R. MILLS ARIAIL, JR.
ATTORNEY AT LAW

11 NORTH IRVINE STREET, SUITE 11 • GREENVILLE, SC 29601
PHONE 864.232.9390 • FAX 864.232.9392 • E-MAIL MILLS@RMALAWOFFICE.COM

May 30, 2018

Via US Mail
Daniel Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: Notice of Intent to Appeal from State of SC v. Edward Whitlock
C.A. No.: 2017-CP-23-0695

Dear Mr. Shearouse:

I was Court Appointed in the above referenced matter, and I expect that appellate defense will handle the appeal and petition for certiorari. On behalf of my client, enclosed for filing please find the Notice of Appeal and proof of service. I've enclosed a copy of the Honorable Letitia H. Verdin's Order of Dismissal to be challenged on appeal. By copy of this letter, I am also serving my client, counsel for the State of South Carolina, the South Carolina Commission of Indigent Defense - Appellate Defense Division and the Greenville County Clerk's Office.

Thank you for your assistance in this matter and if you have any questions, please feel free to contact me.

Sincerely,
LAW OFFICE OF R. MILLS ARIAIL, JR.
Attorney at Law

R. Mills Ariail, Jr.

RMAjr/dl
Enclosures (as stated)

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

JUN 01 2018

S.C. SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No. 2017-CP-23-695

Edward Whitlock,..... Appellant,

v.

State of South Carolina ..... Respondent.

NOTICE OF APPEAL

Appellant appeals the Honorable Letitia H. Verdin's Order of Dismissal dismissing Appellant's application for post-conviction relief. On May 15, 2018, the Honorable Letitia H. Verdin signed an order dismissing Appellant's application for post-conviction relief with prejudice. Appellant, through counsel, received written notice of entry of this order on May 29, 2018. A copy of the Honorable Letitia H. Verdin's Order of Dismissal is attached.

R. Mills Ariail, Jr.
Attorney at Law
11 North Irvine St., Suite 11
Greenville, SC 29601
Telephone (864) 232-9390
Facsimile (864) 232-9392
Attorney for Edward Whitlock

Greenville, South Carolina
May 30, 2018

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No.2017-CP-23-695

Edward Whitlock,..... Appellant,

v.

State of South Carolina ..... Respondent.

CERTIFICATE OF SERVICE

I, Denise Tanner LaBeck, paralegal to R. Mills Ariail, Jr., do hereby certify that on this May 30, 2018, I served upon the below named Respondents copies of the **NOTICE OF APPEAL** by depositing copies of the same via U.S. Mail, postage prepaid, Registered Mail in an envelope addressed as set forth herein below:

DeShawn Mitchell, Esq.
Assistant Attorney General
PO Box 11549
Columbia, SC 29211
Attorney for the State of South Carolina

Greenville County Clerk's Office
Greenville County Courthouse
305 East North Street
Greenville, SC 29601

Edward Whitlock SCDC# 201405
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

SC Commission of Indigent Defense
Division of Appellate Defense
PO Box 11433
Columbia, SC 29211-1433

Denise Tanner LaBeck
Denise Tanner LaBeck

May 30, 2018

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Edward Lee Whitlock, Jr., #201405 Applicant, v. State of South Carolina, Respondent.	2017-CP-23-0695 **ORDER OF DISMISSAL** ENTERED COMPUTER

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Paul Wickensimer COC GVL SC

This matter comes before the Court by way of an application for post-conviction relief filed on February 3, 2017 by Edward Lee Whitlock, Jr. (Applicant). Respondent made its Return on or about July 26, 2017. An evidentiary hearing into the matter was convened on October 25, 2017, at the Greenville County Courthouse in Greenville, South Carolina. Applicant was present and represented by R. Mills Ariail, Jr., Esquire. Respondent was represented by DeShawn H. Mitchell, Esquire of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Applicant's Plea Counsel Parker A. Baxley, Esquire also testified. This Court had before it a copy of the records of the Greenville County Clerk of Court regarding the Applicant's convictions, the transcript from Applicant's guilty plea, the PCR application, Respondent's Return and Applicant's records from the Department of Corrections. After reviewing the record and everything presented, this Court finds Applicant has failed to establish any constitutional deprivations entitling him to post-conviction relief and denies this application.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. In May 2016, the Greenville County Grand Jury indicted Applicant for kidnapping (2016-GS-23-4431), and assault with

intent to commit criminal sexual conduct (2016-GS-23-4432). Parker A. Baxley, Esquire represented Applicant. Assistant Solicitor Christine K. Sustakovitch, Esquire prosecuted the case. On July 19, 2016, Applicant pleaded guilty as indicted to all charges before the Honorable Edward W. Miller. Pursuant to a negotiated sentence, Judge Miller sentenced Applicant to imprisonment for concurrent terms of thirty years each for kidnapping and assault with intent to commit criminal sexual conduct. Applicant did not appeal his conviction or sentence.

FACTUAL HISTORY

Applicant was released from prison in October of 2015. Two weeks after his release he went to his aunt's house, the victim in this case, and tried to rape her. His aunt was almost seventy years old at the time. Applicant knocked on the victim's door and she came to the door. He asked if he could come in and she said yes. The victim stated that they were in the kitchen for about an hour talking when Applicant began to act funny while he was looking through a family album. Applicant began scratching his arms strangely and the victim went and gave him some lotion to put on his arms. At that time, Applicant pulled out a knife and showed it to the victim, he then dropped it and grabbed her. Applicant then ripped her robe off and began kissing his aunt. They fell to the floor and the victim fought him, trying to grab the knife that was beside her but the victim had too tight a grasp on her wrists. Applicant then pulled her into the bedroom, ripped her pajama top open, then started touching her breasts. She fell and Applicant then tried to pull her pants off. At this point the victim pretended to be passed out. At that point Applicant seemed to, "come to his senses" and the assault stopped. At that point his aunt took him to a halfway house. Applicant apologized on the way to the halfway house. (GP. Tr. 7).

ALLEGATIONS

In his application, Applicant alleges he is being held in custody unlawfully for the following reasons (quoted verbatim):

1. "Due Process Violation" and
2. "Ineffective Assistance of Counsel," in that:
    a. "Failure to investigate;"
    b. "Abandonment;"
    c. "had discovery with a physc Doctors (sic) order for me to go to Patrick B. Harris and she refused to give me a mental health evaluation when she had Doctor's name and order for a bed to a mental hospital;"
    d. "In motion of discovery, said that I was placed in Greenville Memorial Hospital under the orders of Doctor Staener where I would be held waiting on a (sic) open bed at Patrick B. Harris mental hospital;"
    e. "Also in motion cousin Tracy Worthy stated I've been in an out since about age 9 for these type of charges and that I have mental health issues;"
    f. "Also in motion – victim stated that if I get mental health treatment she would not press charges;"
    g. "Also on the crime scene investigation report that my brother comes picks me up and takes me to a hospital for psychiatric evaluation;"
    h. "I informed my public defender 'Parker Ann Baxley' I had mental health problems and needed mental health treatment[;] she refused and I told her I had mental health problems all my life and had a major head surgery when I was 6 months old. . . Solicitor to Judge Miller at plea[;] victim request[ed] I get mental treatment and I told Judge Miller I was getting Haldol [for] mental health problems

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTARY HEARING

Applicant's Testimony

Applicant testified he remembered "bits and pieces" of his case. He testified Plea Counsel told him he would get life in prison if he did not plead guilty to the charges. Applicant testified he did not get all the evidence concerning his case until after he had pled guilty. He testified he saw plea counsel twice in person but talked to her several times on the phone. Applicant testified he was on a lot of medication at the time and did not understand what was happening. He testified he was hearing voices had hallucinations, and was cutting himself while he was in the detention center. Applicant testified he was put in a strip cell because he was cutting himself and

was on mental health medications and also receiving a Haldol shot every thirty days. He testified he told Plea Counsel about his mental health problems but she said she did not think he needed to be evaluated. Applicant testified Plea Counsel kept telling him he would get life in prison if he did not plead guilty. He testified Plea Counsel was ineffective for not giving or going over discovery with him. He testified he quit school in the fifth grade and he has trouble understanding things. Applicant testified the victim, his aunt said she just wanted him to get mental health treatment not go to jail. He testified he thought he was going to the hospital for help for mental issues but did not go.

On cross-examination Applicant testified prior to being charged with this crime he had been in prison for almost thirty years for a previous conviction of criminal sexual conduct. He testified he pled guilty to his prior conviction. Applicant testified he was getting mental health medications while he was incarcerated previously. He again testified he met with Plea Counsel twice in person but talked to her several times on the phone. Applicant testified Plea Counsel kept telling him to plead guilty to avoid a sentence of life in prison. He testified Plea Counsel discussed some of the evidence with him but he did not remember if she discussed any defenses with him. Applicant testified he told the plea court he was on medication but he wanted to go forward with the plea. He testified he remember telling the plea court he was satisfied with Plea Counsel but did not recall agreeing with the facts presented at his guilty plea.

Plea Counsel's Testimony

Plea Counsel testified she went over the discovery in Applicant's case with him in detail, including the victim's statement. She testified she made three different jail visits and had numerous phone calls with Applicant. Plea Counsel testified Applicant went back and forth several times if he wanted a copy of discovery due to concerns over his personal safety in prison.

She testified Applicant also gave a verbal statement regarding the charges to law enforcement. Plea Counsel testified Applicant "absolutely one hundred percent" understood what he was doing. She testified she did know about Applicant's mental health history so she brought in two more senior attorneys in her office to see if Applicant needed to be evaluated. Plea Counsel testified she never had any inkling Applicant was not competent. She testified Applicant demanded he be able to plead guilty as soon as possible. Plea Counsel testified Applicant informed her he would pled guilty to thirty years if life in prison was off the table. She testified Applicant committed this crime nine days after he was released from the South Carolina Department of Corrections (SCDC). Plea Counsel testified the state agreed to a negotiated plea offer of thirty years. She testified the victim wanted Applicant to be committed to a mental health facility and not prison. Plea Counsel testified the victim would not press charges if Applicant was confined in a mental health facility and never let out. She testified she thought she spoke with the victim in this case and definitely spoke with Applicant's brother regarding Applicant's case. Plea Counsel testified the victim met with the state and would have testified at trial. She testified if there had been no negotiated plea and the case had went to trial, she would have gotten Applicant's SCDC mental health records.

On cross-examination, Plea Counsel testified Applicant was competent and understood all of their conversations. She testified Applicant understood the evidence in his case and did not want the discovery with him because of concerns over his personal safety. Plea Counsel testified she had several of her clients evaluated this calendar year and definitely was not hesitant to get a client evaluated if she believed they needed to be.

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 at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. These credibility findings have been applied to the Court's findings and conclusions set forth below. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application 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 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. 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).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 at 688). 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." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Lockhart, 474 U.S. at 56. Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). 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 the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, "[a] guilty

plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, an applicant's right to contest the validity of such a plea is usually foreclosed. Dalton, at 137–38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). "In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." Id. at 138–39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

Failure to Investigate

Applicant failed to present any evidence in support of this allegation. To show ineffective assistance in this regard, Applicant must present evidence to show what counsel could have discovered had he more fully investigated. Jackson v. State, 329 S.C. 345, 354, 495 S.E.2d 768, 772 (1998) ("Respondent failed to present any evidence of what counsel could have discovered or what other defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial."). 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)). Applicant has failed to show what beneficial information could have been discovered had Counsel done more investigation. Even so, Counsel testified credibly that not only did she review all of the discovery, she spoke to the

victim in the case. This Court finds Counsel's investigation was beyond reasonable. Therefore, Applicant has failed to meet his burden to prove Counsel was ineffective. This allegation is denied and dismissed with prejudice.

Failing to request mental evaluation

Applicant alleges Plea Counsel should have had him evaluated as he was mentally incompetent at the time of his guilty plea. In a PCR action, a petitioner has the burden of proving by a preponderance of the evidence that he was incompetent at the time of his guilty plea. Matthews v. State, 358 S.C. 456, 458, 596 S.E.2d 49, 50 (2004) (quoting Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 595-596 (1992). Applicant testified he was on a lot of medication at the time of his guilty plea and did not understand what was happening. He testified he was hearing voices had hallucinations, and was cutting himself while he was in the detention center. Applicant testified he was put in a strip cell because he was cutting himself and was on mental health medications and also receiving a Haldol shot every thirty days. Plea Counsel testified Applicant "absolutely one hundred percent" understood what he was doing. She testified she did know about Applicant's mental health history so she brought in two more senior attorneys in her office to see if Applicant needed to be evaluated. Plea Counsel testified she never had any inkling Applicant was not competent.

This Court finds Applicant has failed to meet his burden of proving Plea Counsel was ineffective for failing to request a mental evaluation. Furthermore, this Court finds Plea Counsel's testimony on the matter credible. This Court finds Applicant was not evaluated as part of this PCR proceeding nor did he introduce any records to establish that he currently or previously lacked sufficient competency to stand trial. This Court finds Applicant has offered no valid reason to be allowed to depart from the truth of the statements made under oath during his

guilty plea. See Crawford v. United States, 519 F.2d 347 (4th Cir.1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976) (Statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements.). Furthermore, the record from Applicant's guilty plea, as well as the way Applicant testified at the PCR hearing, both show Applicant is coherent and fully able to effectively communicate. This Court finds Applicant did not meet his burden to prove he was incompetent to stand trial at the time of his plea. Therefore, this allegation is denied and dismissed with prejudice.

Due Process Violation

Applicant alleges that he was denied due process of law. However, Applicant failed to set forth with specificity the grounds upon which these constitutional violations were based or present any evidence of a specific violation. After a review of the record, this Court finds this allegation is without merit. Accordingly, this allegation is denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any violations 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 receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice

of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCP. Reefer to Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

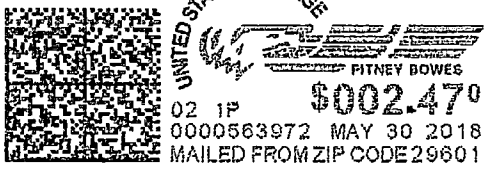
1. The application for Post-Conviction Relief is denied and dismissed with prejudice;

2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 15 day of May, 2018.

LETITIA H. VERDIN
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina



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IL, JR.

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