plea Counsel's ineffectiveness because Plea Counsel did not provide and present his mental health records in a proper way, which, if Plea Counsel had done so, would have gotten Applicant a better outcome. (PCR Tr. p. 32).

Applicant testified that Plea Counsel informed the plea court that his most recent hospitalization was in November 2019 and that Plea Counsel had never seen where Applicant was diagnosed with schizophrenia. (PCR Tr. p. 19; Plea Tr. p. 23). Applicant testified that he had with him at the evidentiary hearing documentation showing that he had been diagnosed with schizophrenia seven different times. (PCR Tr. p. 19). Applicant testified that his most recent hospitalization was in January of 2020, where he was diagnosed with schizophrenia. (PCR Tr. p. 20). Applicant testified that by not knowing his exact diagnosis, Plea Counsel was ineffective in representing him. (PCR Tr. p. 20).

On cross-examination, Applicant testified that his mother provided Plea Counsel with the records of Applicant's January 2020 hospital records. (PCR Tr. p. 33). Applicant testified that he was diagnosed with schizophrenia sixteen days before he committed the crime. (PCR Tr. p. 33). Applicant testified that the diagnosis of schizophrenia would have helped him get a lesser charge of manslaughter or helped his case because he was seeing and hearing things that were not there, was not thinking clearly, and was out of his mind. (PCR Tr. p. 33). When questioned on what he thought a mental evaluation would have revealed about his mental state at the time of the crime, Applicant testified that a mental evaluation would have revealed that he had severe schizophrenia

and was seeing and hearing things that were not there. (PCR Tr. p. 34). Applicant testified that he did not bring an expert to testify as to what a mental evaluation would have revealed about his mental state at the time of the crime and that he did not know that he could bring an expert to the hearing. (PCR Tr. pp. 34–35).

Applicant testified that he recalled the plea court receiving his medical records dating back to 2012. (PCR Tr. p. 37). Applicant testified that he did not recall Plea Counsel informing the plea court that he had bipolar disorder, but that he did remember Plea Counsel saying that Applicant struggled with mental health issues. (PCR Tr. p. 37). Applicant also testified that Plea Counsel also informed the plea court that he had never seen where Applicant was diagnosed with schizophrenia, but Applicant testified that he was diagnosed with schizophrenia by "several different doctors several different times." (PCR Tr. p. 37). Applicant testified that he recalled Plea Counsel requesting the plea court to consider Applicant's mental health and drug addiction histories as mitigating factors in rendering its sentence, but that some of what Plea Counsel said was not true, such as Plea Counsel's statement that he had never seen where Applicant was diagnosed with schizophrenia and the last date that Plea Counsel said Applicant was seen. (PCR Tr. pp. 37–38).

Applicant testified that the person whom Plea Counsel testified he spoke with for over two hours was never his doctor, knew nothing about Applicant, was someone whom Applicant had never seen or spoken to before, and was not an expert. (PCR Tr. pp. 41–42). Applicant testified that the person was from "another county mental health" and that Plea Counsel was supposed to subpoena him. (PCR Tr. pp. 41–42).

On redirect examination, Applicant testified that he wanted a new trial and for his medical records to be used at that new trial. (PCR Tr. p. 44).

On direct examination, A.S. Leskanic testified that a mental health evaluation was performed on Applicant with the opinion that Applicant had the capacity to stand trial. (PCR Tr. p. 45). A.S. Leskanic testified that the mental health evaluation was dated December 31, 2020, and January 7, 2021, and that the doctors at the Department of Mental Health looked at fifty-two items that included "numerous" medical records of Applicant. (PCR Tr. p. 45). A.S. Leskanic testified as to items forty-three through fifty-two that the doctors had access to for the mental health evaluation: The doctors had access to a two-hour forensic clinical interview on December 31, 2020; a one-hour-and-fifteen-minute clinical forensic interview on January 7, 2021; and medical records from Cherokee Medical Center, Mary Black Hospital, Upstate Carolina Medical Center, Prisma Health Greenville Hospital System, Three Rivers Behavioral Health, Carolina's Center for Behavioral Health, Cherokee County Detention Center, and SCDC. (PCR Tr. p. 46). A.S. Leskanic testified that she did not see anything in the mental health evaluation concerning a finding of schizophrenia. (PCR Tr. pp. 46–47). A.S Leskanic testified that under the mental status examination section of the mental health evaluation, "it stated that [Applicant's] performance on tests of cognitive function appeared purposely poor in an effort to appear impaired. He also frequently gave near-miss answers consistent with a phenomenon --." (PCR Tr. p. 47).

On cross-examination, when questioned whether she thought that the records that she read from the mental health evaluation were important to Applicant's case, A.S. Leskanic testified that they were important for the mental health evaluation where Applicant was deemed to be malingering and faking symptoms. (PCR Tr. p. 49). A.S. Leskanic testified that it was important that the doctors reviewed Applicant's records and diagnosed him as malingering. (PCR Tr. p. 49). A.S. Leskanic testified that she did not know what was contained in Applicant's records or the basis of Applicant's diagnosis and that she did not have anything that said that Applicant had

schizophrenia. (PCR Tr. p. 49). A.S. Leskanic testified that she had not reviewed the mental health evaluation. (PCR Tr. p. 49). A.S. Leskanic testified that that she just had the mental health evaluation, the facts of Applicant's case, and Applicant's actions after killing Victim. (PCR Tr. pp. 49–50). A.S. Leskanic testified that she did not have access to and did not review Applicant's records. (PCR Tr. p. 50).

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland). As an initial matter on this issue, this Court finds Plea Counsel's and A.S. Leskanic's testimonies **credible** and Applicant's testimony **not credible**. Plea Counsel **credibly** testified that he had boxes of Applicant's medical records that dated back to when Applicant was a teenager and that he had "lengthy" conversations with Applicant's mental health provider, whom Plea Counsel believed would not have been helpful to Applicant's case. Furthermore, contrary to Applicant's testimony, Plea Counsel **credibly** testified that he discussed these records and diagnoses with Applicant. As for the medical records containing diagnoses of schizophrenia, Plea Counsel **credibly** testified that he was unaware of a schizophrenia diagnosis. This Court questions whether Applicant ever provided Plea Counsel with medical records containing a diagnosis of schizophrenia. Furthermore, Plea Counsel reviewed the records he had and spoke about them alongside Applicant's mental health issues with the plea court during mitigation.

As for obtaining an independent mental health evaluation, Plea Counsel **credibly** testified that he believed that doing so would not have been helpful. Plea Counsel **credibly** testified that, based on his interactions with Applicant, Applicant appeared lucid, was able to understand what

was going on, and was able to assist him in preparing for the guilty plea. Additionally, Applicant had a mental health evaluation, which found that he was competent to stand trial and that he was malingering. Therefore, this Court finds that Plea Counsel was not deficient in his representation.

Regardless, Applicant has not presented any evidence demonstrating that this case would have resulted in a different outcome had Plea Counsel properly investigated his medical records. Although Applicant testified that a mental evaluation would have revealed that he had severe schizophrenia and was seeing and hearing things that were not there at the time of the crime, Applicant did not present a mental evaluation or the testimony of an expert showing this. Additionally, Applicant testified that his mental health records containing his diagnoses of schizophrenia, bipolar disorder, and impulse control disorder would have helped him present and defend his case; Applicant also testified that had Plea Counsel provided and presented his medical records properly, then Applicant would have gotten a better outcome. Both are mere speculation, and speculation does not meet Applicant's burden. Therefore, this Court finds that no prejudice resulted from Plea Counsel's representation.

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

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Allegation:	**Plea Counsel failed to show and advise Applicant prior to pleading guilty that the State made a plea offer to Applicant for forty-five years if he would plead guilty as indicted.**
Allegation:	**Counsel was ineffective for not communicating with Applicant prior to his guilty plea that the State made a plea offer.**

Applicant alleges Plea Counsel was constitutionally ineffective for failing to inform Applicant of a plea offer. Specifically, Applicant avers that Plea Counsel failed to inform Applicant of a plea offer of forty-five years if Applicant would plead as indicted. This Court finds this allegation is without merit.

A defendant has the right to effective assistance of counsel during the plea-bargaining process. Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018)). "The United States Supreme Court has held that 'defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused.'" Collins v. State, 422 S.C. 250, 261, 810 S.E.2d 871, 876 (2018) (quoting Missouri v. Frye, 566 U.S. 134, 145 (2012)); 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.

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On cross-examination, Plea Counsel testified that he spent a few months negotiating with the State for a plea deal. (PCR Tr. p. 13). Plea Counsel testified that he and the State went back and forth in their plea negotiations. (PCR Tr. pp. 13–14). Plea Counsel testified that the State offered a plea to murder with a forty-five-year sentence, which Applicant rejected and authorized Plea Counsel to counter with voluntary manslaughter with a twenty- or twenty-five-year sentence. (PCR Tr. p. 14). Plea Counsel testified that A.S. Leskanic "made it clear" that a plea would have to be to murder and that he believed she reduced the sentence from forty-five to forty years. (PCR Tr. p. 14). Plea Counsel testified that he believed that A.S. Leskanic told him that if Applicant wanted to plead in front of Judge Hayes, then the plea would have to be straight-up with no recommendation. (PCR Tr. p. 14). Plea Counsel testified that he had Applicant sign a guilty plea affidavit stating that Applicant understood his rights. (PCR Tr. pp. 8–9; Resp. Exh. 1). Plea Counsel testified that the complete chain of plea offers and responses from the plea negotiations was set forth in the guilty plea affidavit. (PCR Tr. p. 14; Resp. Exh. 1). Plea Counsel testified that the signature on the second page of the guilty plea affidavit was Applicant's, which Applicant signed while he was in the holding cell in the Spartanburg County Courthouse. (PCR Tr. p. 16; Resp. Exh. 1).

On redirect examination, Plea Counsel testified that the date of 10/29/02 on the guilty plea affidavit was probably not the date it was signed, but the signature and writing were Applicant's. (PCR Tr. p. 16).

On direct examination, Applicant testified that he remembered the guilty plea affidavit and that he was in the courtroom when he signed it, which was why he dated it wrong; he was in a hurry and only dated it without getting a chance to read it. (PCR Tr. p. 26; Resp. Exh. 1). Applicant testified that the guilty plea affidavit was presented to him five minutes before his guilty plea and that he did not have an opportunity to read it or understand it. (PCR Tr. pp. 26–27). When questioned on why he signed the guilty plea affidavit if he did not read or understand it, Applicant testified that when he was told the judge was coming into the courtroom, he had not signed it yet, and Plea Counsel told him the guilty plea affidavit only stated that he was agreeing to the plea offer, so Applicant signed it. (PCR Tr. p. 27; Resp. Exh. 1). Applicant testified that it was his signature on the second page of the guilty plea affidavit and that the date was not the correct date because he was in a hurry to sign it and he had taken his medication, which was a "very strong psychotic medication." (PCR Tr. pp. 27–28; Resp. Exh. 1). Applicant testified that he took his medication at jail before pleading guilty and that he was probably not thinking clearly. (PCR Tr. p. 28).

On direct examination, A.S. Leskanic testified that the State was set to go to trial on November 1st. (PCR Tr. p. 48). A.S. Leskanic testified that a voluntary manslaughter plea was never an option from the State. (PCR Tr. p. 47). A.S. Leskanic testified that Plea Counsel extended an offer of voluntary manslaughter and twenty-five years, which the State rejected. (PCR Tr. p. 47). A.S. Leskanic testified that Plea Counsel asked for murder and thirty years, which the State rejected as well. (PCR Tr. p. 47). A.S. Leskanic testified that the only offer the State made was murder with a forty-five-year sentence or a straight-up plea, the latter of which Applicant chose. (PCR Tr. pp. 47–48).

Findings

Based on the record before this Court and Plea Counsel's **credible** testimony, this Court finds that Plea Counsel's investigation was reasonable. See Taylor, 404 S.C. at 364, 745 S.E.2d at 104 (citing Wiggins v. Smith, 539 U.S. 510, 522– 23 (2003). As an initial matter on this issue, this Court finds Plea Counsel's and A.S. Leskanic's testimonies **credible** and Applicant's testimony **not credible**. Plea Counsel **credibly** testified as to the plea negotiations in Applicant's case, including that he informed Applicant of the forty-five-year plea deal, which Applicant rejected. As Plea Counsel **credibly** testified, the guilty plea affidavit gives a detailed summary of the plea negotiations in Applicant's case:

> Client has been made aware of the plea negotiations made on his behalf. Client has authorized Attorney Brannon to offer a plea to Voluntary Manslaughter with a negotiated sentence of 25 years. That offer was made and rejected on at least two instances. Client authorized Attorney Brannon to offer a plea to murder with a negotiated sentence of 30 years. That offer was rejected. On Wednesday, October 27, 2021 Client authorized Attorney Brannon to Offer a plea to Murder with a negotiated sentence of 35 years. Client is aware that while that offer was not accepted, it did begin other negotiations and on Thursday, October 28, 2021 the State offered to allow the client to plea straight up to the crime of murder in front of Judge Mark Hayes. In a phone call with attorney Brannon, on that same day, the client accepted that offer. During Attorney Brannon's representation of James Eric Spencer, the only offers ever made by the State were a straight up plea or a plea to murder and a negotiated sentence of 45 years.

(Resp. Exh. 1).

A.S. Leskanic **credibly** testified as to the plea negotiations and that the State offered Applicant a forty-five-year plea deal to murder or a straight-up plea, the latter of which Applicant chose. This Court finds that Plea Counsel informed Applicant of the forty-five year deal and that Applicant rejected it because he wanted a better deal, which is evidenced by his counteroffer and the other offers he made through Plea Counsel.

This Court finds through the combination of the record and Plea Counsel's **credible** testimony that Applicant has failed to meet the burden of showing Plea Counsel 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:	**Counsel failed to discuss any defense or trial strategies with Applicant prior to pleading guilty.**
Allegation:	**Counsel failed to advise Applicant that he had a legal right to present a legally insanity defense at the time this alleged homicide occurred.**
Allegation:	**Counsel failed to discuss with Applicant that he possibly had a heat of passion case.**
Allegation:	**Counsel was ineffective for failing to investigate possible defenses prior to having Applicant's guilty plea.**
Allegation:	**Counsel was ineffective for not counseling Applicant on the laws pertaining to manslaughter.**

Applicant alleges Plea Counsel was constitutionally ineffective for failing to investigate, inform Applicant of, and discuss with Applicant defenses and trial strategies. Specifically, Applicant avers that Plea Counsel failed to discuss with Applicant the issues of voluntary manslaughter and heat of passion. This Court finds this allegation is without merit.

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)), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). Likewise, in order to prevail on a claim that counsel did not review discovery with applicant, the applicant must demonstrate prejudice by showing what evidence could have been discovered or what other defenses could have been pursued. Id.

Furthermore, an applicant must 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 insufficient to support a relief grant. 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

At the guilty plea hearing, the following colloquy occurred between the plea court and Applicant:

THE COURT:	Are you satisfied with the work that your lawyer has done for you?
APPLICANT:	Yes, sir, I am.
THE COURT:	Do you feel like you've had enough time to talk to him about the legal elements of the charge that you're pleading to, the facts that are behind this case and also any possible defenses you might have?
APPLICANT:	Yes, sir.
THE COURT:	All right. And if you feel you need anymore time to talk to him about any of those, you just let me know, and we'll stop, and I'll allow you to do that, okay?
APPLICANT:	Yes, sir.

(Plea Tr. pp. 8–9).

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On direct examination, Plea Counsel testified that Applicant did not want to go to trial. (PCR Tr. p. 7). Plea Counsel testified that the first time he met Applicant, Applicant admitted that he committed the crime because Victim cheated on him and told Plea Counsel that he wanted to plead. (PCR Tr. p. 7). Plea Counsel testified that with the facts of Applicant's case, "there was absolutely no way that we would've gotten a not guilty. There were eye witnesses to him entering and leaving the premises. There was DNA evidence on the ligature. This was a bad case." (PCR

Tr. pp. 9–10). When questioned whether it was his position that there was no question that Applicant killed Victim, Plea Counsel testified that Applicant told him he did. (PCR Tr. p. 10).

Plea Counsel testified that he discussed with Applicant the law pertaining to manslaughter and the heat of passion. (PCR Tr. pp. 7–8). Plea Counsel testified that he would imagine that for Applicant to get a favorable resolution, he would have to get some type of manslaughter charge or mental illness defense. (PCR Tr. p. 10).

Plea Counsel testified that when he discussed manslaughter and heat of passion with Applicant, Plea Counsel did not feel that it was a route that he could pursue because of the facts of Applicant's case:

> [I]t wasn't like he walked in the house and caught her in the act of intercourse with another man. He learned of it and he stewed on it for several days and then went across -- I believe his mom lived across the street from this woman. He walked to her house and committed this crime.

(PCR Tr. p. 8).

Plea Counsel testified that he remembered "distinctly going over the statements that were written in the case." (PCR Tr. p. 10). Plea Counsel testified that he and Applicant talked about defenses and that it was "not a bright future," which Plea Counsel believed that Applicant understood, and which Applicant also indicated in the guilty plea affidavit. (PCR Tr. p. 10; Resp. Exh. 1).

On cross-examination, Plea Counsel testified that in light of the State's evidence, he could not conceive of any defenses available to Applicant that would have been successful at trial, both currently and during his representation. (PCR Tr. p. 13).

On direct examination, Applicant testified that Plea Counsel never discussed any defense strategies with him. (PCR Tr. p. 30). Applicant testified that Plea Counsel did not discuss the heat of passion with him. (PCR Tr. p. 22). Applicant testified that he and Plea Counsel spoke about

the defense of manslaughter. (PCR Tr. p. 21). Applicant testified that he tried to tell Plea Counsel that he wanted him to use his mental health records and get a lesser charge of manslaughter; Applicant testified that when he spoke with Plea Counsel about this, Plea Counsel told him that he did not think Applicant could get a manslaughter charge and that if Applicant went to trial, then Applicant would get life without parole. (PCR Tr. pp. 21–22). Applicant testified that Plea Counsel was "bound and determined" that Applicant would receive life without parole. (PCR Tr. p. 22). Applicant testified that he knew very little about manslaughter prior to pleading guilty; he just knew that manslaughter was a lesser charge and carried less time. (PCR Tr. p. 22). Applicant testified that he and Plea Counsel never talked about voluntary manslaughter. (PCR Tr. p. 22). Applicant testified that, based on his review of the law that he now had, he believed it was reasonable to ask for a manslaughter charge and conviction if he went to trial. (PCR Tr. p. 26).

Applicant testified that he did not remember what happened at the time of the crime because "we" were using drugs, and Applicant was drugged by Victim with roofies that she obtained off the dark web. (PCR Tr. p. 24). Applicant testified that Victim discussed with several people about him and what room he was passed out in. (PCR Tr. p. 24). Applicant testified that he learned of this by looking through Victim's phone and that he wanted Plea Counsel to obtain her phone records. (PCR Tr. p. 24). Applicant testified that the messages and being drugged are what made Applicant upset and that at some point he got to the house where he blacked out and did not remember what happened, which Applicant discussed with Plea Counsel. (PCR Tr. p. 25).

Applicant testified that Plea Counsel said he was going to submit plea offers for manslaughter to the Solicitor's Office. (PCR Tr. p. 22). Applicant testified that he and Plea Counsel had no discussions about his condition exacerbating what happened on the day of the

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crime. (PCR Tr. p. 22). Applicant testified that anything he brought to Plea Counsel's attention as potentially a defense strategy was told by Plea Counsel would not help him. (PCR Tr. p. 23).

When questioned on why he informed the plea court that he was satisfied with Plea Counsel's representation, Applicant testified that the plea court told him to consult with Plea Counsel after he told the plea court that he "had no true recollection of [the crime]" and that Plea Counsel told him to answer the plea court's questions by saying "true" and "correct" and agreeing with everything the plea court said. (PCR Tr. p. 23).

On cross-examination, Applicant testified that if Plea Counsel had discussed and advised him of the defenses, he would not have pleaded guilty. (PCR Tr. p. 40). Applicant testified that if the defenses had not been successful at trial, then he would not have received any more time than he received from pleading guilty. (PCR Tr. p. 40).

Findings

Based on the record before this Court and Plea Counsel's **credible** testimony, this Court finds that Plea Counsel's investigation was reasonable. See Taylor, 404 S.C. at 364, 745 S.E.2d at 104 (citing Wiggins v. Smith, 539 U.S. 510, 522–23 (2003). As an initial matter on this issue, this Court finds Plea Counsel's testimony **credible** and Applicant's testimony **not credible**. Although Applicant testified that Plea Counsel never discussed any defense strategies with him, Plea Counsel **credibly** testified that he discussed defenses and the law pertaining to manslaughter and the heat of passion and that he could not think of any defense that would have been successful at trial in light of the State's evidence. Notably, Plea Counsel **credibly** testified that it was "not a bright future" concerning defenses in Applicant's case. Plea Counsel **credibly** testified that Applicant told him that he did not want to go to trial and that he killed Victim because she cheated on him. This Court does not find credible or persuasive Applicant's version of events and his claim

that he blacked out when the crime occurred. Additionally, Plea Counsel **credibly** testified that Applicant committed the crime several days after learning of Victim's infidelity, which is why Plea Counsel did not find manslaughter as a viable defense. See State v. Pittman, 373 S.C. 527, 574, 647 S.E.2d 144, 169 (2007) ("The sudden heat of passion, upon sufficient legal provocation, which mitigates a felonious killing to manslaughter, while it need not dethrone reason entirely, or shut out knowledge and volition, must be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence.") (quoting State v. Knoten, 347 S.C. 296, 303, 555 S.E.2d 391, 395 (2001) (internal quotations omitted). This Court finds that Plea Counsel was not deficient in advising Applicant of defenses in his case.

Additionally, Applicant informed the plea court that he felt he had enough time to speak with Plea Counsel about possible defenses, and the plea court gave Applicant the option to speak with Plea Counsel if he felt he needed to. This Court is not persuaded by Applicant's testimony that he answered the plea court's questions based on Trial Counsel's advice that he had to answer them affirmatively, which would not support a grant of post-conviction relief. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (Defendant's claim that, at his plea hearing, he had answered trial judge's questions regarding plea affirmatively based on his counsel's advice that the questions were meaningless did not support grant of postconviction relief.).

Furthermore, Applicant did not present any evidence showing how any of these defenses would have resulted in a different outcome in his case. The most Applicant testified to was that he would not have pleaded guilty had Plea Counsel advised him of defenses and that it was reasonable to request a manslaughter charge and conviction had he gone to trial, both of which this Court finds to be mere speculation, and speculation does not meet Applicant's burden. As for a

legal insanity defense, Applicant did not present any evidence that he was legally insane at the time of the crime or that it would have resulted in a different outcome in his case. Therefore, this Court finds that there was no prejudice resulting from Plea Counsel investigation into and advisement of defenses in Applicant's case.

This Court finds through the combination of the record and Plea Counsel's **credible** testimony that Applicant has failed to meet the burden of showing Plea Counsel 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 Convey Discovery.**
Allegation: **Counsel failed to timely give Applicant his motion of discovery.**

Applicant alleges Plea Counsel was constitutionally ineffective for failing to obtain, provide, and discuss discovery materials with Applicant. Specifically, Applicant avers that Plea Counsel failed to timely provide Applicant with his discovery. This Court finds this allegation is without merit.

Applicant alleges Counsel was ineffective in failing to provide a copy of the discovery in his case. An applicant who alleges his or her defense attorney was ineffective in failing to provide a copy of the discovery materials must show how the outcome of trial would have been different had the attorney provided such a copy; the applicant must show what evidence could have been discovered or what other defense could have been 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)).

PCR Evidentiary Hearing

On direct examination, Plea Counsel testified that he remembered "distinctly going over the statements that were written in the case." (PCR Tr. p. 10).

On cross-examination, Plea Counsel testified that during the course of his representation, he filed a request for discovery pursuant to Rule 5 and under Brady[4] and was provided those materials. (PCR Tr. pp. 12–13). Plea Counsel testified that he provided Applicant with a copy of his discovery after the guilty plea and that he believed Applicant's mother picked up the discovery. (PCR Tr. p. 14; pp. 14–15). Plea Counsel testified that he did not provide Applicant with a copy of his discovery while Applicant was incarcerated for the following reason:

> I have had this happen to more than one client, which is what caused me to stop doing it. If you leave discovery with those incarcerated defendants, often cell mates will pick those documents up and become witnesses against your client.

(PCR Tr. p. 14).

Plea Counsel testified that he explained this reasoning to Applicant. (PCR Tr. p. 14). Plea Counsel testified that each time he visited Applicant, he brought the discovery and reviewed it with Applicant. (PCR Tr. p. 14).

On direct examination, Applicant testified that when Plea Counsel came to the jail, they did not review his medical records or "anything." (PCR Tr. pp. 29–30). Applicant testified that Plea Counsel did not provide him with discovery, which was because of Plea Counsel's position that he did not want the discovery to be disseminated in jail. (PCR Tr. p. 30). Applicant testified that he "asked [Plea Counsel] over and over and over that I wanted to read them." (PCR Tr. p. 30). Applicant testified that when Plea Counsel came to the jail with all the information about his case, he did not discuss it with Applicant. (PCR Tr. p. 30). Applicant testified that Plea Counsel

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[4] (Insert full case name)

only showed him one statement, which was a statement Applicant made admitting his guilt. (PCR Tr. p. 30).

Findings

This Court finds the combination of the record and Plea Counsel's **credible** testimony that Applicant has failed to meet the burden of showing Plea Counsel was constitutionally ineffective. See Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006). As an initial matter on this issue, this Court finds Plea Counsel's testimony **credible** and Applicant's testimony **not credible**. Contrary to Applicant's testimony that Plea Counsel did not review the discovery with him, Plea Counsel **credibly** testified that he reviewed the discovery with Applicant every time that he visited him. Additionally, the guilty plea affidavit states that "Client is aware that the discovery is significant in this case. There are two statements attributed to the client, admitting his guilt, his DNA is present at the crime scene and a child witnessed the client beating [Victim]." (Resp. Exh. 1). This Court finds that Applicant was aware of the discovery in his case and what it contained. Therefore, this Court finds that Plea Counsel was not deficient in reviewing the discovery with Applicant.

Also, Plea Counsel **credibly** testified that he did not provide Applicant with a copy of the discovery before the plea hearing based on prior experiences of other inmates finding his clients' discovery materials and using them against them, a reason which Plea Counsel explained to Applicant. This Court finds that Plea Counsel was not deficient in not providing Applicant with a copy of his discovery prior to the guilty plea hearing because of Plea Counsel's reasonable basis for not doing so.

Additionally, Plea Counsel **credibly** testified that he provided Applicant's family with the discovery after the guilty plea hearing. The guilty plea affidavit states that "[a] copy of all

discovery materials will be provided to the client's family after this plea takes place." (Resp. Exh. 1). Therefore, this Court finds that Plea Counsel did provide Applicant's family with discovery after the guilty plea hearing as stated in the guilty plea affidavit.

Furthermore, Applicant failed to present any evidence of what Plea Counsel could have discovered or what defenses could have been pursued had Plea Counsel reviewed or provided the discovery with him.

This Court finds through the combination of the record and Plea Counsel's **credible** testimony that Applicant has failed to meet the burden of showing Plea Counsel 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 not effectively communicate with Applicant prior to Applicant's guilty plea.**
Allegation:	**Failure to communicate with Applicant a sufficient amount of time to represent him.**

Applicant alleges Plea Counsel was constitutionally ineffective for failing to effectively communicate with Applicant. Applicant also alleges that Plea Counsel was constitutionally ineffective for failing to meet with Applicant a sufficient number of times in order to represent him. This Court finds that these allegations are without merit.

Federal case law holds that there is no constitutional minimum number of meetings between attorneys and their clients required to satisfy the competency requirement. Moody v. Polk, 408 F.3d 141, 148 (4th Cir. 2005); see also Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) (no constitutional minimum number of meetings to satisfy competency); United States v. Olson, 846 F.2d 1103, 1108 (7th Cir. 1988) (reciting that there is no constitutional minimum number of meetings between attorney and client and observing that an experienced attorney may

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

South Carolina case law has established that even if Trial Counsel only met with his client very briefly, that alone does not establish that he was unprepared or ineffective at trial. See Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) (citing Easter) ("First, there is no question that counsel met with [Applicant] on several occasions prior to the first trial. Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation."). An applicant must present evidence showing how additional time spent in consultation would have resulted in a different outcome; mere speculation as to how the alleged lack of preparation prejudiced the applicant is insufficient to support a grant of relief. Smith v. State, 404 S.C. 493, 500–01, 745 S.E.2d 378, 382 (Ct. App. 2012) (citing Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998); Skeen v. State, 325 S.C. 210, 214–15, 481 S.E.2d 129, 132 (1997)).

Guilty Plea Hearing

At the guilty plea hearing, the following colloquy occurred between the plea court and Applicant:

THE COURT:	Are you satisfied with the work that your lawyer has done for you?
APPLICANT:	Yes, sir, I am.
THE COURT:	Do you feel like you've had enough time to talk to him about the legal elements of the charge that you're pleading to, the

	facts that are behind this case and also any possible defenses you might have?
APPLICANT:	Yes, sir.
THE COURT:	All right. And if you feel you need anymore time to talk to him about any of those, you just let me know, and we'll stop, and I'll allow you to do that, okay?
APPLICANT:	Yes, sir.

(Plea Tr. pp. 8–9).

PCR Evidentiary Hearing

On direct examination, Plea Counsel testified that he discussed "in detail" the elements of the crime and "all the stuff" with Applicant prior to Applicant's guilty plea. (PCR Tr. p. 8). Plea Counsel testified that he believed that he communicated with Applicant a sufficient amount of time to represent him. (PCR Tr. p. 11). Plea Counsel testified that, concerning the guilty plea, he had "lengthy" conversations with Applicant and that they had "a lot" of in-person conversations. (PCR Tr. p. 11).

On direct examination, Applicant testified that he never had lengthy conversations with Plea Counsel. (PCR Tr. p. 22). Applicant testified that Plea Counsel "did like four or five-minute video calls with me and maybe a 15-minute in-person visit" during the entire representation. (PCR Tr. pp. 22–23). Applicant testified that Plea Counsel "never really spoke" to him about his mental health records. (PCR Tr. p. 29). Applicant testified that he probably only spoke with Plea Counsel for an hour during the entire representation. (PCR Tr. p. 29). Applicant testified that when Plea Counsel came to the jail, they did not review his medical records or "anything." (PCR Tr. pp. 29–30).

Findings

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

See Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006). As an initial matter on this issue, this Court finds Plea Counsel's testimony **credible** and Applicant's testimony **not credible**. Contrary to Applicant's testimony that he and Plea Counsel had minimal meetings and conversations, Plea Counsel **credibly** testified that he discussed Applicant's case with him in detail and that he communicated with Applicant a sufficient amount of time to represent him. Concerning the guilty plea, Plea Counsel **credibly** testified that there were "lengthy" conversations and that they had "a lot" of in-person conversations. Additionally, Applicant informed the plea court that he felt that he had enough time to talk with Plea Counsel about the legal elements of the charge, the facts of his case, and possible defenses, which the plea court gave Applicant the option to speak with Plea Counsel about if he felt that he needed to. Therefore, this Court finds that Plea Counsel was not deficient in his communications with Applicant and the amount of time he spent in consultation with Applicant.

Furthermore, Applicant failed to present "any evidence of how additional preparation or communication would have resulted in a different outcome." Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012); see Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998) (explaining that, where an applicant failed to present any evidence of what counsel could have discovered or what other defenses he would have requested counsel pursue had counsel more fully prepared for the trial, applicant failed to show his counsel's lack of preparation prejudiced him); Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (finding that, when there is evidence counsel met with a defendant in preparation for trial and there is no evidence additional preparation on the part of counsel would have affected the outcome at trial, counsel cannot be said to have been ineffective), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). Therefore, there was no prejudice that resulted from Plea Counsel's

communications and meetings with Applicant.

This Court finds through the combination of the record and Plea Counsel's **credible** testimony that Applicant has failed to meet the burden of showing Plea Counsel 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 1: Plea Counsel failed to inform Applicant that a life sentence would be without parole.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to inform Applicant that a life sentence would be without parole. This Court finds that this allegation is without merit.

PCR Evidentiary Hearing

On direct examination, Plea Counsel testified that he "absolutely" discussed with Applicant that Applicant could receive a life sentence by pleading guilty. (PCR Tr. pp. 11–12). Plea Counsel testified that he did not make any representations at all to Applicant that Applicant could receive a lesser sentence. (PCR Tr. p. 12). Plea Counsel testified that when Applicant pleaded guilty, Applicant was fully aware that he was exposing himself to a potential life sentence, which the guilty plea affidavit reflects. (PCR Tr. p. 12; Resp. Exh. 1).

On cross-examination, Plea Counsel testified that Applicant signed the guilty plea affidavit while he was in the holding cell in the Spartanburg County Courthouse. (PCR Tr. p. 16).

On direct examination, Applicant testified that Plea Counsel discussed with him that Applicant could receive a life sentence by pleading. (PCR Tr. pp. 30–31). Applicant testified that he thought that there was a life without parole and a life with parole and that a life sentence could allow him parole. (PCR Tr. p. 31). Applicant testified that Plea Counsel never explained that a

life sentence meant life without parole. (PCR Tr. p. 31). Applicant testified that "[t]hey didn't say without parole. It just says life." (PCR Tr. p. 31). Applicant testified that he was anticipating receiving parole out of his life sentence. (PCR Tr. p. 31). Applicant also testified that Plea Counsel told him that if Applicant went to trial, then Applicant would get life without parole. (PCR Tr. pp. 21–22). Applicant testified that Plea Counsel was "bound and determined" that Applicant was going to get life without parole. (PCR Tr. p. 22).

Applicant testified that he remembered the guilty plea affidavit and that he was in the courtroom when he signed it, which was the reason he dated it wrong because he was in a hurry and only dated it without getting a chance to read it. (PCR Tr. p. 26; Resp. Exh. 1). Applicant testified that the guilty plea affidavit was presented to him five minutes before his guilty plea and that he did not have an opportunity to read it or understand it. (PCR Tr. pp. 26–27; Resp. Exh. 1). When questioned on why he signed the guilty plea affidavit if he did not read or understand it, Applicant testified that when he was told the judge was coming into the courtroom, he had not signed it yet, and that Plea Counsel told him the guilty plea affidavit only stated that he was agreeing to the plea offer, so Applicant signed it. (PCR Tr. p. 27; Resp. Exh. 1). Applicant testified that it was his signature on the second page of the guilty plea affidavit and that the date was not the correct date because he was in a hurry to sign it and he had taken his medication, which was a "very strong psychotic medication." (PCR Tr. pp. 27–28; Resp. Exh. 1). Applicant testified that he took his medication at jail before pleading guilty and that he was probably not thinking clearly. (PCR Tr. p. 28).

Findings

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

See Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006). As an initial matter on this issue, this Court finds Plea Counsel's testimony **credible** and Applicant's testimony **not credible**. Applicant testified that although Plea Counsel told him that he could receive a life sentence by pleading guilty, Plea Counsel never informed him that a life sentence was without parole. However, Applicant himself testified that Plea Counsel told him that he would get life without parole if he went to trial. Furthermore, Plea Counsel **credibly** testified that he told Applicant that he could get a life sentence, which is reflected in the guilty plea affidavit. Notably, the guilty plea affidavit contains the following line: "Client understands that he could be sentenced to life without parole in this plea." (Resp. Exh. 1). Clearly, Plea Counsel informed Applicant that the maximum sentence he could receive was life without parole, and Applicant was aware of this possible sentence before the guilty plea hearing.

Even if Plea Counsel did not advise Applicant of the parole eligibility of a life sentence, he had no duty to do so. See Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983) (Parole eligibility is a collateral consequence of sentencing which a defendant need not be specifically advised of before entering a guilty plea.); see also Brown v. State, 306 S.C. 381, 412 S.E.2d 399 (1991) (A guilty plea is not rendered involuntary if the defendant is not informed of the collateral consequences of his sentence.); but see Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) ("However, if trial counsel actively misinforms the defendant about parole eligibility, the defendant must prove he relied on the misinformation to receive PCR."). This Court finds that Plea Counsel correctly advised Applicant that he could receive a sentence of life imprisonment without parole by pleading guilty.

This Court finds through the combination of the record and Plea Counsel's **credible** testimony that Applicant has failed to meet the burden of showing Plea Counsel 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 correctly advise the plea court regarding Applicant's mental health records.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to correctly advise the plea court of Applicant's mental health records. Specifically, Applicant avers that Plea Counsel misadvised the plea court as to Applicant's last hospitalization for mental health and his diagnosis of schizophrenia. This Court finds this allegation is without merit.

Guilty Plea Hearing

At the guilty plea hearing, Plea Counsel also informed the plea court during mitigation that Applicant's "most recent hospitalization was in November of 2019 at Mary Black where he stayed seven days." (Plea Tr. p. 23).

After mitigation where Plea Counsel and Applicant's mother spoke on Applicant's behalf, the following colloquy occurred:

PLEA COUNSEL:	Your Honor, I believe [Applicant] would like to speak briefly.
THE COURT:	[Applicant], do you agree with the statements that were made by your lawyer when he addressed them to me?
APPLICANT:	Yes, sir, I do.
THE COURT:	All right. [Applicant], is there anything else that you would like to say or want me to know or consider?
APPLICANT:	As you heard him say, I've been sick with mental health and addicted to drugs for a very, very long time. I finally found somebody that I loved. And my sickness and my addiction led to tragedy, and I can't say sorry enough, sorry for my actions. And I'm sorry to the family. And I ask them to please forgive me. Please forgive me. I ask the Lord to forgive me, and I'm asking them to forgive me.
PLEA COUNSEL:	Thank you, Your Honor.
THE COURT:	Thank you, [Applicant].

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(Plea Tr. p. 30).

PCR Evidentiary Hearing

On direct examination, Plea Counsel testified that he had access to Applicant's mental health records dating back to when Applicant was either age twelve or sixteen, had boxes of Applicant's medical records, and had "lengthy" conversations with Applicant's mental health provider. (PCR Tr. pp. 6–7). Plea Counsel testified that Applicant was diagnosed with anxiety and that he believed that Applicant was diagnosed with attention-deficit/hyperactivity disorder when he was younger. (PCR Tr. p. 7). Plea Counsel testified that he reviewed a box of records that covered a period of time that showed that Applicant suffered from anxiety. (PCR Tr. p. 9). Plea Counsel testified that he reviewed the medical records with Applicant and discussed the anxiety diagnosis with him as well. (PCR Tr. p. 9). Plea Counsel testified that he was unaware of whether Applicant was diagnosed with schizophrenia. (PCR Tr. p. 7).

On direct examination, Applicant testified that Plea Counsel informed the plea court that his most recent hospitalization was November 2019 and that Plea Counsel never saw where Applicant was diagnosed with schizophrenia. (PCR Tr. p. 19). Applicant testified that he had documentation with him at the evidentiary hearing showing that he had been diagnosed with schizophrenia seven different times. (PCR Tr. p. 19). Applicant testified that his most recent hospitalization was in January of 2020 where he was diagnosed with schizophrenia. (PCR Tr. p. 20). Applicant testified that he went to Spartanburg Medical Center – Mary Black campus, which is where he was diagnosed with schizophrenia. (PCR Tr. p. 28). Applicant testified that the records for Spartanburg Regional stated that he was diagnosed with schizophrenia. (PCR Tr. pp. 28–29). Applicant testified that Plea Counsel did not talk with him about his schizophrenia diagnosis. (PCR Tr. p. 29).

Applicant testified that his mental health records contained diagnoses of schizophrenia, bipolar manic depressive, and impulsive control disorder that could have helped him present and defend his case. (PCR Tr. p. 21). Applicant testified that there was a difference between depression and schizophrenia and that he suffered from both, which Applicant discussed with Plea Counsel. (PCR Tr. p. 20).

On cross-examination, Applicant testified that his mother provided Plea Counsel with the records of Applicant's January 2020 hospital records. (PCR Tr. p. 33). Applicant testified that he was diagnosed with schizophrenia by "several different doctors several different times." (PCR Tr. p. 37). Applicant testified that he was diagnosed with schizophrenia sixteen days before he committed the crime. (PCR Tr. p. 33). Applicant testified that Plea Counsel misadvised the plea court. (PCR Tr. pp. 33–34). When questioned why he did not correct Plea Counsel, Applicant testified to the following reasoning:

> 'Cause at the time I didn't have these records. He had the records. He was holding them from me. I didn't know that. I didn't know this until after. He only give me my records after I plead guilty.

(PCR Tr. p. 34).

Applicant testified that he was present and aware when he was diagnosed with schizophrenia in 2020 but that it had been a long time since then and that he did not know the date. (PCR Tr. p. 34). Applicant testified that he recalled informing the plea court that he had mental health and drug addiction issues. (PCR Tr. p. 38). Applicant testified that the reason why he did not inform the plea court that he was diagnosed with schizophrenia was because at the time he did not know if doing so would help or hurt his case. (PCR Tr. pp. 39–40). Applicant testified that he did not at that time correct Plea Counsel and tell the plea court that he was diagnosed with schizophrenia because he was leaving it up to Plea Counsel and had figured that Plea Counsel was

going to inform the plea court. (PCR Tr. pp. 38–39). Applicant also testified that Plea Counsel never spoke to him about "mine" and that Applicant was leaving it up to Plea Counsel because he was the professional. (PCR Tr. p. 39). Applicant testified that he remembered that Plea Counsel had already spoken to the plea court when Applicant spoke. (PCR p. 39).

On direct examination, A.S. Leskanic testified that a mental health evaluation was performed on Applicant with the opinion that Applicant had the capacity to stand trial. (PCR Tr. p. 45). A.S. Leskanic testified that the mental health evaluation was dated December 31, 2020, and January 7, 2021, and that the doctors at the Department of Mental Health looked at fifty-two items that included "numerous" medical records of Applicant. (PCR Tr. p. 45). A.S. Leskanic testified that she did not see anything in the mental health evaluation concerning a finding of schizophrenia. (PCR Tr. pp. 46–47). A.S Leskanic testified that under the mental status examination section of the mental health evaluation, "it stated that [Applicant's] performance on tests of cognitive function appeared purposely poor in an effort to appear impaired. He also frequently gave near-miss answers consistent with a phenomenon --." (PCR Tr. p. 47).

On cross-examination, when questioned whether she thought that the records that she read from the mental health evaluation were important to Applicant's case, A.S. Leskanic testified that they were important for the mental health evaluation where Applicant was deemed to be malingering and faking symptoms. (PCR Tr. p. 49). A.S. Leskanic testified that it was important that the doctors reviewed Applicant's records and diagnosed him as malingering. (PCR Tr. p. 49).

Findings

This Court finds the combination of the record and Plea Counsel's **credible** testimony that Applicant has failed to meet the burden of showing Plea Counsel was constitutionally ineffective. See Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006). As an initial matter on this issue,

this Court finds Plea Counsel's and A.S. Leskanic's testimonies **credible** and Applicant's testimony **not credible**. Plea Counsel **credibly** testified that he reviewed Applicant's medical records that dated back to when Applicant was a teenager and that he had "lengthy" conversations with Applicant's mental health provider. Plea Counsel **credibly** testified that he reviewed Applicant's medical records with him, including Applicant's diagnoses, and that he was not aware of a schizophrenia diagnosis. If Applicant had been diagnosed with schizophrenia seven times by several doctors, that would be something significant to discuss with Plea Counsel or to make sure is known to the plea court. This Court questions if Applicant ever provided Plea Counsel with the records containing the schizophrenia diagnoses.

Although, as Applicant testified, Plea Counsel did not inform the plea court of the last hospitalization that Applicant had or of his diagnosis of schizophrenia, Applicant had the opportunity following Plea Counsel's comments to the plea court to correct Plea Counsel's statements but did not do so. This Court finds Applicant's various reasons for not doing so unpersuasive. Although Applicant testified that he did not have the records, Applicant was aware of the emergency room visit in January of 2020 and the diagnosis of schizophrenia he received there. Applicant testified that he was unsure whether the diagnosis would hurt or help his case, but the defense's strategy during mitigation centered on mental health issues, and Applicant himself told the court that he had been "sick with mental health and addicted to drugs for a very, very long time." Also, despite testifying that he was "leaving it up" to Plea Counsel, Applicant spoke to the plea court after Plea Counsel conducted his mitigation and Applicant's mother spoke to the court, so Applicant had the opportunity to correct Plea Counsel's statements concerning his medical records and mental health but chose not to.

Furthermore, Applicant failed to show how Plea Counsel misadvising the plea court would

have resulted in a different outcome in his case. Applicant's testimony that his diagnoses could have helped him present and defend his case is mere speculation, and speculation does not meet Applicant's burden. Therefore, this Court finds that no prejudice resulted from Plea Counsel's representation.

Additionally, this Court finds notable A.S. Leskanic's testimony that Applicant's mental health evaluation, which was based on his medical records and in which he was deemed competent to stand trial, did not appear to contain a finding of schizophrenia. It did, however, contain a finding that Applicant was malingering.

This Court finds through the combination of the record and Plea Counsel's **credible** testimony that Applicant has failed to meet the burden of showing Plea Counsel was constitutionally ineffective. Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

INVOLUNTARY GUILTY PLEA ALLEGATION

Allegation:	**Involuntary Guilty Plea.**
Allegation:	**If Not For Counsel's Deficient Representation, He Would Not Have Pleaded Guilty But Would Have Demanded A Jury Trial.**
Allegation:	**If Not For Counsel's Deficient Representation, Applicant would have received a lesser charge of manslaughter.**

Applicant alleges Plea Counsel was constitutionally ineffective and that his guilty plea was involuntary. Specifically, Applicant avers that but for Plea Counsel's deficient representation, he would not have pleaded guilty but instead would have demanded a jury trial. This Court finds these allegations are without merit.

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

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

As an initial matter, this Court finds the record refutes Applicant's allegations and reflects that Applicant's guilty plea was knowingly and voluntarily entered with a complete understanding of the charges and consequences of the plea. This Court further finds Applicant was fully aware

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

Guilty Plea Hearing

At the guilty plea hearing, the following colloquy occurred between the plea court and Applicant:

THE COURT:	Okay. And, Mr. Spencer, I just need to remind you, you are under oath to tell me -- tell me truthful information to my questions, okay?
APPLICANT:	Yes, sir.
	. . . . .
THE COURT:	And, sir, is it your intent to enter a plea to the charge that was just announced by the solicitor?
APPLICANT:	Yes, sir.
	. . . . .
THE COURT:	[Applicant], has anybody come to you and perhaps threatened you in any way or have they promised you anything in order to get you to make the decision to enter the plea today?
APPLICANT:	No, sir.
THE COURT:	Am I correct to conclude that your decision to enter this plea today that it is a free and voluntary decision on your part?
APPLICANT:	Yes, sir.
	. . . . .
THE COURT:	Okay. And, [Applicant], do you understand that on this particular charge that you're pleading to today that this charge carries a potential sentence of anywhere from 30 years to life?
APPLICANT:	Yes, sir, I do.
THE COURT:	And, sir, do you also understand that this charge that you're pleading to today, that it is classified as both a violent and also as a most serious offense under the law?

APPLICANT:	Yes, sir, I do.
THE COURT:	And, [Applicant], have you been able to talk to your lawyer as to the consequences and ramifications of this charge being classified as both a violent and most serious offense?
APPLICANT:	Yes, sir, I have.
THE COURT:	Understanding the consequence, ramifications of those two classifications as well as the possible sentence I could impose, you still wish to enter this plea?
APPLICANT:	Yes, sir, I do.
THE COURT:	[Applicant], are you, in fact, guilty of this charge of murder?
APPLICANT:	Yes, sir, I am.
THE COURT:	[Applicant], have all of your answers to my questions so far today, have they been truthful and honest?
APPLICANT:	Yes, sir.

(Plea Tr. p. 6; p. 9; pp. 17–18).

The following colloquy occurred between the plea court and Applicant concerning substance use and his ability to understand the proceedings:

THE COURT:	Okay. Mr. Spencer, within the last 24 hours have you consumed any type of substance that is adversely or negatively affecting your ability to understand what we're doing today?
APPLICANT:	No, sir.

(PCR Tr. p. 7).

PCR Evidentiary Hearing

On direct examination, Plea Counsel testified that Applicant did not want to go to trial. (PCR Tr. p. 7). Plea Counsel testified that the first time he met Applicant, Applicant admitted that he committed the crime because Victim cheated on him and told Plea Counsel that he wanted to plead. (PCR Tr. pp. 7, 10). Plea Counsel testified that Applicant was on the trial docket in Gaffney, South Carolina with Judge Cole when he entered his guilty plea and that Applicant was "terrified" to go to trial in front of Judge J. Derham Cole. (PCR Tr. p. 8). Plea Counsel testified that Applicant

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BY ANDY W. MCBEE

was on the trial docket for a Monday and pleaded on the morning of the prior Friday.[5] (PCR Tr. p. 11). Plea Counsel testified that the timing of the plea was part of negotiations: "The trial was in front of Judge Cole. Mr. Barnett and Ms. Leskanic said, look, if you want to take this plea, you don't want to plea in front of Judge Cole, it's going to be in front of [Judge] Hayes today." (PCR Tr. p. 11). Plea Counsel testified that there were "lengthy" conversations and "a lot" of conversations in person and that the plea was arranged over the phone while Plea Counsel was in Spartanburg and Applicant was in the detention center. (PCR Tr. p. 11). Plea Counsel testified that the State arranged the phone call so that they could talk. (PCR Tr. p. 11). Plea Counsel testified that the decision to plead guilty was made over the phone because the plea had to happen either on that Friday or on the following Monday. (PCR Tr. p. 11).

Plea Counsel testified that he "absolutely" discussed with Applicant that Applicant could receive a life sentence by pleading guilty. (PCR Tr. pp. 11–12). Plea Counsel testified that he did not make any representations at all to Applicant that Applicant could receive a lesser sentence. (PCR Tr. p. 12). Plea Counsel testified that when Applicant pleaded guilty, Applicant was fully aware that he was exposing himself to a potential life sentence, which the guilty plea affidavit reflects. (PCR Tr. p. 12; Resp. Exh. 1). When questioned whether he believed that Applicant's guilty plea was voluntarily made, Plea Counsel testified that Applicant was "the one who decided to plea freely and voluntarily in front of Judge Mark Hayes rather than going to trial or pleading the following week in front of Judge Cole." (PCR Tr. p. 12).

On cross-examination, Plea Counsel testified that he stood by his representation of Applicant. (PCR Tr. p. 15).

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[5] Although Plea Counsel was unsure whether Applicant's plea was on Thursday or Friday, the guilty plea hearing was held on October 29, 2021, which fell on a Friday. (PCR Tr. p. 11).

On direct examination, Applicant testified that Plea Counsel told him to plead guilty. (PCR Tr. p. 22). When questioned why he pleaded guilty if he had so little communication with Plea Counsel, Applicant testified that he was scared to go to trial and that everything he kept bringing up that he thought would be a defense strategy, Plea Counsel told him would not help him. (PCR Tr. p. 23). Applicant testified that had Plea Counsel represented him properly, he would have gotten a better outcome, which would have been a lesser charge of manslaughter and not a guilty plea to murder. (PCR Tr. p. 25). Applicant testified that all Plea Counsel kept wanting was for Applicant to plead guilty and that Plea Counsel "kept saying . . . submitting requests to the Solicitor about pleading guilty." (PCR Tr. p. 30). The following colloquy occurred:

> Q. During this whole case, the whole thing was you were going to plea guilty to the case; right?
> A. That's all he kept wanting. He kept saying, you know, submitting requests to the Solicitor about pleading guilty. He never discussed any defense strategies with me.
> Q. You didn't refuse this pleading guilty because you thought you was going to get what you got, a life sentence; right?
> A. Right.

(PCR Tr. p. 30).

Applicant testified that Plea Counsel discussed with him that Applicant could receive a life sentence by pleading. (PCR Tr. pp. 30–31). Applicant testified that he thought that there was a life without parole and a life with parole and that a life sentence could allow him parole. (PCR Tr. p. 31). Applicant testified that Plea Counsel never explained that life was life without parole to him. (PCR Tr. p. 31). Applicant testified that the State did not say "without parole," "[i]t just says life." (PCR Tr. p. 31). Applicant testified that he was anticipating receiving parole out of his life sentence. (PCR Tr. p. 31).

Applicant testified that he remembered the guilty plea affidavit and that he was in the courtroom when he signed it, which was the reason he dated it wrong because he was in a hurry

and only dated it without getting a chance to read it. (PCR Tr. p. 26; Resp. Exh. 1). Applicant testified that the guilty plea affidavit was presented to him five minutes before his guilty plea and that he did not have an opportunity to read it or understand it. (PCR Tr. pp. 26–27). When questioned on why he signed the guilty plea affidavit if he did not read or understand it, Applicant testified that when he was told the judge was coming into the courtroom, he had not signed it yet, and Plea Counsel told him the guilty plea affidavit only stated that he was agreeing to the plea offer, so Applicant signed it. (PCR Tr. p. 27; Resp. Exh. 1). Applicant testified that it was his signature on the second page of the guilty plea affidavit and that the date was not the correct date because he was in a hurry to sign it and he had taken his medication, which was a "very strong psychotic medication." (PCR Tr. pp. 27–28; Resp. Exh. 1). Applicant testified that he took his medication at jail before pleading guilty and that he was probably not thinking clearly. (PCR Tr. p. 28).

When questioned on why he informed the plea court that he was satisfied with Plea Counsel's representation, Applicant testified that the plea court asked him if the facts that A.S. Leskanic stated were true and that he told the plea court that he "had no true recollection of it" because he did not remember committing a crime. (PCR Tr. p. 23). Applicant testified that the plea court told him to consult with Plea Counsel and that Plea Counsel told him to answer the plea court's questions by saying "true" and "correct" and agreeing with everything the plea court said. (PCR Tr. p. 23). Applicant testified that the plea court allowed him to change his answer to the question. (PCR Tr. pp. 23–24).

Applicant testified that the guilty plea affidavit says that he wished he had more time to think about pleading guilty. (PCR Tr. p. 41).

On cross-examination, Applicant testified that Plea Counsel told Applicant that he could get him a thirty- or thirty-five-year sentence. (PCR Tr. p. 42). Applicant testified that he asked Plea Counsel what he thought Applicant should do, and Plea Counsel told Applicant that he should take the open plea of thirty years to life. (PCR Tr. p. 42).

When questioned on whether he remembered various answers he gave to the plea court, Applicant testified several times that he answered the plea court's questions the way Plea Counsel had instructed him to, which was to say "yes" and "true." (PCR Tr. pp. 35–43; pp. 35–36; pp. 41–43). Applicant testified that he met with Plea Counsel before the hearing where he told him how to respond to the plea court. (PCR Tr. pp. 35–36). When questioned whether he recalled informing the plea court that his intent was to enter a plea to the murder charge, Applicant testified that his intent was not to enter a plea and that he was told to answer the question affirmatively. (PCR Tr. p. 42).

When questioned why he informed the plea court that he had not consumed any kind of substance in the last 24 hours that adversely or negatively affected his ability to understand the proceedings, Applicant testified that he thought the plea court was asking about drugs and that he "didn't know they was talking about I could have said something about my prescription medication." (PCR Tr. p. 42). Applicant testified that he was on very strong psychiatric medication and that he still takes psychiatric medication for schizophrenia and "bipolar manic." (PCR Tr. p. 42). Applicant testified that he did not clarify with the plea court if their question included prescription medication. (PCR Tr. p. 42).

Findings

This Court finds Applicant has failed to show that Plea Counsel's representation fell below an objective standard of reasonableness, and that but for Plea Counsel's alleged errors, Applicant

would not have pled guilty and proceeded to trial. See Roscoe 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). As an initial matter on this issue, this Court finds Plea Counsel's testimony **credible** and Applicant's testimony **not credible**. To the extent that Applicant testified concerning defense strategies, this Court has discussed that *supra*. As for this Court's discussion concerning Applicant's testimony that he answered the plea court in the affirmative based on the advice of Plea Counsel, this Court also refers to discussions *supra*.

While Applicant is correct that the guilty plea affidavit states that he wished he had more time to think about his guilty plea, the guilty plea affidavit also states the following:

> Client has expressed that he wished that he had had more time to consider this decision. Client is aware that he is #1 for trial on Monday, November 1. 2021 in front of trial Judge J. Derham Cole. This plea offer came up based on the client's conversation with Attorney Brannon of Wednesday, October 27, 2021. Client is also aware that Attorney Brannon has been negotiating on his behalf for almost one full year. With these facts being true, *Client has had enough time to discuss this matter with N. Douglas Brannon.*

(Resp. Exh. 1) (emphasis added).

Furthermore, this Court finds that the combination of the record, the guilty plea affidavit, and Plea Counsel's **credible** testimony at the evidentiary hearing show that Applicant knew about the consequences of pleading guilty pursuant to the requirements of Boykin v. Alabama, 395 U.S. 238 (1969) and Roddy v. State, 339 S.C. 29 (2000). The guilty plea affidavit shows that Applicant was aware of the possible sentence that he could receive. The plea transcript reflects that Applicant entered his plea knowingly and voluntarily, engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the plea court's questions. Applicant has presented no valid reason why he should be able to depart from the statements made during his guilty plea as provided *supra*. See Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975), overruled on other

grounds by United States v. Whitley, 759 F.2d 327 (4th Cir. 1985) (finding that the accuracy and truth of an accused's statements at a guilty plea proceeding are "conclusively" established unless he makes some reasonable allegation why this should not be so).

Additionally, Plea Counsel **credibly** testified that Applicant did not want to go to trial and that Applicant was terrified to stand trial before Judge Cole. Applicant himself testified that he was scared of going to trial. Applicant pleaded straight-up without negotiation or recommendation. Applicant knew that he could receive a sentence of life imprisonment without the possibility of parole (Resp. Exh. 1) and chose to plead guilty despite that with the hope that he would receive a lighter sentence. See Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997) ("Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made."). This Court finds that Applicant's decision to plead guilty was made freely, knowingly, and voluntarily and was not the result of Plea Counsel's performance. Applicant's decision to plead guilty was based on not wanting to stand trial before Judge Cole and instead taking his chances pleading guilty before Judge Hayes.

To the extent that Applicant is alleging his medication affected his ability to understand the guilty plea affidavit and the proceedings at the guilty plea hearing, this Court finds this to be without merit. Applicant indicated to the plea court that he had not consumed any substance in the last twenty-four hours that was adversely or negatively affecting his ability to understand what they were doing that day of the guilty plea hearing. This Court does **not** find **credible** Applicant's testimony that he did not know that the plea court's question included prescription medications. The plea court's question was broad in that it asked if Applicant had consumed "any type of substance," not just drugs or alcohol. Applicant could have clarified with the plea court if the

question included prescription medications, but he did not. Furthermore, Applicant has failed to present "objective data about the nature and effect of the medication [Applicant] had taken" and to show whether the medication "had the capability to produce a sufficient effect on his mental faculties to render him incompetent to enter a guilty plea." Garren v. State, 423 S.C. 1, 15, 813 S.E.2d 704, 712 (2018) (quotations omitted).

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

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CONCLUSION

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

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

IT IS THEREFORE ORDERED:

1. That the Application for Post–Conviction Relief must be denied and dismissed with prejudice; and

2. Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 6 **day of** May **, 2026.**

J. C. MADDOX, JR.
Presiding Judge
Seventh Judicial Circuit

Anderson, South Carolina

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