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April 14, 2015

Office of Appellate Defense
Attn: Ms. Sharon Graham
P.O. Box 11433
Columbia, SC 29211-1433

RE: Reginald Charles Sheftall v. State of South Carolina
Case No.: 2012-CP-42-2465

Dear Ms. Graham:

Please find enclosed a copy of the Notice of Appeal, Proof of Service, and the Final Order in the above-referenced matter. I was appointed as counsel for Mr. Sheftall by Order to Substitute Attorney of Record. Due to Mr. Sheftall's indigent status, it is my understanding that your office would accept Mr. Sheftall's appellate case. At this time, Mr. Sheftall wishes to appeal the attached order, and to claim indigency in light of his inability to pay for an appeal. If you have any questions, please feel free to call.

With best regards, I am,

Very truly yours,

Stephen L. Denton

SLD/amd

Enclosures

cc: Reginald Charles Sheftall #348974
Lee Correctional Institution
990 Wisacky Hwy
Bishopville, SC 29010

The Honorable Daniel Shearouse
Clerk of the South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

RECEIVED
APR 16 2015
S.C. Supreme Court

Case No. 2012-CP-42-2465

State of South Carolina,

Respondent,

v.

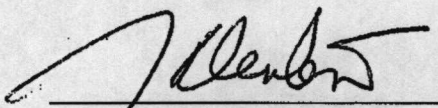
Reginald Charles Sheftall #348974,

Appellant.

NOTICE OF APPEAL

Reginald Charles Sheftall, appeals the order of the Honorable Deadra L. Jefferson dated March 31, 2015, dismissing his action for Post-Conviction Relief. Appellant received written notice of entry of this order on or about April 9, 2015.

Respectfully submitted,



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April 14, 2015
Spartanburg, S.C.

cc: South Carolina Office of Appellate Defense
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Reginald Charles Sheftall, 00348974
Lee Correctional Institution
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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Case No. 2012-CP-42-2465

State of South Carolina,

Respondent,

v.

Reginald Charles Sheftall #348974,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the South Carolina Attorney General's Office, as Attorney for Respondent, by depositing a copy of it in the United States Mail, postage prepaid, on April 14, 2015, addressed to the Attorney of Record, Assistant Attorney General, Suzanne White, Post Office Box 11549, Columbia, South Carolina 29211-1549.

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April 14, 2015
Spartanburg, S.C.

cc: South Carolina Office of Appellate Defense
P.O. Box 11433
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Reginald Sheftall. #348974
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
	)	2012–CP–42–2465
Reginald Charles Sheftall, #348974,	)	
	)	
Applicant,	)	
	)	
v.	)	**ORDER OF DISMISSAL**
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Presiding Judge:	Hon. Deadra L. Jefferson
Applicant's Attorney:	Stephen L. Denton, Esquire
Respondent's Attorney:	Suzanne H. White, Esquire
Plea Counsel:	Tanya Jones, Esquire
Date of Hearing:	January 14, 2015
Court Reporter:	Pamela E. Green

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed June 12, 2012, and amended application on January 28, 2014. The Respondent made its Return on or about July 24, 2013. An evidentiary hearing into the matter was convened on January 14, 2015, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Stephen L. Denton, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. By agreement of the parties, Tanya Jones, Esquire, was sworn and testified via telephone.[1] This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the Return, the Applicant's appellate records, and the plea transcript.

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PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. He was indicted at the October 2010 term of the Spartanburg County Grand Jury for Burglary–First Degree (Dwelling)[2] (2010–GS–42–5724) and Attempted Murder[3] (2010–GS–42–5722). Indictment Number 2010–GS–42–5722 was amended in November 2011 to include the charge of Possession of a Firearm or Knife During Commission of or Attempt to Commit a Violent Crime[4] (count 2). The Applicant was represented by Tanya Jones, Esquire. On December 12, 2011, the Applicant pled guilty before the Honorable J. Mark Hayes II and was sentenced to confinement for concurrent terms of forty (40) years for Burglary–First Degree, thirty (30) years for Attempted Murder, and five (5) years for Possession of a Weapon During the Commission of a Violent Crime. The Applicant was given credit for five-hundred forty-one (541) days' time served. The plea court further ordered that the Applicant receive mental health counselling and have no contact with the victim.

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[1] Tanya Jones, Esquire is no longer employed with the Public Defender's office and at the time of this hearing was employed outside the State of South Carolina.

[2] "Burglary in the first degree is a [violent, most serious] felony punishable by life imprisonment. For purposes of this section, 'life' means until death. The court, in its discretion, may sentence the defendant to a term of not less than fifteen [(15)] years." S.C. CODE ANN. § 16–11–311(B) (2010); S.C. CODE ANN. § 16–1–60 (2010); S.C. CODE ANN. § 17–25–45 (2010).

[3] Attempted murder is a violent, most serious felony punishable by imprisonment "for not more than thirty [(30)] years. A sentence imposed pursuant to this section may not be suspended nor may probation be granted." S.C. CODE ANN. § 16–3–620 (2010); S.C. CODE ANN. § 16–1–60 (2010); S.C. CODE ANN. § 17–25–45 (2010).

[4] "If a person is in possession of a firearm or visibly displays what appears to be a firearm or visibly displays a knife during the commission of a violent crime and is convicted of committing or attempting to commit a violent crime as defined in Section 16-1-60, he must be imprisoned five [(5)] years, in addition to the punishment provided for the principal crime. This five-year [(5)] sentence does not apply in cases where the death penalty or a life sentence without parole is imposed for the violent crime." Further, "[s]ervice of the five-year [(5)] sentence is mandatory unless a longer mandatory minimum term of imprisonment is provided by law for the violent crime. The court may impose this mandatory five-year [(5)] sentence to run consecutively or concurrently." S.C. CODE ANN. § 16–23–490 (2010).

On December 22, 2010, the Applicant's plea counsel filed a timely notice of appeal on the Applicant's behalf. In an unpublished Order filed with the Clerk of the South Carolina Court of Appeals on March 5, 2012 and with the Spartanburg County Clerk of Court on April 11, 2012, the Court of Appeals dismissed the Applicant's appeal for failure to demonstrate any issue was raised or ruled upon by the circuit court judge, pursuant to Rule 203(d)(1)(B)(iv), SCACR. The Remittitur was issued on March 30, 2012 and filed with the Spartanburg County Clerk of Court on April 11, 2012.

ALLEGATIONS

In his Application and Amended Application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that;
    1. Counsel failed to inform Applicant of elements of each offense,
    2. Counsel failed to advise Applicant of direct consequences,
    3. Counsel failed "to any waivers to any procedural, jurisdictional and non-jurisdictional defects and defenses,"
    4. Counsel improperly promised sentence that would be received as a result of guilty plea,
    5. Counsel failed to advise Applicant of the consequences of sentencing to avoid the two strikes application,
    6. Counsel failed to fully investigate the case,
    7. Counsel failed to inform the Applicant of the results from the SLED report,
    8. Counsel failed to object to the validity of the statements made by the victim,
    9. Counsel failed to share the motion of discovery with the Applicant,
    10. Failed to petition the court, prior to the Applicant's plea, for a Blair hearing, and
2. Involuntary guilty plea, in that;
    1. Guilty plea was not knowingly and intelligently entered.

At the hearing, the Applicant proceeded only on grounds 1–2, 4–7, 9–10, and the allegation that his guilty plea was involuntary. This Court finds the Applicant failed to present any testimony or evidence regarding any other claims raised in his Application and Amended Application, therefore, this Court finds all allegations other than those presented at the hearing are deemed abandoned by the Applicant.[5]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. CODE ANN. § 17–27–80 (2003).

Summary of Testimony and Proceeding

The Applicant testified that at the time of his arrest, he had completed four (4) years at Francis Marion University, but did not graduate. The Applicant testified that he was first appointed Kathy Hodges, Esquire and then Tanya Jones, Esquire (Counsel) from the Spartanburg County Public Defender's office. The Applicant testified that although Kathy Hodges, Esquire was appointed to represent him, he did not meet with her. The Applicant testified Counsel had his case for one (1) year. He testified that he met with Counsel to discuss his personality disorders, depression, narcissistic antisocial behavior, anxiety, and mental health diagnoses. He testified that he was evaluated by the South Carolina Department of Mental Health in Columbia and he told Counsel that he wished to review his medical records, signing a release to that effect. The Applicant testified that he never received or saw his psychiatric evaluation and did not

[5] The transcript reveals that the Applicant was also indicted for a thirty (30) day magistrate-level offense of violating an order of protection (Tr. 14:19–15:2). The Applicant does not challenge the disposition of this offense on

discuss the report with Counsel. The Applicant testified Counsel told him that the insanity defense was inapplicable but did not explain why. He further testified that Counsel never had the documents with her and that he never saw the report until May 20, 2012. The Applicant testified he pled guilty on December 12, 2011.

The Applicant testified he never saw the police reports, the DNA analysis or ballistics reports from SLED, or any telephone records, as well as various, additional exculpatory evidence. He alleged he never saw any reports until after Counsel filed a Rule 5 Motion, which he received in May 2012. The Applicant testified that Counsel never reviewed her file or any discovery materials with the Applicant. Overall, the Applicant testified that he met with Counsel three (3) times for a total of three (3) hours. He testified the first two (2) times he met with Counsel they discussed his mental health, and not his case. The third time, the Applicant testified, Counsel "instructed" him to plead guilty and he "went with her advice." He further testified that Counsel advised him that he should accept a plea because a trial would not end in a good result. The Applicant testified that he signed three (3), undated sentencing sheets. The Applicant testified that Counsel never spoke with him about the penalty ranges associated with his offenses. Likewise, he testified Counsel never advised him of the possibility he could receive a sentence of fifteen (15) years to life in prison for Burglary–First Degree. The Applicant testified that the first time he heard that he could possibly serve life in prison was during his plea hearing; however, he did not stop the judge at that point in the hearing. Further, Applicant testified that Counsel never reviewed the sentencing possibilities of zero (0) to thirty (30) years associated with the Attempted Murder charge. The Applicant testified that he was never told about the consequences of the charges classified as violent, serious, or most serious.

The Applicant testified that he was never aware that he could receive consecutive

collateral review before this Court.

5 of 30

sentences and instead, was promised he would receive a sentence of twenty (20) years, suspended to fifteen (15) years' imprisonment, with five (5) years of probation. The Applicant introduced a letter from his attorney on a separate case (Applicant's Exhibit #1), which he testified would support that claim. It was noted that the letter did not purport to say what the Applicant alleged. The Applicant testified that Counsel never told him about the State's offer. He testified he knew his plea was "open" or "straight up" with no negotiations, but he did not understand the concept at the time. He further testified that he felt Counsel was "rushing." The Applicant affirmed that he was promised the above referenced deal and that Counsel and Mr. James Cheek, Esquire, Counsel's co-counsel at the Public Defender's Office said the same thing: that he would receive "no more than fifteen [(15)] years."

The Applicant testified that he expected Counsel to conduct further investigations to determine whether he had any defenses, specifically, the insanity defense, and to see if there was any exculpatory evidence, specifically because the SLED DNA report indicated that DNA found at the scene was not a match to the Applicant. The Applicant alleged the DNA analysis revealed that the DNA of an unidentified male suspect at the scene did not match his. He testified Counsel never told him about the favorable SLED report and never looked into another possible defense related to the DNA evidence. The Applicant introduced a letter dated May 2012 requesting discovery as Exhibit #2; the SLED reports regarding gunshot residue and DNA as Exhibit #3; and a statement from eyewitness Markevious White as Exhibit #4. He testified the eyewitness' physical description of the assailant did not match his description as a twenty-two-year-old (22) five foot, five inches (5'5") one hundred twenty-four pound (124 lb) male. The Applicant denied shooting the victim and testified that he believed an unidentified male shot her. The Applicant testified that when he pled guilty, he simply said he was guilty, not that he shot the victim.

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The Applicant testified he did not know whether Counsel filed a motion for reconsideration on his behalf. He testified Counsel related that after she filed an appeal, she did not feel compelled to file a motion for reconsideration based on the severity of the crime. The Applicant testified that Counsel's office filed an appeal, but no more. The Applicant alleged that he did not talk to anyone regarding his appeal or motion for reconsideration.

Counsel testified that she had practiced law for approximately eleven (11) years at the time she represented the Applicant and was a Spartanburg County Public Defender. Counsel testified that the Applicant pled guilty on December 12, 2011 and that after the Applicant had been assigned representation from her office for one (1) year, she inherited his file from another Public Defender. Counsel testified that her standard procedure was to bring her files to the jail and that she specifically recalled discussing the elements of the charges with the Applicant and the consequences of his plea. Counsel testified she reviewed the discovery materials with the Applicant several times at the jail. In fact, Counsel testified, the Applicant's prior attorney, Kathy Hodges, Esquire, had already received the discovery materials at the time Hodges represented the Applicant. Although Counsel had no specific recollections of the substance of the discovery materials, which were not provided to her in anticipation of the Applicant's PCR hearing, Counsel testified that she kept specific information in the Public Defender's system for ease of access. Counsel denied that she saw the discovery material for the first time the week before the Applicant's plea. Counsel affirmed that she always had her file when she went to the jail to see the Applicant and would have seen him at the jail prior to his plea.

Counsel summarized the underlying facts of the Applicant's offenses: The Applicant had a third party drive him to the victim's apartment, which he entered armed with a gun. The Applicant's friend Jacqueline Cash and some of her cousins, who witnessed the crime, drove the

Applicant to the house because Applicant said the victim was not allowing him to see his child. The Applicant used them to gain entry to the apartment by having Cash knock on the victim's door. The Applicant hit the victim, his ex-girlfriend with whom he shared a child, in the face and shot the victim twice. Counsel stated the Applicant then tried to kill himself. The Applicant and victim's six (6) month old child was present during the melee. The Applicant fled the scene of the crime and later turned himself in. Counsel clarified that the victim did not want anything to do with the Applicant, so he went over to her apartment and shot her. Counsel testified that the Applicant informed her that he read a letter from the victim on the day of the incident, which caused him to just snap and go to victim's home.

Counsel testified that the DNA found at the scene was "shared with" the Applicant. She further testified that she found no basis to object to the victim's statement to the court during the plea hearing. Counsel confirmed that she spoke with the Applicant at length regarding the relevant events, his defenses, and the discovery. She testified that the Applicant had written a letter, which over her objections, he read in open plea court. She reviewed the letter in question; read over the letter with the Applicant; advised him to "water" the letter down "a little;" and did not want the Applicant to publish the letter for the record because, in her opinion, from the "tone" of the letter, it sounded as though the Applicant would continue to "stalk" the victim upon his release from prison and that he showed "no remorse." Counsel recalled "it sounding bad."

Counsel testified that she reviewed the facts with the Applicant and conveyed her concerns that the State had an overwhelming case against him. Counsel further affirmed that she "went over everything" with the Applicant. Counsel testified that the evidence against the Applicant was "so strong" that she felt the Applicant's case would "never" go to trial and was "always a plea." She further testified that the Assistant Solicitor Barry Barnette "takes cases that

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are like shooting fish in a barrel" and assessed the Applicant's case as a "clear trial." She further testified that the Assistant Solicitor was reluctant to offer any recommended plea deals and that Mr. Cheek, Counsel's co-counsel would have had conversations with the Solicitor in attempts to negotiate a plea agreement. She testified that she always attempted to negotiate a deal with the Solicitor, but that the Solicitor put no deal on the table because of the notoriety of the case.

Counsel testified that in going forward with trial, one of the main issues would be competency to stand trial and therefore she requested a mental evaluation regarding both competency and insanity. Counsel represented that she "fully" and "thoroughly" investigated the Applicant's sanity and competence. The report indicated that he was competent to stand trial and understood legal right from wrong at the time of the crime. Therefore, Counsel testified that an insanity defense was not viable.

Counsel testified that the Applicant understood the range of penalty and consequences of sentencing. She testified that the Applicant understood that he faced maximum exposure. Counsel testified that although she does not specifically recall whether she advised the Applicant of the three-strikes law, her standard practice is to always discuss each charge and the potential sentence for each and that she would have discussed the three-strikes law, the elements of the offenses, the ranges of penalty, and the violent, serious, and most serious offenses classification scheme with the Applicant. During her testimony, Counsel concluded that the Applicant had no reason to think that he was receiving a twenty (20) to thirty (30) year sentence instead of a thirty (30) to forty (40) year sentence. Counsel testified that her common practice is to "always go over the numbers," penalty ranges, and other details in order to insure against discrepancies. She testified that she does not recall her specific schedule during the period of time between the

Applicant's execution of the sentencing sheets and his plea, but encouraged the Court to verify her whereabouts on the day the Applicant pled guilty by double checking the jail records.

Counsel emphatically denied ever "promising" the Applicant a sentence. She testified that she told the Applicant that she hoped he would receive between a twenty (20) and thirty (30) year sentence, but the best way to receive that was to plead guilty, ask for mercy during mitigation, and hope for the best. She testified that, unfortunately, the Applicant ended up receiving a forty (40) year sentence. Counsel affirmed that the Applicant was aware of the range of penalty and his exposure and represented to the court that she "mitigated" as much as possible. However, Counsel testified that unfortunately, the Applicant's tone at his plea appeared to not sound very remorseful or accepting of his responsibility. Counsel represented that in order to avoid unrealistic expectations; she is always honest with her clients and explains that she ultimately cannot control the plea court's decision on sentencing. Counsel affirmed that based on ethical considerations, she made no promises to the Applicant. Counsel testified that she did not recall anything said by the victim that would have been objectionable.

Although Counsel had no specific recollection of advising the Applicant to file a motion for reconsideration, she testified that she did file a notice of appeal on the Applicant's behalf. She also had no recollection that the Applicant asked her to file a motion for reconsideration. Counsel testified she does not usually have "luck" with filing motions for reconsideration, so her usual practice was not to file them. She testified that she would not have encouraged the Applicant to file a motion for reconsideration because there was a chance the Applicant could receive more time and possibly life in prison without possibility of parole. Counsel testified she advised the Applicant about the differences between concurrent and consecutive sentences and that the plea judge could "change his mind" and could have run the Applicant's sentences

consecutively to affect a life sentence. Counsel testified that had she considered filing a motion, she would have discussed her strategy with co-counsel, Mr. Cheek. Counsel confirmed that she did not believe that filing a motion for reconsideration would have been in the Applicant's best interest given the facts, evidence, witnesses, and strength of the State's case.

Ineffective Assistance of Counsel

In a PCR action, "the burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 622, 300 S.E.2d 482, 483 (1983)). Where the Applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 686, 104 S. Ct. at 2064).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. See Strickland at 690, 104 S. Ct. at 2066. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See id. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. See id. at 117–18, 386 S.E.2d at 625. Under this prong, attorney performance is measured by its "'reasonableness under prevailing professional norms.'" Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at

668, 104 S. Ct. at 2052). Second, counsel's deficient performance must have prejudiced the applicant such that "'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" Id. at 117–18, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068).

The Applicant alleges he received ineffective assistance of counsel. This Court finds the testimony of Counsel to be more credible than the testimony of Applicant as to all allegations raised in the Application, the Amended Application, and at the hearing. This Court finds Counsel is a criminal practitioner who has experience in the trial of serious offenses. This Court finds Counsel provided credible testimony during the Applicant's evidentiary hearing. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, Counsel discussed the pending charges, the elements of the charges and what the State was required to prove, the Applicant's constitutional rights, the Applicant's version of the facts, and his possible defenses or lack thereof. The record reflects that Counsel effectively explained the charges, their associated penalty ranges, and the consequences of pleading guilty. The record reflects that the Applicant's plea was entered freely, voluntarily, knowingly, and intelligently.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that the Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 5, 239 S.E.2d 750, 752 (1977); Strickland, 466 U.S. at 687–88, 104 S.

Ct. 2052, 2064–65; Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 687–88, 104 S. Ct. at 2064–65, Turner v. Bass, 753 F.2d 342, 348 (4th Cir. 1985), *rev'd on other grounds*, Turner v. Murray, 106 S. Ct. 1683 (1986); Marzullo v. Maryland, 561 F.2d 540, 543 (4th Cir. 1977)). This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, and provided thorough representation. This Court finds that Counsel's representation did not fall below an objective standard of reasonableness. This Court can find no deficiency in Counsel's representation in this matter

Failure to Advise of Penalty and Sentencing Consequences

The Applicant alleges Counsel was ineffective for failing to inform the Applicant of the penalty ranges associated with his charges, the potential sentences he was facing, and the consequences of entering his plea, specifically the "two strikes application." This Court finds this allegation is wholly without merit. This Court finds credible Counsel's testimony that she informed the Applicant of the following: the elements of the charged offenses; the penalty ranges of the offenses; the potential sentences associated with his charges; the three-strikes law; the violent, serious, and most serious classification scheme; the difference between running the charges consecutively or concurrently; and the possibility that the plea court could potentially impose, in effect, a life sentence. This Court finds Counsel was not deficient in this regard and her performance did not affect the outcome of the Applicant's proceeding. See Randall v. State, 356 S.C. 639, 641–42, 591 S.E.2d 608, 609–610 (2004) (citing Jackson v. State, 349 S.C. 62, 562 S.E.2d 475 (2002)) (failure to advise of collateral consequences of parole eligibility before the applicant proceeds to trial not ineffective assistance of counsel); Knox v. State, 340 S.C. 81, 530 S.E.2d 887 (2000), *overruled on other grounds*, State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005) (counsel is not ineffective for failing to advise a defendant regarding parole eligibility

in connection with his guilty plea because it is a collateral consequence of sentencing); Smith v. State, 329 S.C. 280, 494 S.E.2d 626 (1997) (unless counsel gives erroneous advice, parole information is not a ground for collateral attack of a guilty plea); Brown v. State, 306 S.C. 381, 412 S.E.2d 399 (1991) (guilty plea is not rendered involuntary if the defendant is not informed of the collateral consequences of his sentence).

Moreover, this Court finds that any alleged deficiencies in the Applicant's personal understanding of the ramifications of his plea were cured during the plea court's colloquy. Specifically, the plea court advised the Applicant of the penalty ranges of his offenses and the Applicant affirmed that he understood (Tr. 13:8–11; 14:3–6; 15:3–9). Further, the plea court advised the Applicant that the offenses are both violent and most serious and confirmed that the Applicant had the opportunity to discuss the consequences and ramifications of pleading to violent and most serious offenses with his attorney (Tr. 13: 12–24; 14:1–18). The Applicant affirmed his understanding and told the court he still wished to plead guilty. Id. "A defendant must be advised of a mandatory punishment for the offense to which he is pleading." State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980). Despite counsel's alleged failure to advise his or her client regarding the mandatory minimum sentences, the trial judge cures any misconception by properly advising the defendant of the penalty ranges at the plea hearing. Knox, 340 S.C. at 86, 530 S.E.2d at 889 (citing Moorehead v. State, 329, S.C. 329, 496 S.E.2d 415 (1998)). Cf. Smith v. State, 329 S.C. 280, 284–85, 494 S.E.2d 626, 628–29 (1997) (enumerating collateral consequences of burglary conviction and holding that guilty plea not rendered invalid for counsel's failure to advise of each consequence associated with violent crimes).Therefore, this Court finds the Applicant's assertions that Counsel was inefficient for failing to explain all penalty ranges and sentencing consequences without merit.

Improperly "Promised" Sentence

The Applicant alleges that Counsel was ineffective for improperly promising him a sentence he would receive in return for his guilty plea and therefore his guilty plea was rendered involuntary. Based on Counsel's credible testimony that after her extensive discussions about sentencing and mitigation with the Applicant, she saw no reason for the Applicant to think he was promised a twenty (20) to thirty (30) year deal, this Court finds the Applicant's bald assertion without merit. This Court finds most compelling the transcript of the Applicant's plea colloquy where the Applicant affirmed that he understood the potential sentences he was facing (Tr. 13:8–11; 14:3–6; 15:3–9) and told the court that his decision to plead guilty to the charged offenses was free, voluntary, and induced by no threats or promises (Tr. 9:4–12). See Wolfe v. State, 326 S.C. 158, 164–66, 485 S.E.2d 367, 370–71 (1997) (in finding that plea was not rendered involuntary by the applicant's erroneous assumption that he was promised a deal, the court opined, "[w]ishful 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"); see, e.g., Rayford v. State, 314 S.C. 46, 48–49, 443 S.E.2d 805, 806–807 (1994) (transcript of plea hearing refuted applicant's claim that he did not understand the terms of his plea arrangement where plea court cured any possible misapprehensions); Richardson v. State, 310 S.C. 360, 362–63, 426 S.E.2d 795, 797 (1993) (having heard incorrect information regarding plea arrangement, fatal misimpressions were corrected by accurate information from the plea court).

Failure to Fully Investigate

The Applicant claims Counsel was ineffective for failing to fully investigate his case. Consequently, the Applicant argues that Counsel was ineffective for failing to develop additional

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defenses based on potential discovery material. This Court finds the Applicant has failed to show the potential benefit of any further investigation; this Court will not speculate as to the result of such investigation.

"[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012), *overruled on other grounds*, Walker v. State, 407 S.C. 400, 756 S.E.2d 144 (2014). "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result." Porter v. State, 368 S.C. 378, 385–86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). "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." Wiggins v. Smith, 539 U.S. 510, 521–22, 123 S. Ct. 2527, 2535 (2003).

Our Courts have repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (citing Pauling v. State, 31 S.C. 606, 503 S.E.2d 468 (1998); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995); Underwood v. State, 309 S.C. 345, 495 S.E.2d 768 (1998)). The Applicant's mere speculation as to what a witness' testimony would have been by itself cannot satisfy the Applicant's burden of showing prejudice. Id. (citing Glover, 318 S.C. at 498–99, 458 S.E.2d at 540). See Edwards, 392 S.C. at 457, 710 S.E.2d at 65 ("So long as a defendant's attorney conducts a reasonable investigation, including

interviewing potential witnesses when it is reasonable to do so, his performance will not be deficient."); Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006) (citing Strickland, 466 U.S. at 691, 104 S. Ct. at 2066) ("Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.").

This Court finds credible Counsel's testimony that she "fully" and "thoroughly" investigated the Applicant's case. This Court further finds credible Counsel's testimony that she received and reviewed all discovery with the Applicant prior to his plea. This Court finds compelling Counsel's unwavering belief that the State's case against the Applicant was so strong and the State's refusal to enter into a plea bargain so sustained, that she never contemplated the Applicant's case ending in any disposition other than a plea. Consequently, this Court finds the Applicant's uncorroborated assertions that the DNA of an unidentified male found at the scene and one witness' inconsistent physical description of the assailant exonerate him lack credibility, especially in light of the strength of the State's case and the Solicitor's proffered eyewitness statements.

Additionally, the record reflects that Counsel received the discovery associated with the Applicant's case prior to his plea. The Applicant's first attorney and Counsel's predecessor in representation and colleague at the Public Defender's office, Kathleen J. Hodges, Esquire filed a Brady Motion with the Spartanburg County Clerk of Court on June 29, 2010. The record contains two Affidavits of Additional Discovery, filed July 16, 2010 and July 21, 2010, the State delivered the Applicant's hospital lab reports, the warrant, incident reports, investigation report, statement of the Applicant, witness statement, copy of the Applicant's prior records, the Solicitor's Rule 5 mandatory disclosures, photographs, narrative, offense report, canine report,

crime scene information, bond revocation information to Counsel in July 2010. The State transmitted the results of the SLED DNA and trace evidence tests to Counsel by email on September 27, 2011. See "Affidavit of Service by Email," filed September 28, 2011. In an order filed July 27, 2011, and which was provided to Counsel, the Applicant was ordered to be evaluated by the South Carolina Department of Mental Health for competency to stand trial, pursuant to State v. Blair. Further, Counsel credibly testified that she presented as much mitigating evidence as possible during sentencing. The record further reflects that Counsel and her co-counsel, Mr. Cheek provided extensive mitigating evidence to the sentencing court, which included various details and anecdotes about the Applicant's educational and demographic background, history of mental health challenges, and troubling childhood and home life (Tr. 22:6–32:20). Moreover, the plea transcript reflects that Counsel entered various mitigating documents as exhibits at the hearing, including the Applicant's competency evaluation, letters, and certificates from jail rehabilitation programs, which she had provided to the Court well in advance of sentencing (Tr. 25:2–25).

Therefore, this Court finds that Counsel thoroughly and adequately investigated the Applicant's case and finds no basis to speculate as to the results of any further investigation. Thus, this Court finds the Applicant has failed to carry his burden of proving Counsel was ineffective for failing to fully investigate his case.

Failure to Review Discovery

The Applicant asserts that Counsel was ineffective for failing to review and share discovery materials, including the results from the SLED reports.[6] Consequently, the Applicant

[6] During his testimony, the Applicant made a passing reference to telephone records that were ostensibly in Counsel's possession as a part of the discovery, but never turned over to the Applicant. The Applicant made no further argument regarding any telephone records; therefore, this ground for relief is deemed abandoned. This Court notes that the Brady and Rule 5 filings in the Applicant's file do not include descriptions of telephone records.

argues that Counsel was ineffective for failing to develop additional defenses based on this discovery material. The record reflects that, pursuant to Counsel's predecessor's Brady Motion, Counsel received the discovery, including the results of the SLED DNA and trace evidence tests. See "Affidavit of Service by Email," filed September 28, 2011. This Court finds credible Counsel's testimony that she reviewed "everything" with the Applicant and it was her practice to bring her entire file, including discovery, to the jail in order to review discovery with her clients. The transcript of the plea colloquy where the Solicitor affirmed to the court that he had turned over all discovery prior to the hearing corroborates Counsel's testimony (Tr. 16:3–4). This Court finds that the Applicant has failed to meet his burden of showing that Counsel failed to turn over favorable evidence for his review. Accordingly, this Court finds that Counsel was not ineffective.

Further, the Applicant presented no cogent argument that the results of the SLED DNA report and gunshot residue tests specifically contain exculpatory evidence or support any possible defense to the charges. Cf. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (citing Pauling v. State, 31 S.C. 606, 503 S.E.2d 468 (1998); Glover v. State, 318 S.C. 496, 498–99, 458 S.E.2d 538, 540 (1995); Underwood v. State, 309 S.C. 345, 495 S.E.2d 768 (1998)) (the Applicant's mere speculation as to what a witness' testimony would have been by itself, cannot satisfy the Applicant's burden of showing prejudice). Concurrently,

> where the alleged error of counsel is a failure to investigate or discover potentially exculpatory evidence, the determination whether the error "prejudiced" the defendant by causing him to plead guilty rather than go to trial will depend on the likelihood that discovery of the evidence would have led counsel to change his recommendation as to the plea. This assessment, in turn, will depend in large part on a prediction whether the evidence likely would have changed the outcome of a trial. Similarly, where the alleged error of counsel is a failure to advise the defendant of a potential affirmative defense to the crime charged, the resolution of the "prejudice" inquiry will depend largely on whether the affirmative defense likely would have succeeded at trial.

Hill v. Lockhart, 474 U.S. 52, 59, 106 S. Ct. 366, 370-71, 88 L. Ed. 2d 203 (1985). Therefore,

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this Court finds that the Applicant has failed to meet his burden of proving Counsel's representation was ineffective in this regard.

Failure to File Motion for Reconsideration and Perfect Appeal

The Applicant asserts that Counsel was ineffective for failing to file a motion to reconsider the Applicant's sentence and failing to perfect an appeal.

"The authority to change a sentence rests exclusively with the sentencing judge and is within his or her discretion." State v. Hicks, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008) (citing State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981)). "A judge or other sentencing authority is to be accorded very wide discretion in determining an appropriate sentence, and must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed." Hicks, 377 S.C. at 325, 659 S.E.2d at 500.

"[A]bsent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea." Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995). The South Carolina Appellate Court Rules provide the procedure for appealing a guilty plea and sentence from the Circuit Court:

> If the appeal is from a guilty plea, an Alford plea or a plea of nolo contendere, a written explanation showing that there is an issue which can be reviewed on appeal. This explanation should identify the issue(s) to be raised on appeal and the factual basis for the issue(s) including how the issue(s) was raised below and the ruling of the lower court on that issue(s). If an issue was not raised to and ruled on by the lower court, the explanation shall include argument and citation to legal authority showing how this issue can be reviewed on appeal. If the appellant fails to make a sufficient showing, the notice of appeal may be dismissed

SCACR 203(d)(1)(B)(iv). See Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995); State v. Thrift, 378 S.C. 70, 661 S.E.2d 373 (2008).

At the hearing, the Applicant alleged he was uncertain why Counsel chose not to file a

motion for reconsideration and appellate brief on his behalf.[7] The testimony of the PCR hearing and record of the Applicant's file reflect that Counsel properly and timely filed an appeal at the behest of her client according to the South Carolina Appellate Court Rules, which was later dismissed. See *supra*. The Court of Appeals' Order dismissing the Applicant's appeal, pursuant to 203(d)(1)(B)(iv), SCACR provides: "Appellant filed a letter regarding his appeal, but Appellant has not made a showing that any issue was raised to or ruled upon by the circuit court judge. Furthermore, Appellant's counsel has asserted that no issues were raised during the guilty plea." The Applicant has provided no authority that requires Counsel to perfect his appeal. This Court finds that Counsel properly advised the Applicant of his right to appeal and followed the procedures outlined in the South Carolina Appellate Court Rules. The Applicant failed to present any meritorious claim supporting his argument that Counsel was obligated to file a motion for reconsideration of his sentence or that any such motion would have been successful. This Court finds credible Counsel's testimony that she could discern no basis to file a motion for reconsideration and, in fact, believed filing a motion for reconsideration would be against her advice and against the Applicant's best interest. Further, the Applicant presented no cogent theory supporting his claim that Counsel was obligated to perfect his appeal or that any such appeal would have been successful. To the contrary, this Court finds that the sentence imposed by the plea court was reasonable, especially in light of the horrific facts of the underlying event, the strength of the State's case should the Applicant proceed to trial, and the Applicant's potential exposure to life imprisonment. Additionally, this Court finds that had the Applicant

[7] Where an appellant fails to object to his sentence at the time of its imposition, the appellant has waived that issue for appellate review. See State v. Garner, 304 S.C. 220, 222, 403 S.E.2d 631, 632 (1991) (citing State v. Shumate, 276 S.C. 46, 275 S.E.2d 288 (1981); Rule 29, SCRCrimP (providing parties to criminal actions may file post-trial motions within ten days after the trial court imposes a sentence). However, the Applicant does not argue that Counsel was ineffective for failing to properly preserve error to the Court of Appeals. The Applicant merely argues that Counsel was ineffective for failing to file a motion for reconsideration and for failing to perfect his appeal.

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perfected his appeal, it likely would have been dismissed pursuant to an Anders brief. Anders v. California, 386 U.S. 738, 741–42, 87 S. Ct. 1396, 1398–99 (1967). Accordingly, this Court finds that Counsel was not deficient in this regard.

Failure to Evaluate for Competency and Insanity

The Applicant alleges Counsel was ineffective for failing to have the Applicant mentally evaluated to determine his competency to stand trial prior to his guilty plea and for failing to pursue a not guilty by reason of insanity defense. This Court finds the Applicant has failed to carry his burden of proving Counsel was ineffective in this regard.

Under M'Naghten, "[a]n accused who lacks the capacity to distinguish moral or legal right from moral or legal wrong at the time of the crime is relieved of responsibility for his acts." Davenport v. State, 301 S.C. 39, 40, 389 S.E.2d 649, 649 (1990) (citing S.C. CODE ANN. § 17–24–10 (2014); State v. Law, 270 S.C. 664, 244 S.E.2d 302 (1978); State v. Cannon, 260 S.C. 537, 197 S.E.2d 678 (1973)).

A defendant must be mentally competent to stand trial to assist Counsel in his defense. Drope v. Missouri, 420 U.S. 162 (1975) ("It has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial.").

In every criminal case, it is presumed the defendant is sane. State v. Milian-Hernandez, 287 S.C. 183, 185, 336 S.E.2d 476, 477 (1985). "This presumption relieves the State of the burden of proving sanity in every case. However, when the defendant offers evidence of insanity, the presumption disappears and it is incumbent on the State to present evidence from which a jury could find the defendant sane. Any evidence of sanity is sufficient to present a jury issue

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when the defendant relies on the affirmative defense of insanity." Id. Insanity is an affirmative defense to a prosecution for a crime. Id. South Carolina has adopted the M'Naghten test to determine insanity. State v. Lewis, 328 S.C. 273, 277–78, 494 S.E.2d 115, 117 (1997). "A defendant is insane if, at the time of the commission of the act constituting the offense, as a result of mental disease or defect, he lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong." Id. (citing S.C. CODE ANN. § 17–24–10(A) (2014)). South Carolina law provides:

> (A) It is an affirmative defense to a prosecution for a crime that, at the time of the commission of the act constituting the offense, the defendant, as a result of mental disease or defect, lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong.
>
> (B) The defendant has the burden of proving the defense of insanity by a preponderance of the evidence.
>
> (C) Evidence of a mental disease or defect that is manifested only by repeated criminal or other antisocial conduct is not sufficient to establish the defense of insanity.

S.C. CODE ANN. § 17–24–10(A) (2014). "[T]he key to insanity is 'the power of the defendant to distinguish right from wrong in the act itself-to recognize the act complained of is either morally or legally wrong'." State v. Wilson, 306 S.C. 498, 506, 413 S.E.2d 19, 23 (1992) (quoting State v. McIntosh, 39 S.C. 97, 17 S.E. 446 (1893)).

This Court finds the allegation that Counsel was ineffective for failing to have the Applicant mentally evaluated to determine his competency to stand trial prior to his guilty plea is wholly without merit. In determining whether counsel is ineffective for failing to request a competency hearing, under the second prong of the Strickland standard, an applicant must show that a reasonable probability exists that he would be found incompetent at the time of this trial or plea. Jeter v. State, 308 S.C.230, 417 S.E.2d 594 (1992). The test of competency to enter a plea is the same as required to stand trial. State v. Lambert, 266 S.C. 574, 225 S.E.2d 340 (1976). The

accused must have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings against him. Carnes v. State, 275 S.C. 353, 271 S.E.2d 121 (1980). "In a PCR action, the petitioner bears the burden of proof and is required to show by a preponderance of the evidence he was incompetent at the time of his plea." Jeter, 308 S.C. at 222–23, 417 S.E.2d at 596 (citing Webb v. State, 281 S.C. 237, 314 S.E.2d 839 (1984)). Counsel may reasonably rely on his own perceptions in deciding if a client is competent to stand trial. Id.

In order to show an Applicant was prejudiced by Counsel's failure to pursue the defense of insanity, "the petitioner must produce some evidence of insanity or a showing that with the exercise of due diligence, an insanity defense could have been developed." Id. (citing State v. Vickers, 306 N.C. 90, 291 S.E.2d 599 (1982), Daniel v. State, 282 S.C. 155, 317 S.E.2d 746 (1984)).

This Court finds the Applicant has failed to meet his burden of showing that he was incompetent at the time of his guilty plea. Counsel requested and was granted the right to have the Applicant evaluated for competency to stand trial and determined that he would not have a viable insanity defense. See Order for Competency to Stand Trial Evaluation Pursuant to State v. Blair, filed July 27, 2011. Counsel requested and received a competency evaluation pursuant to State v. Blair by Order dated July 26, 2011 and filed with the Spartanburg County Clerk of Court on July 27, 2011, which evaluation was entered into the record at the Applicant's plea hearing and was reviewed by the sentencing court. The only testimony the Applicant provided in support of his contention that he was both incompetent and insane at the time of his plea was that he had suffered from personality disorders, depression, narcissistic antisocial behavior, and anxiety. The transcript of the plea colloquy reveals that the Applicant was evaluated twice: once to determine

whether he was competent to stand trial and a second time to determine whether the insanity defense applied (Tr. 36:4–15).[8] The record is completely devoid of any evidence that the Applicant was either incompetent or insane at the time of his plea hearing. Accordingly, this Court finds that the Applicant has failed to meet his burden of proof in this regard.

Involuntary Guilty Plea

In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al–Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566, 566 (4th Cir. 1976).

When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill, 474 U.S. at 52, 106 S. Ct. at 366; Roscoe, 345 S.C. at 20, 546 S.E.2d at 419 (citing

[8] The trial court held an off-the-record bench conference with Counsel and the Assistant Solicitor. Thereafter, the court qualified and accepted the Applicant's plea and sentenced the Applicant as enumerated above (Tr. 36:16–

Hill, 474 U.S. at 52, 106 S. Ct. at 366; Jackson v. State, 342 S.C 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243–44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991) (citing State v. Hazel, 275 S.C. 392, 394, 271 S.E.2d 602, 602 (1980)). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009) (citing Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 650 (2000)). See Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). "Specifically, the voluntariness of a guilty plea is not determined by an examination of a 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 also from the record of the PCR hearing." Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000). "In order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of the plea." Id. (citing Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991); State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993). "Under the procedure, a defendant, before his guilty plea may be accepted, is examined under oath on the voluntariness of his plea, including particularly its freedom from coercion by threat." Edmonds, 546 F.2d at 567. When a defendant pleads guilty on the advice of counsel, the plea may be attacked through only a claim

37:17). The Applicant did not argue this portion of the transcript at the evidentiary hearing before this Court.

of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citing Al-Shabazz v. State, 338 S.C. 354, 363–64, 527 S.E.2d 742, 747 (1999)). Moreover,

> a signed document that informs a defendant of the charges against him, such as a sentencing sheet, gives rise to a presumed regularity in the proceedings and signifies that the defendant has been notified of the charges to which he has pled guilty. . . . In a criminal case, a defendant who chooses to plead guilty has ample opportunity to be fully notified of the charges he is pleading guilty to. . . . [A] defendant may check a box to indicate that he wishes to plead guilty. In addition, a defendant may sign the sentencing sheet, indicating the defendant is informed of the choices and has selected the box that corresponds to the course of action the defendant wants to take in the case. As a result, we believe that all of these factors indicate that the Defendant had notice of the charges to which he chose to plead guilty.

State v. Smalls, 364 S.C. 343, 347, 613 S.E.2d 754, 756 (2005).

This Court finds that the Applicant failed to meet his burden of proof as to this claim. This Court finds the transcript of the guilty plea to be most compelling. The Applicant affirmed that he was pleading guilty to the charges as recited by the Solicitor (Tr. 6:23–7:5). The Applicant thereafter told the plea court that he was twenty-three (23) years old, had attended Francis Marion University for four (4) years, but did not graduate, was unmarried but had one (1) nineteen-month old (19) child, and worked as a custodial manager for Francis Marion University and for the Boy Scouts of America (Tr. 7:23–8:9). The Applicant confirmed that he had not consumed any substances within the past twenty-four (24) hours that would adversely or negatively affect his ability to understand his plea proceedings (Tr. 8:14–17) and had never been treated for any substance abuse or alcohol problem (Tr.8:18–20). The Applicant told the plea court that he was satisfied with his lawyer's services; had enough time to speak with her regarding the elements of the charges, the facts underlying the offenses, and any possible defenses (Tr. 8:21–9:3). The Applicant told the court that his decision to plead guilty to the

charged offenses was free, voluntary, and induced by no threats or promises (Tr. 9:4–12). The plea court advised the Applicant of his constitutional rights, which the Applicant said he understood (Tr. 9:13–10:9). Thereafter, the Applicant waived his constitutional rights. Id. The Applicant allocated to the facts of the offenses as published by the Solicitor (Tr. 12:17–13:2). The plea court advised the Applicant of the penalty ranges of his offenses and the Applicant affirmed that he understood (Tr. 13:8–11; 14:3–6; 15:3–9). Further, the plea court advised the Applicant that the offenses are both violent and most serious and confirmed that the Applicant had the opportunity to discuss the consequences and ramifications of pleading to violent and most serious offenses with his attorney (Tr. 13: 12–24; 14:1–18). The Applicant affirmed his understanding and told the court he still wished to plead guilty. Id. Lastly, the Applicant told the plea court that he was able to hear all of his questions, had provided truthful and honest responses (Tr. 15:24–16:2). Thereafter, the court qualified and accepted the Applicant's plea and sentenced the Applicant as enumerated above (Tr. 36:16–37:17). Therefore, this Court finds that the Applicant has failed to meet his burden of showing that his guilty plea was not entered freely, voluntarily, knowingly, and intelligently.

All Other Allegations

As to any and all allegations that the Applicant raised in the application and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant abandoned such allegations. Therefore, they are hereby denied and dismissed.

CONCLUSION

This Court finds in regards to the allegations of ineffective assistance of counsel and involuntary guilty plea, Applicant's testimony as a whole was not credible. This Court further

finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in her representation, and that Counsel's conduct did not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test specifically that Counsel failed to render reasonably effective assistance under prevailing professional norms. See Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in her representation of the Applicant. The Applicant failed to show that Counsel's performance was deficient. Therefore, this Court need not address whether the Applicant was prejudiced by Counsel's representation. See id. The Applicant's complaints concerning Counsel's performance are without merit and are denied and dismissed.

Based on all the foregoing, this Court finds and concludes that the 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 cautions 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. 453 454, 409 S.E.2d 395, 396 (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 if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. The Applicant's attention is directed to South Carolina Appellate Court Rule 243 for

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appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 31st day of March, 2015.

Deadra L. Jefferson
Presiding Judge
Seventh Judicial Circuit

Charleston, South Carolina
At Chambers

First Class Mail

HWS&C
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