

LAW OFFICE OF  
**Kristy Grafton Goldberg, LLC**  
ATTORNEY AT LAW

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June 28, 2018

RECEIVED

JUL 02 2018

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

S.C. SUPREME COURT

RE: Oriental J. Charley, SCDC # 357460, vs. State of South Carolina  
Case No. 2014-CP-41-101

Dear Mr. Shearouse,

Enclosed for filing is a Notice of Appeal in the above referenced case. Also enclosed are a certificate of service, a copy of the original court order which is to be challenged on appeal, and a copy of the Form 4 denying the motion to alter/amend.

I would appreciate it if you could file the Notice of Appeal and mail a date-stamped copy back to me in the enclosed pre-stamped envelope.

By copy of this letter I am informing the Office of Appellate Defense of this Appeal so that they may begin representation of Mr. Charley, as I was appointed as counsel in this matter. I am also hereby requesting that Appellate Defense obtain a copy of the court transcript within the time required by this court.

Please let me know if you have any questions or concerns regarding this.

Respectfully,



Kristy Goldberg

CC: Ed Salter  
Assistant Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211-1549

Oriental Charley, SCDC # 357460  
McCormick Correctional Institution  
386 Redemption Way  
McCormick, SC 29899

The Honorable Sherri Coleman  
Clerk of Court  
100 East Church Street  
Saluda, South Carolina 29138

Office of Appellate Defense  
Chief Appellate Defender – Robert Dudek  
PO Box 11433  
Columbia, SC 29211-1433

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

RECEIVED

JUL 02 2018

S.C. SUPREME COURT

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APPEAL FROM SALUDA COUNTY  
Court of Common Pleas

William A. McKinnon, Circuit Court Judge

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Case No. 2014-CP-41-101

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Oriental J. Charley, #357460, ..... Appellant

v.

State of South Carolina, ..... Respondent.

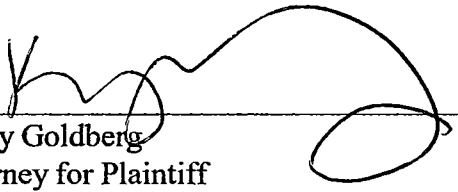
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NOTICE OF APPEAL

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Applicant Oriental J. Charley hereby appeals from the Order of the Honorable William J. McKinnon presiding Judge for the 11<sup>th</sup> Judicial Circuit, filed ~~May 4, 2018~~ in the matter of Oriental J. Charley v. State of South Carolina, Case No. 2014-CP-41-101 and received by counsel on May 22, 2018. Counsel for the Applicant filed a Motion to Alter or Amend Judgement and received a Form 4 denying said motion on June 27, 2018.

June 28, 2018

  
\_\_\_\_\_  
Kristy Goldberg  
Attorney for Plaintiff

Law Office of Kristy Goldberg, LLC.  
1720 Main Street, Suite 303  
Columbia, SC 29201  
Phone (803) 667-6633  
kristy@kristygoldberglaw.com

**Other Counsel of Record:**

Assistant Attorney General, Ed Salter  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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JUL 02 2018

S.C. SUPREME COURT

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APPEAL FROM SALUDA COUNTY  
Court of Common Pleas

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Case No. 2014-CP-41-101

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Oriental J. Charley, #357460, ..... Appellant

v.

State of South Carolina, ..... Respondent.

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PROOF OF SERVICE

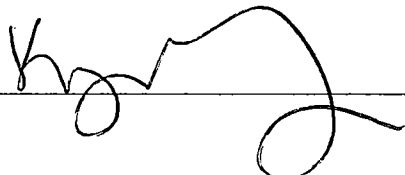
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Personally appeared before me, Kristy Goldberg, Esquire, who being duly sworn, deposes  
and states:

She is the counsel of record for Applicant;  
Service by mail is proper in this instance; and  
She has served the NOTICE OF APPEAL on the following party on June 28, 2018 by  
depositing one copy in the U.S. Mail, postage prepaid:

Assistant Attorney General, Ed Salter  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211

June 28, 2018



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Kristy Goldberg  
Attorney for Plaintiff

Law Office of Kristy Goldberg, LLC.  
1720 Main Street, Suite 303  
Columbia, SC 29201  
Phone (803) 667-6633  
[kristy@kristygoldberglaw.com](mailto:kristy@kristygoldberglaw.com)

Oriental Charley

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for :  Plaintiff  Defendant  
 or  
 Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court: Plaintiff did not mention the forfeiture of funds or the alleged agreement of an eight year sentence at his sentencing, despite being told that he would lose the benefits of any bargains the State may have made to him if he did not place them on the record. Additionally, the Plaintiff stated on the record before he was sentenced that the State had made him no promises in exchange for his guilty plea. Plaintiff's Motion to Amend/Alter Judgement is **DENIED**.

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk :

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

2018 JUN 25 AM 9:15  
 CLERK OF COURTS  
 SALUDA CO. S.C.  
 FILED



STATE OF SOUTH CAROLINA  
COUNTY OF SALUDA

FILED

IN THE COURT OF COMMON PLEAS

Oriental J. Charley, # 357460,

2018 MAY 24 AM 11:45

2014-CP-41-101

Applicant,

CLERK OF COURT  
SALUDA CO. S.C.

v.

ORDER OF DISMISSAL

The State of South Carolina,

Respondent.

This matter is before the Court by way of a Post-Conviction Relief (PCR) Application filed on May 15, 2014, and an Amended Application dated September 17, 2017. The Court held an evidentiary hearing into the matter on April 18, 2018, at the Lexington County Courthouse. Applicant was present at the hearing and Kristy Goldberg, Esquire, represented him. Senior Assistant Attorney General William Edgar Salter, III, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing, while Respondent presented testimony from plea counsel, Jerry M. Screen Sr., Esquire. The Court had before it copies of the transcripts of Applicant's June 11, 2012 guilty plea and his October 17, 2013 sentencing; the Record on Appeal filed on behalf of Applicant's co-defendant, Gerald Williams, in *State v. Gerald R. Williams*, Appellate Case No. 2013-002304; the records of the Saluda County Clerk of Court regarding Applicant's convictions; his South Carolina Department of Corrections (SCDC) records; and the pleadings in this action. The Court now denies relief and makes the following findings:

### I. PROCEDURAL HISTORY

Oriental J. Charley, # 357460 (Applicant), is presently confined in the McCormick Correctional Institution, of the South Carolina Department of Corrections (SCDC), as the result

*WAM / 1*

of his Saluda County convictions and sentence. The Saluda County Grand Jury indicted him in May 2012 for three counts of attempted murder (2012-GS-41-131 thru -133), possession of a deadly weapon during a violent crime (2012-GS-41-130), and malicious injury to real property (2012-GS-41-134). Jerry M. Screen Sr., Esquire, represented him on these charges.

Applicant pled guilty, without any negotiation as to sentence, to one count of attempted murder (2012-GS-41-131) before the Honorable William P. Keesley, on June 11, 2012. Judge Keesley accepted his plea, but sentencing was deferred until after the trial of Applicant's co-defendant because he had initially agreed to cooperate with the State in the prosecution of his co-defendant.

The Honorable J. Michael Baxley held a separate sentencing proceeding on October 17, 2013. Judge Baxley sentenced him twenty years imprisonment. The State *nolle prossed* the remaining charges at that time. Applicant did not appeal his convictions or sentence.

However, he filed a *pro se* PCR Application on May 15, 2014, in which he raised the following claims:

1. Ineffective Assistance of Counsel:
  - a. "[C]ounsel was ineffective during the sentencing phase of the plea by his failure to object or file [a] motion[] that the sentencing court had no authority to sentenced applicant for the crime of attempted murder after applicant had waived venue in Saluda County;"
  - b. failure to object to: "The State breached the written plea agreement when it sentence me to twenty years for attempted murder and applicant had a signed agreement for eight years."

On July 10, 2014, Kristy Goldberg, Esquire, was appointed to represent him. Respondent filed a Return on March 17, 2015. With counsel's assistance, Applicant filed his Amended Application on or about September 17, 2017. Respondent filed an Amended Return dated October 30, 2017.

## II. STATEMENT OF FACTS

The State proffered the following facts in support of Applicant's guilty plea:

**INVESTIGATOR SHORTER:** Thank you, Your Honor.

This took place on the 13th of April of this year ... in Saluda County. On the 12th, I received a phone call from a Rodney Pruitt, a deputy with Barnwell County, and he advised me of a situation going on in a drug dispute between the defendant, Mr. Charley, here and the victim, A.J. Young.

In no uncertain terms, he advised me that his information was Mr. Charley, along with some of his associates, were looking for Mr. Young and when they found him, they were going to kill him. He didn't say they were going to hurt him, he said they were going to kill him. He said there was a drug dispute over some funds. He gave me a description of the vehicle in which they would be riding and told me that we needed to be on the lookout for these individuals because the victim in this case, Mr. Young, was supposedly hiding at a residence somewhere in Saluda County.

Later on that night after midnight, the sheriff's office received a call regarding a shooting incident at [the location Deputy Pruitt had mentioned the previous day]. While responding, they passed by a van parked on the side of the road that fit the description of a van that they may be driving given to me by Investigator Pruitt the previous day. No one was around that van.

Other units were responding. Our deputies got there. They found the house shot up, multiple gunshots going through the door in both directions at a mobile home ....

Later, units responding by the van discovered Mr. Charley along with a co-defendant, Mr. Gerald Williams, at the van. They were taken into custody.

We went to the house. We got the victims out of the house. And after interviewing Mr. A.J. Young, the victim in this case, we discovered \$20,140 in a Camelbak water pack strapped to his back under his T-shirt.

Mr. Young told us that two days prior to this, he was fronted \$32,000 by Mr. Charley to go purchase cocaine with. He said he ripped him off. He said when he got out of Mr. Charley's vehicle, he started running and he never looked back and that Mr. Charley and his associates had been looking for him for two days and it culminated with this shooting incident.

Mr. Young admitted that he shot back at them through the door. He was back in his bedroom. We found bullet holes in the bedroom and in the hallway. And,

again, there were bullet holes going through the door in both directions. Mr. Charley was arrested along with Mr. Williams.

After daylight, we went back and walked the approximate half mile route in which they would have traveled from the vehicle to the house. While walking that route, we discovered two firearms and some rubber gloves.

On the previous night when Mr. Williams was arrested, when we got him to the jail, he had the trigger finger and the thumb finger of rubber gloves still stuck to his fingers. The rubber gloves found with the firearms were consistent with the material and color of the rubber glove fingers that were found on Mr. Williams' fingers at the jail. All of that's at SLED being tested now.

And later on that day, we got Mr. Charley out, interviewed him. And he disputed some of the facts about whether or not it was drug money, but he did say that Mr. Young had taken \$32,000 from him and that [he] and Mr. Williams were here in an effort to get that money back.

**MR. MAYE:** May it please the Court, Your Honor. Mr. Charley ... as a result of this, ... was charged with possession of a weapon during the commission of a violent crime, specifically law enforcement seized a TEC-9 9mm semiautomatic pistol. We did have some information that that weapon may have jammed during the course of this shootout or [stove-piped] and prohibited from discharging further rounds. That's the only thing I think that he took any issue with about was number of rounds that were fired on his part there.

But, Your Honor, he has indicated to us that he intends to testify against Mr. Williams. He intends to testify truthfully and that the version of the facts that we have in this case is truthful and that he intends to testify in accordance with that should we need him to testify against the co-defendant.

**INVESTIGATOR SHORTER:** I'd also add, Your Honor, that the victim in this case is currently incarcerated in Barnwell County. He's aware of these proceedings and he's in agreement with them.

*6-11-12 Tr. pp. 10-14.*

### III.

Applicant raises the following claims in his Amended Application:

- 11(a). Ineffective assistance of trial counsel - plea counsel was ineffective for encouraging and/or allowing Applicant to consent to forfeiture of money in exchange for a plea agreement and/or allowed the Applicant to believe that [he] consented to a forfeiture of money in exchange for a plea agreement.

- (b). Ineffective assistance of trial counsel - plea counsel was ineffective in failing to object and failing to have plea agreement between defendant and solicitor's office enforced based on the detrimental reliance exception.
- (c). Ineffective assistance of trial counsel - in the alternative to the above allegations, plea counsel was ineffective for not correcting the Applicant's belief that he was accepting a plea offer to an eight year sentence.
- (d). Ineffective assistance of trial counsel - plea counsel was ineffective for allowing the Applicant to enter an unknowing, unintelligent and involuntary plea.
- (e). Ineffective assistance of trial counsel - counsel failed to file for reconsideration of the sentence.

#### IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has also had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The 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.

##### A. *Ineffective Assistance of Counsel.*

The United States Supreme Court has held that *Strickland*'s two-pronged test "applies to challenges to guilty pleas based on ineffective assistance of counsel." *Hill v. Lockhart*, 474 U.S. 52, 58 (1985). In order to prevail, Applicant must first establish " 'that counsel's representation fell below an objective standard of reasonableness.' " *Lafler v. Cooper*, 566 U.S. 156, 162-63 (2012) (quoting *Hill*, 474 U.S. at 57). *See also Hill*, 474 U.S. at 56 ("Where, as here, a defendant is represented by counsel during the plea process and enters his plea upon the advice of counsel,

the voluntariness of the plea depends on whether counsel's advice 'was within the range of competence demanded of attorneys in criminal cases' "); *Strickland*, 466 U.S. at 687-88.

A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action "might be considered sound trial strategy."

*Id.* (Citation omitted).

Even if Applicant can establish deficient performance, he would still have to show prejudice from counsel's performance. To establish *Strickland* prejudice in the context of guilty pleas, he must prove "that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial" *Hill*, 474 U.S. at 52. *See also Lafler*, 566 U.S. at 163 (" 'a defendant must show the outcome of the plea process would have been different with competent advice' ") (citing *Missouri v. Frye*, 566 U.S. 134 (2012)).

**B. Involuntary Guilty Plea.**

The test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). *See also Boykin v. Alabama*, 395 U.S. 238, 242 (1969) "... [A] [guilty] plea's validity may not be collaterally attacked merely because the defendant made what turned out, in retrospect, to be a poor deal." *Bradshaw v. Stumpf*, 545 U.S. 175, 186 (2005). Rather, "[w]here, as here, a defendant is represented by counsel during the plea process and enters his plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel's advice 'was within the range of competence demanded of attorneys in criminal

cases' ” *Hill*, 474 U.S. at 56 (quoting *McMann v. Richardson*, 397 U.S. 759, 771 (1970)). Accord *Tollett v. Henderson*, 411 U.S. 258 (1973). “In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. *Harres v. Leeke*, 282 S.C. 131, 318 S.E.2d 360 (1984).” *Wolfe v. State*, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997). Applying this standard to the claims raised by Applicant, the Court finds that he has not met his burden of proof.

#### Ground (a)

Applicant’s first claim is that plea counsel was ineffective for encouraging or allowing Applicant to consent to the “forfeiture of money in exchange for a plea agreement and/or allow[ing] the Applicant to believe that he consented to a forfeiture of money in exchange for a plea agreement.” The Court finds that Applicant has not met his burden of proof under *Strickland*, *Hill* and the current record.

Applicant testified at the PCR hearing that he is currently serving a twenty year sentence for attempted murder. He was arrested on this and other charges on April 13, 2012, and he never bonded out before his June 11, 2012 guilty plea. He had his wife call Mr. Screen to represent him because Mr. Screen had represented him on unrelated drug charges in Barnwell County. Those proceedings also involved forfeiture of drug funds. Mr. Screen indicated that it would cost \$15,000.00 to represent Applicant.

The attempted murder victim had taken roughly \$32,000.00 from Applicant, and law enforcement had recovered \$20,140.00 of that amount from the attempted murder victim, Al Jerome Young. See Applicant’s Ex. 3. Applicant testified that law enforcement served him with documents indicating that it was seeking forfeiture of the money that had been recovered. Applicant claimed that Mr. Screen told him in a conversation approximately two weeks after his

arrest that they were going to get some of the money back and that he would get a sentence with a low number of years. Approximately two weeks before his plea, he saw counsel again in a trailer located in Saluda County, which Applicant thought was a satellite branch of the Sheriff's Office. Deputy Solicitor Ervin Maye and Inv. Shorter, from the Sheriff's Office, were also present. Applicant left the presence of the other men at some point. When he returned, Mr. Screen told him that he would get \$7,500.00 back and that he would receive an eight year sentence, in exchange for a plea to one count of attempted murder. The remaining charges would then be dropped. He thought consenting to forfeiture of the \$20,140.00 was part of the plea agreement. Therefore, he signed Applicant's Ex. 3, the Voluntary Assignment form, and he waived any claim of ownership of the money the victim had taken from him.

Counsel, Mr. Screen, testified that he has practiced law since 1975, and that approximately one-half of his practice is criminal defense. Also, he has extensive experience in handling major felonies. Counsel had previously represented Applicant on unrelated drug charges in Barnwell County earlier in 2012,<sup>1</sup> and he was retained in this case to represent Applicant on the charges for which Applicant was indicted. Counsel made a number of trips to the Saluda County Jail, where he met with Applicant and discussed the case before the guilty plea. Counsel was sure that he had filed *Brady*<sup>2</sup> and Rule 5, SCRCrim.P, discovery requests and that he had reviewed the State's responses with Applicant. Additionally, counsel had spoken to the investigating officer. Applicant did not provide counsel with any potentially favorable witnesses or possible defenses to the charges.

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<sup>1</sup> Applicant had pled guilty and received a probationary sentence in the Barnwell case. The Barnwell case also involved civil forfeiture, but the forfeiture did not impact the plea to the charge there.

<sup>2</sup> See *Brady v. Maryland*, 373 U.S. 83 (1963).

Instead, Applicant told counsel that the attempted murder victim had come into possession of Applicant's money that was to be used to purchase cocaine from a Mexican individual. Thereafter, Applicant, Williams and another co-defendant armed themselves and went looking for the victim in order to cause "serious damage." Applicant admitted to counsel that he had fired one or two shots into the house where he found the victim, and that he ran away when someone in the house returned fire. Counsel reviewed the "pros and cons" of taking the case to trial with his client, including counsel's belief that Applicant could not be a credible witness in the trial of this drug-related case, in light of his Barnwell County drug conviction. Counsel described Applicant as "ring wise," and testified that Applicant understood what was going on. Nor did Applicant ever affirmatively indicate that he did not understand counsel's discussions with him. As a result, there was never a serious thought of taking this case to trial and counsel attempted to negotiate a favorable plea to the charges against Applicant. Counsel's efforts to negotiate a sentence for Applicant and his advice to Applicant are discussed in Grounds (b)-(c), *infra*.

With respect to the forfeiture of drug money that the victim had stolen from Applicant, counsel testified that the State knew that the money was involved in this case and asserted that it was subject to forfeiture. He explained to Applicant that forfeiture was a separate action and that Applicant's chances of prevailing at a forfeiture hearing were negligible. Applicant indicated to counsel that he did not care about the money, and that he only wanted less time. Counsel did not know where he and Applicant were when they signed the Voluntary Assignment, Applicant's Ex. 4.<sup>3</sup> However, he thought that this document took the place of a formal forfeiture proceeding,

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<sup>3</sup> Counsel understood that the Solicitor's Office typically handles forfeiture proceedings but pointed out that the Sheriff's Office must agree in order for the forfeiture to go smoothly.

and he had explained to Applicant that Applicant could not buy less time by agreeing to forfeit the funds.

An action for forfeiture is a civil *in rem* action at law governed by S.C. Code Ann. § 44-53-520, et seq., (Supp. 2017). § 44-53-520(a)(7) provides as follows:

The following [is] subject to forfeiture.... all property including, but not limited to, monies, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance, and all proceeds including, but not limited to, monies, and real and personal property traceable to any exchange.

Section 44-53-520(b)(7) states that “[a]ny property subject to forfeiture under this article may be seized by the department having authority upon warrant issued by any court having jurisdiction over the property. Seizure without process may be made if ... the department has probable cause to believe that the property was used or is intended to be used in violation of this article.”

The Court finds that counsel’s testimony was credible and that Applicant’s testimony is not credible to the extent that it contradicts counsel on this claim. Accordingly, the Court finds that Applicant understood that he was not agreeing to the forfeiture of the money as part of the plea agreement, and that he was aware he could not receive a lesser sentence by relinquishing any claim to this money. Applicant understood that the only money involved in the case was the money that Applicant gave to the victim with which to purchase drugs; that the victim stole this money from him; and that this led Applicant’s attempted murder of the victim. The Court further finds that Applicant understood that there was almost no chance that he could prevail if a formal forfeiture hearing was held, and that he knowingly freely, and voluntarily signed Applicant’s Ex. 4.

AM / 10

The Court further finds that Applicant's claim is inconsistent with his reluctant admission to Judge Baxley, at the October 17, 2013 sentencing proceeding, that at least part of the money was drug money. *See 10/17/13 Tr. p. 11, lines 21-25. Cf. Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) ([T]he representations of the defendant, his lawyer, and the prosecutor at such a hearing, as well as any findings made by the judge accepting the plea, constitute a formidable barrier in any subsequent collateral proceedings. Solemn declarations in open court carry a strong presumption of verity). Likewise, the Court finds that Applicant's present claim is inconsistent with his failure to tell Judge Keesley, at the plea that he had agreed to forfeiting the funds as part of a plea bargain for an eight year sentence. In particular, the Court notes that Applicant did not mention either the forfeiture of funds or the alleged agreement of an eight year sentence, even though he twice told Judge Keesley that he understood he would lose the benefit of any "bargains the State might have made to [him], any agreements about ... recommending sentences, anything like that," if he did not place the matter on the record. *Id. See also 6/11/12 Tr. p. 14, line 14 – p. 15, line 6; p. 16, lines 16-22*. Further, Applicant did not mention that he had agreed to forfeit the funds as part of a plea bargain for an eight year sentence in his June 12, 2012 letter to Judge Keesley (Applicant's Ex. 5).

Based upon this record, the Court finds that he has not proven either deficient performance under *Strickland*, or resulting prejudice under *Hill*. Additionally, the Court finds that the Supreme Court has specified that "to obtain relief on this type of claim, [an] [applicant] must convince the court that a decision to reject the plea bargain would have been rational under the circumstances." *Padilla v. Kentucky*, 559 U.S. 356, 372 (2009). "The challenger's subjective preferences, therefore, are not dispositive; what matters is whether proceeding to trial would

have been objectively reasonable in light of all of the facts.” *United States v. Fugit*, 703 F.3d 248, 260 (4<sup>th</sup> Cir. 2012), *cert. denied*, 134 S.Ct. 999 (2014).

The Court finds that Applicant cannot meet his burden of proof on the current allegation or the other claims in the Application because if he had elected to stand trial, he would have gone to trial on two other counts of attempted murder (2012-GS-41-132 & -133), and one count each of possession of a deadly weapon during a violent crime (2012-GS-41-130), and malicious injury to real property (2012-GS-41-134). In spite of his testimony that he did not receive a benefit from the guilty plea because he did not receive an eight year sentence, the Court finds that his plea bargain resulted in a significant benefit to him.

Each count of attempted murder carried a sentence of up to thirty years imprisonment under *see* S.C. Code Ann. § 16-3-29 (Supp. 2017), while possession of a deadly weapon during a violent crime carries a five year sentence, *see* S.C. Code Ann. § 16-23-490 (Supp. 2017) and, for property worth valued at \$2,000.00 or less, malicious injury to real property carries a fine of “not more than one thousand dollars” and up to thirty days imprisonment. *See* S.C. Code Ann. § 16-11-520(B)(3) (Supp. 2017).<sup>4</sup> Accordingly, he would have faced a potential sentence of up to ninety-five years imprisonment if he had not pled guilty. Thus, the Court finds that “proceeding to trial would [not] have been objectively reasonable in light of all of the facts.” *Fugit*, 703 F.3d at 260. *See also Padilla*, 559 U.S. at 372. Under these circumstances, he has not shown Sixth Amendment prejudice. *Id.*

#### Grounds (b) and (c)

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<sup>4</sup> “A person who violates the provisions of this section is guilty of a ... misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, if the injury to the property or the property loss is worth two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days, or both.”

WAM / 12

Applicant's second allegation is that plea counsel was ineffective because he did not object and did not "have [the] plea agreement between defendant and [the] solicitor's office enforced based on the detrimental reliance exception." His third claim is that counsel was ineffective because he did not correct "Applicant's belief that he was accepting a plea offer to an eight year sentence." The Court finds that he has not met his burden of proof under *Strickland* and *Hill* as to either allegation.

**A. Applicant's guilty plea and sentencing.**

The United States Supreme Court stated in *Blackledge* that:

More often than not a prisoner has everything to gain and nothing to lose from filing a collateral attack upon his guilty plea. If he succeeds in vacating the judgment of conviction, retrial may be difficult. If he convinces a court that his plea was induced by an advantageous plea agreement that was violated, he may obtain the benefit of its terms. A collateral attack may also be inspired by "a mere desire to be freed temporarily from the confines of the prison." (Citation omitted).

*Blackledge*, 431 U.S. 63, 71-72. Balancing concerns for finality of litigation against a person's right to challenge the constitutionality of his conviction, *id.* at 72, the Court held that:

... [T]he representations of the defendant, his lawyer, and the prosecutor at such a hearing, as well as any findings made by the judge accepting the plea, constitute a formidable barrier in any subsequent collateral proceedings. Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.

*Blackledge*, 431 U.S. at 73-74. See also *Christian v. Ballard*, 792 F.3d 427, 444 (4<sup>th</sup> Cir. 2015).

At the time of the guilty plea before Judge Keesley, the Deputy Solicitor indicated that Applicant was being represented by Mr. Screen and that he had other pending charges, in addition to the count of attempted murder (2012-GS-41-131) to which he was pleading guilty. However, Applicant had agreed to cooperate with the State in the prosecution of his co-defendant, Gerald Rudell Williams, whom he had claimed was "an active participant" in the

incident. Therefore, the Deputy Solicitor asked the plea judge to accept his plea on that date but to defer sentencing. He also stated that he would hold the disposition of the other charges in abeyance. *6/11/12 Tr. pp. 4-5.*

Judge Keesley first addressed Applicant, who waived venue and agreed to have the court accept his plea in McCormick County. *6/11/12 Tr. pp. 5-6.* Counsel, Mr. Screen, then represented to Judge Keesley that counsel had explained to Applicant his constitutional rights, including his right to a jury trial; the nature and elements of the charge he was facing; the possible punishment he could receive on the charge; and "his rights related to jurisdiction and venue and attestation." Counsel was satisfied there was a factual basis for Applicant's plea, and he agreed with Applicant's decision to plead guilty. *6/11/12 Tr. pp. 6-7.*

Next, Judge Keesley addressed Applicant. Applicant represented to Judge Keesley, under oath, that:

- he was not under the influence of any medicine, drugs or alcohol or anything affecting his thinking;
- he did not have any physical or mental problems that affected his thinking;
- he was clearheaded and knew what he was doing;
- he understood that by pleading guilty, he was giving up "important rights," including his right to remain silent and his right to a jury trial;
- he understood that if he wanted a jury trial, he would be presumed to be innocent and the State would have to prove him guilty beyond a reasonable doubt to convict him;
- he understood that he would be able to see and hear every witness against him, and that his lawyer could cross-examine those witnesses at a jury trial;
- he understood that if he chose not to testify at a jury trial, the trial judge would tell the jury that his silence could not be held against him in any way;
- he understood that he was waiving his right to remain silent by pleading guilty, and that he would be telling the plea judge that he was guilty;

- he understood that he was waiving any defenses that he might have to the charge against him by pleading guilty;
- he understood that he was waiving his right to challenge the evidence against him by pleading guilty;
- he again stated that he understood that he was giving up these rights by pleading guilty, but that he wanted to plead guilty;
- he did not want a jury trial;
- following the State's proffer of facts in support of the plea, he admitted that he was guilty of the charge of attempted murder;
- he also admitted that no one had forced, threatened, or coerced him to induce the guilty plea;
- he understood that he would lose the benefit of "any agreements about dropping charges, reducing charges, recommending sentences, anything like that," unless it was stated on the record;
- after conferring with plea counsel, he stated, "Currently, we're in negotiation ... about reduction of the charges;" and
- he understood that the plea judge was unaware of any such discussions and that he would be adjudicated guilty if the judge accepted his plea.

*6/11/12 Tr. pp. 7-15.*

At this point, the Deputy Solicitor stated that there had not been any negotiations to reduce the original charge, that he had not yet made any recommendation as to sentence, and that he would make a recommendation as to sentence in the future, based upon Applicant's cooperation. He further explained, "And we've not had a negotiation as to what the sentence would be and we'll address that after such time as we've dealt with the co-defendant." *6/11/12*

*Tr. p. 15.*

In response to further questioning by Judge Keesley, Applicant stated that:

- he understood the Deputy Solicitor's explanation;

- he understood that the judge would determine the sentence that he would receive and that Judge Keesley did not know who that judge would be;
- he understood that Judge Keesley did not know who the judge would be he was fully satisfied with the services of counsel;
- He again stated that he understood “the concept ... if they've made promises to you and they haven't put them on the record, you're going to lose them;
- Nevertheless, he still wished to go forward and plead guilty;
- he was “fully satisfied with [his] lawyer;
- there was nothing else that he wanted counsel to do that counsel had not done;
- he did not have any complaints about either counsel, law enforcement officials, or anyone else who had dealt with his case;
- he was pleading guilty of his own free will and accord;
- he understood that “[a]tttempted murder is a felony that carries up to 30 years in prison;”
- he understood that he could not be given probation on any sentence that he received and that no part of the sentence imposed could be suspended;
- he understood that the Legislature had classified attempted murder as a violent crime;
- he did not have any prior convictions for violent crimes, and he understood that “on a second violent crime, a person has to do all the time;”
- he understood that “the department of corrections treats violent offenders differently than nonviolent offenders,” that he “would not be eligible for placement in certain types of institutions that a nonviolent offender would be.
- he understood that the Legislature had classified attempted murder as a “most serious” offense, that it represented two “strikes” and that he could receive a sentence of life without parole if he accumulated the appropriate number of strikes;
- he understood that, at a minimum, he would have to serve 85 percent of the sentence that would be imposed, and that there was “no guarantee you get out in 85 percent, that's the least time you can possibly do;”

- he understood that after he had completed his sentence, he would have to go through a period of community supervision, and that if he did not successfully complete community supervision, he would be sent back to prison;
- he understood that he would be required to have a sample of his DNA put in the DNA database;
- Understanding everything that Judge Keesley had told him, he still wished to give up his right to a trial and plead guilty.

*6/11/12 Tr. p. 16-20.*

Applicant further indicated that he understood the explanation that Judge Keesley would make findings as to the voluntariness of his plea and that guilt would have been determined if Judge Keesley accepted the plea, but that Judge Keesley would not sentence him at that time. He likewise understood that if Judge Keesley accepted his plea, this was “the determination that you're guilty of attempted murder just the same as if a jury came back in and said he's guilty or you had a bench trial and the judge said he's guilty. Once I do that, the issue of guilt's determined.” He also indicated, yet again, that he wanted to plead guilty. Counsel agreed that this was “right.” *6/11/12 Tr. pp. 20-21.*

Based upon his responses, Judge Keesley found that:

The Court finds beyond a reasonable doubt that Mr. Charley's made a free, knowing, voluntary and intelligent decision to waive his rights, including his right to jurisdiction, attestation and venue and enter his plea of guilty to attempted murder. He's made his decision upon the advice of counsel with whom he's fully satisfied. There is a factual basis for his plea.

He understands his rights related to having this matter heard in Saluda County, the Clerk of Court attesting his signature in Saluda County, a judge in Saluda County presiding and a jury in Saluda County hearing his case. He understands that he has given up all those rights and entering his plea of guilty here in McCormick County.

Once again, he's made his decisions upon the advice of counsel with whom he's fully satisfied. There is a factual basis for his plea and his plea of guilty is accepted. Sentencing is deferred until a later date.

6/11/12 Tr. p. 21, line 11 – p. 20, line 7.

Judge Baxley, who sentenced Applicant, also was the trial judge in the trial of Applicant's co-defendant, Williams. At the October 17, 2013, sentencing proceeding, the Deputy Solicitor stated that while Applicant initially cooperated, he had recanted. At trial, he again changed his story and implicated his co-defendant. The Deputy Solicitor described the benefit to the State from his cooperation as "inadvertent." However, he stated that Applicant had pled guilty. He also stated that the State was not making any sentencing recommendation but that he was *nolle prosequing* the remaining charges against Applicant. *10/17/13 Tr. pp. 3-5*. Judge Baxley later stated on the record that Applicant had cooperated at trial only after the Deputy Solicitor warned that he could be prosecuted for perjury. *10/17/13 Tr. p. 12*.

**B. The testimony at the PCR hearing.**

Applicant testified at the PCR hearing that counsel told him that he would receive an eight year sentence in exchange for a plea to one count of attempted murder and that the State would dismiss the other charges. He claimed that he would not have entered his guilty plea unless there had been a deal for an eight year sentence because there allegedly was no benefit to him otherwise. He further claimed that he did not learn that there was no agreement for an eight year sentence until he testified at Williams' trial.

He claimed that counsel never told him that he would have to testify against his co-defendant, Williams, as part of the plea bargain. Rather, supposedly counsel told him to tell the truth in his co-defendant's trial. However, if he did not say what the prosecution wanted him to say, the State would hold it against him. In support of his claims, he introduced Applicant's Ex. 1, a document entitled "Summary of Evidence, which was filed with the Clerk of Court on May 31, 2012 and served on the Solicitor's Office, as well as Applicant's Exhibit 4, an undated

Wm/18

statement to the Saluda County Sheriff's Office. Both of these documents were supposedly executed before his guilty plea and he claims in both that Williams did not have anything to do with the charges for which he was arrested. He also introduced letter that he wrote to Judge Keesley shortly after his June 11, 2012 plea (Applicant's Ex. 5). This letter likewise indicates Williams did not have anything to do with the shooting.

On the other hand, plea counsel testified that he attempted to negotiate a sentence with Deputy Solicitor Ervin Maye. Counsel explained that he told Deputy Solicitor Maye that thirty years was too harsh, and that he attempted to negotiate a sentence for either eight or ten years on one count of attempted murder because even a ten year sentence would result in Applicant serving just over eight years in prison. However, Deputy Solicitor Maye made Applicant's cooperation in the trial of Applicant's co-defendant Williams a condition of the plea bargain, and he would not agree to recommend any sentence until after the trial. Counsel explained that Applicant's statement at the plea that "we're in negotiation ... about the reduction of the charges" (6/11/Tr. p. 14, lines 21-25) was a reference to his cooperation in Williams' trial.

Counsel did not know what error had been corrected on Applicant's sentencing sheet (Applicant's Ex. 2). Although counsel told Applicant that he hoped to get Applicant an agreement for an eight year sentence, he did not know why Applicant thought that there was a deal for an eight year sentence. There was never a promise that the State would recommend a specific sentence, and counsel never told Applicant that Applicant would receive an eight year sentence or any specific sentence. If counsel had told Applicant that he would only receive an eight year sentence, counsel would have informed Judge Keesley of this at the plea. Further, Applicant understood that his cooperation in the prosecution of Williams was necessary in order for him to receive a favorable sentencing recommendation. Counsel thought that the guilty plea

was in Applicant's best interest, and Applicant appeared to understand counsel's discussions with him.

Counsel thought that Applicant remained housed in the Saluda County Jail following the guilty plea. Counsel thereafter learned that Applicant was planning to cooperate with the defense in the *Williams* case. Counsel knew that if Applicant gave Williams' counsel what they wanted, it would "explode Applicant's case. So, counsel made two or three trips to see Applicant and he pleaded with Applicant not to cooperate with Williams because it was a mistake that would be detrimental to his plea bargain. Counsel explained that Williams would "drop" Applicant if Williams had received the deal that Applicant had gotten. Applicant, however, testified as a defense witness in *Williams*, even though he understood it would adversely impact his own case. Nevertheless, the plea resulted in dismissal of charges that potentially carried sixty-five years imprisonment.

**C. Applicant is not entitled to relief on his claims.**

The Court finds that plea counsel's testimony is credible. However, it is unnecessary for the Court to address *Strickland's* deficiency prong on this claim because the Court finds that Applicant cannot prove that he was prejudiced by any of counsel's supposed errors, in light of the colloquy Judge Keesley had with him at the time of his plea. *See Strickland*, 466 U.S. at 697 ("The object of an ineffectiveness claim is not to grade counsel's performance. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed").

The Court finds that Applicant had "everything to gain and nothing to lose from filing a collateral attack upon his guilty plea." *Blackledge*, 431 U.S. at 71. Accordingly, the Court finds that his PCR testimony that he lied to and otherwise misled Judge Keesley at the guilty plea on

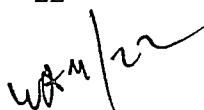
the advice of his attorney is simply not credible, and the Court accepts as truthful the responses given at the time of his plea. *Cf. id.* at 73-74.

Contrary to the allegations of ineffective assistance of counsel in Grounds (b) and (c), the Court finds that the credible evidence is that there was no offer from the Solicitor's Office for an eight year sentence. The Court further finds that the Deputy Solicitor and plea counsel had not yet reached an agreement on a recommendation as to sentence when Applicant entered his plea. Rather, the agreement was that the Deputy Solicitor would make a recommendation as to sentence only after the trial of Applicant's co-defendant, and that the sentencing recommendation would be based upon Applicant's cooperation in prosecuting his co-defendant. *6/11/12 Tr. pp. 4; 15-16.*

The Court finds that any confusion Applicant may have had about the plea negotiations, after his discussions with counsel, were unerringly clarified by Judge Keesley's lengthy colloquy with him at the time of his plea. The Court further finds that his responses to Judge Keesley reflect that he fully understood the agreement that the State and counsel had reached. *See, e.g., Bennett v. State*, 371 S.C. 198, 205 n. 6, 638 S.E.2d 673, 676 n. 6 (2006) (reversing grant of PCR and stating that "even where counsel offers misinformation, this deficiency can be cured where the trial court properly informs the defendant about the sentencing range"); *Burnett v. State*, 352 S.C. 589, 576 S.E.2d 144 (2003) (holding that even if plea counsel erroneously informed defendant that his sentence would only be three years, the information conveyed at the plea hearing cured any misconception caused by counsel's alleged inaccurate advice); *Moorehead v. State*, 329 S.C. 329, 333, 496 S.E.2d 415, 417 (1998) (holding that there was no evidence to support the PCR judge's finding that applicant received ineffective assistance of counsel due to erroneous sentencing advice where "any misconception was cured at the plea hearing"); *Wolfe v.*

*State*, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997) (recognizing that 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); *United States v. Lambey*, 974 F.2d 1389, 1395 (4<sup>th</sup> Cir. 1992) (en banc ), *cert. denied*, 513 U.S. 1060 (1994) (“if the information given by the court at the Rule 11 hearing corrects or clarifies the earlier erroneous information given by the defendant's attorney and the defendant admits to understanding the court's advice, the criminal justice system must be able to rely on the subsequent dialogue between the court and defendant”); *United States v. Foster*, 68 F.3d 86, 88 (4<sup>th</sup> Cir. 1995) (defendant was not prejudiced by counsel's misadvice regarding his sentence because the district court provided a “careful explanation” of the severity of the sentence).

Nor does the Court accept his contention that the presence of white out on the sentencing sheet (Applicant's Ex. 2) in the area of the box to be checked for “Negotiated Sentence” supports his assertion there was a negotiated sentence of eight years. The South Carolina Supreme Court has made clear that “[a]n unambiguous sentencing pronouncement will control over an ambiguous sentence, whether oral or written, so long as giving effect to that pronouncement does not result in an illegal sentence or a deprivation of a defendant's constitutional rights.” *Bordeaux v. State*, 410 S.C. 495, 500, 765 S.E.2d 143, 145 (2014) The Court finds that it is impossible to determine from the sentencing sheet what error was corrected on it. Thus, the presence of white out on it is, ambiguous. Additionally, the sentencing sheet reflects Judge Keesley's handwritten and signed notation, “Plea of guilty accepted 6/11/2012. Sentencing deferred until later date.” The Court finds that this notation is inconsistent with Applicant's Grounds (b) and (c), and that it

Handwritten signature or initials, possibly "WAM/r", written in black ink.

is consistent with this Court's findings that Applicant understood that no agreement had been reached as to the sentence Applicant would receive at the time of his guilty plea.

In rejecting Applicant's Grounds (b) and (c), the Court finds that he did not claim at the time of his sentencing that he had been promised an eight year sentence, or that he did not understand that he was required to testify against Williams in order to fulfill his end of the plea bargain negotiated with the State. Based upon the record of the trial of his co-defendant, Williams, the Court finds that the credible evidence is that he did not fully cooperate in prosecuting his co-defendant, even though aware of his agreement to do so as part of his plea bargain. Instead, he recanted his original account in the letter written to Judge Keesley shortly after his June 11, 2012 plea (Applicant's Ex. 5),<sup>5</sup> and he was a defense witness at Williams' trial. The Court agrees with Judge Baxley's finding that he only cooperated with the State in the *Williams* trial after the Deputy Solicitor warned him on cross-examination that he could be prosecuted for perjury if he did not testify truthfully. *10/17/13 Tr. p. 12; ROA State v. Gerald R. Williams, p. 613; see also ROA State v. Gerald R. Williams, pp. 600-630.*

Indeed, Applicant claimed on cross-examination in *Williams* that he thought he had accepted the State's offer of an eight year sentence. However, when the Deputy Solicitor asked if he had any idea of what the sentence would be, he replied, "No, not now obviously." He likewise admitted that "I guess that's how it's looking," when the Deputy Solicitor asked him whether he was "double-crossing the State now after agreeing to testify and providing all the information about this crime to the State." Even after that admission, he persisted in his assertion that he

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<sup>5</sup> Applicant did not make any representations in Applicant's Ex. 5 that he had been promised an eight year sentence or that he did not understand his obligation to cooperate in prosecuting Williams.

did not remember agreeing to testify against Williams. *ROA State v. Gerald R. Williams*, p. 606, lines 4-23.

On re-direct examination, Applicant again claimed that the State and his counsel had agreed that he would receive an eight year sentence if he testified and that it was only when the Deputy Solicitor had cross-examined him that he learned otherwise. *ROA State v. Gerald R. Williams*, p. 630, line 21 p. 631, line 21. On recross-examination, he asserted that there was a plea agreement that was not reflected in the transcript of the plea. *ROA State v. Gerald R. Williams*, p. 632, line 1- p. 633, line 24.

The Court finds that there was no agreement that was not contained in the plea transcript. The Court further finds that his sentencing judge, Judge Baxley, was the trial judge in Williams' trial and that Judge Baxley had heard Applicant's testimony. Because the State did not make any recommendation as to sentence in Applicant's case, Judge Baxley imposed a sentence that he felt was appropriate under the circumstances. Given this record, Applicant cannot show either deficient performance under *Strickland* or prejudice under *Hill*.

Based upon these findings, the Court also finds that counsel could not have been deficient under *Strickland* for not moving to enforce an agreement for an eight year sentence based upon principles of detrimental reliance because there was no agreement to enforce. The Court further finds that whatever hope Applicant may have had at receiving an eight year sentence were eliminated by Applicant's unilateral decision to breach the terms of the agreement that was actually reached and of which he was aware. Finally, for the reasons argued in connection with Ground (a), the Court finds that there cannot be any prejudice on these claims because "proceeding to trial would [not] have been objectively reasonable in light of all of the facts."

*Fugit*, 703 F.3d at 260. See also *Padilla*, 559 U.S. at 372. Therefore, the Court dismisses Applicant's second and third claims because they lack merit.

#### Ground (d)

Applicant further claims that "plea counsel was ineffective for allowing the Applicant to enter an unknowing, unintelligent and involuntary plea. Again, the Court finds that Applicant cannot meet his burden of proof under *Strickland, Hill* and the current record. As discussed, *supra*, consistent with the record of Applicant's guilty plea, the Court finds that the credible evidence before it is that Applicant freely, voluntarily, knowingly, and intelligently entered his plea.

The Court finds that he fully understood at the time of his plea that the State had not made any recommendation for sentence and that a favorable recommendation of sentence by the State was dependent upon his cooperation in the prosecution of his co-defendant, Gerald Williams. However, following his plea, he made the unilateral decision to not cooperate with the State in the prosecution of his co-defendant and, instead, tried to assist Williams by testifying as a defense witness that Williams had been merely present. The Court further finds that he made this decision to assist Williams against plea counsel's advice. Likewise, he fully understood that forfeiture of the funds was not part of a deal to receive an eight year sentence.

Additionally, the Court finds that he has not shown sufficient reason why he should be allowed to depart from the representations that he made to the plea judge or from the plea judge's finding that he entered his guilty pleas freely, knowingly, voluntarily, and intelligently. *Blackledge*, 431 U.S. at 73-74, 97 S.Ct. at 1629. Finally, for the reasons found in connection with Ground (a), the Court finds that there cannot be any prejudice on this claim because "proceeding to trial would [not] have been objectively reasonable in light of all of the facts." *Fugit*, 703 F.3d

at 260. *See also Padilla*, 559 U.S. at 372, 130 S.Ct. at 1485. Therefore, the Court finds that this claim is without merit.

**Ground (e)**

Applicant's final claim is that plea counsel was ineffective for not filing a motion for reconsideration of the sentence. The Court finds that he has abandoned this claim after all evidence had been presented. Even if Applicant had not abandoned the claim, the Court finds that there was no factual or legal basis for a motion to reconsider the sentence.


The Court notes that Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt 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), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on his behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED THAT:**

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant is remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 27 day of April, 2018.

  
 \_\_\_\_\_ #2761  
 WILLIAM A. MCKINNON  
 Presiding Circuit Court Judge

  
 \_\_\_\_\_, South Carolina

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