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REPLY TO THE CHARLESTON OFFICE
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November 8, 2018

VIA U.S. MAIL
The Honorable Daniel E. Shearhouse
Clerk of South Carolina Supreme Court
Supreme Court Building
Post Office Box 11330
Columbia, SC 29211

RECEIVED
NOV 14 2018
S.C. SUPREME COURT

Re: Stephen Francois, #345325 v. State of South Carolina
Civil Action No.: 2015-CP-10-04723

Dear Mr. Shearhouse:

Enclosed for filing, please find an original and two copies of Appellant's Notice of Appeal of the denial of his application for Post-Conviction Relief, and a Proof of Service regarding same. If you find everything in order, please file the original and return the clocked-in copies in the enclosed self-addressed envelope.

Please note, I was appointed to this and case and have copied the Office of Appellate Defense on this who will handle the appeal. Please call if you have any questions.

With kindest regards, I am

Sincerely,

Christopher L. Murphy, Esq.
For the Firm

CLM/jh

Enclosures
cc (w/ encls.): Mr. Stephen Francois
Megan Harrigan Jameson, Senior Asst. Deputy AG
Office of Appellate Defense
The Honorable Michael G. Nettles
The Honorable Julie J. Armstrong, Clerk, 9th Jud. Cir.

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Michael G Nettles, Circuit Court Judge

Case No.: 2015-CP-10-4723

Stephen Francois, #345325 ..... Appellant

v.

State of South Carolina ..... Respondent

NOTICE OF APPEAL

Appellant appeals the Court's denial of his application for post-conviction relief. Attached is the order from the court dated October 18, 2018 and received November 6, 2018.

November 8, 2018

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RECEIVED
NOV 14 2018
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
STEPHEN FRANCOIS, #345325)
Plaintiff,)
vs.)
)
STATE OF SOUTH CAROLINA)
Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO: **2015-CP-10-4723**

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Plaintiff's Attorney:	Defendant's Attorney:
Christopher L. Murphy, Esquire. Address: Murphy Law Offices, LLC 234 Seven Farms Drive, Suite 128 Charleston, SC 29492 Phone: ____Fax ____ E-mail: ____Other: ____	Megan Harrigan Jameson, Esquire. Address: South Carolina Attorney General's Office PO Box 11549 Columbia, SC 29211 Phone: ____ Fax____ E-mail: ____Other: ____

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☒ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: ____
Estimated Time Needed: ____ Court Reporter Needed: ☐ YES/☒ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Megan Harrigan Jameson
Signature of Attorney for ☐ Plaintiff /☒ Defendant — October 12, 2018 Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: $_____

EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: ____
☐ Other: ____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE ____ Date: ____

CLERK'S VERIFICATION

Collected by:____ Date Filed: ____
☐ MOTION FEE COLLECTED: $ ____
☐ CONTESTED – AMOUNT DUE: $ ____

SCCA 233 (11/2003)

JC
AG
AT
GS
SOL

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Stephen Francois, SCDC No. 345325, Applicant, v. State of South Carolina, Respondent.	Case No. 2015-CP-10-4723 **ORDER OF DISMISSAL**

2018 OCT 24 AM 11:05
CLERK OF COURT

This matter comes before this Court by way of an application for post-conviction relief filed on August 25, 2015, by Stephen Francois (Applicant), alleging he was entitled to post-conviction relief based on constitutionally ineffective counsel and an involuntary guilty plea. Respondent served its return on June 2, 2016, requesting an evidentiary hearing be convened on the application.

An evidentiary hearing was held on October 5, 2018, before this Court at the Charleston County Courthouse. Applicant was present and was represented by counsel Christopher L. Murphy. Respondent was represented by Senior Assistant Deputy Attorney General Megan Harrigan Jameson of the South Carolina Attorney General's Office. At the hearing, testimony was taken from plea counsel Peter D. Brown and Applicant.

Following a thorough review of the record in its entirety, and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations and denies this application with prejudice.

PROCEDURAL HISTORY

The records before this court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. During the June 2010 term, the Charleston County Grand Jury indicted Applicant

for two counts of first-degree burglary, two counts of armed robbery, three counts of kidnapping, and two counts of possession of a weapon (2010-GS-10-4545, -4546, -4547, -4535, -4540, -4541, -4543, -4544, -4754) following two separate home invasions and robberies that occurred days apart committed by Applicant and four co-defendants. Applicant retained Peter D. Brown, Esquire, to represent him on all charges. Ninth Circuit Solicitor Scarlett Wilson and Assistant Solicitor E. Culver Kidd, IV, prosecuted the case.

On January 19, 2011, Applicant and two co-defendants (Miguel Starks and Reginald Rice) appeared in the Charleston County Court of General Sessions before the Honorable R. Markley Dennis, Jr., circuit court judge, and pled guilty as indicted pursuant to a recommendation by the State for concurrent sentences not to exceed thirty years. Sentencing was deferred until after the defendants testified at the trial of co-defendant Sasha Gaskins.

On March 22, 2011, Applicant and co-defendants Starks and Rice appeared before Judge Dennis for sentencing. Following presentations from counsels, Judge Dennis sentenced Applicant to an aggregate thirty years imprisonment.[1]

Applicant, through counsel, filed a timely motion to reconsider his sentence on April 1, 2011. The State filed a written reply to this motion on April 4, 2011. A hearing on this motion was held on November 13, 2014, before Judge Dennis.[2] Following the hearing, Judge Dennis denied the motion. Applicant did not file a notice of appeal.

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[1] Co-defendants Starks and Rice also received sentences of thirty years imprisonment.

[2] While the motion to reconsider the sentence was pending, Applicant filed a pro se motion to relieve counsel. The motion to relive counsel was also heard on this date, and to accommodate Applicant's desire to relieve counsel, Judge Dennis allowed Applicant and counsel to both argue the motion to reconsider his sentence. Judge Dennis ultimately relieved counsel at the conclusion of the hearing.

SUMMARY OF FACTS GIVING RISE TO THE CONVICTIONS

At the guilty plea, Solicitor Wilson, on behalf of the State, presented the following summary of facts:

> [T]his case involves two separate home invasions, two sets of victims on separate days. The same five codefendants were involved in each event.
>
> The first one was on February 24th, 2010. The victim was Herbert Butler and his girlfriend. Mr. Butler had known Reginald Rice from his days at The Citadel. His girlfriend had no connection to Mr. Rice or any one of the other defendants.
>
> Two days later, the second home invasion occurred with Mr. Josh Harpe, who knew both Reginald Rice and Miguel Starks from The Citadel. Mr. Harper worked as an assistant coach in football at The Citadel, where Mr. Rice had played and Mr. Starks was currently on the football team.
>
> As I mentioned, Mr. Starks was enrolled at The Citadel at the time of these events. Mr. Rice had been a cadet in the past but was no longer there.
>
> The other three defendants, Mr. Francois and the two women who were involved, were students at the College of Charleston when all of this unraveled.
>
> These cases, although they happened with Mr. Butler first and then with Mr. Harpe, they were solved in reverse.
>
> Starting from the beginning, on February 24th of last year, Mr. Rice and Mr. Starks began planning the home invasion of Herbert Butler.
>
> I should right now, Judge, that with the media and others involved that there has been some inference or allegation that these two events were drug deals gone bad. They weren't, at all. These men were targeted. They were targeted by people who knew them and knew that they could be taken advantage of.
>
> Mr. Starks and Mr. Rice began to plan. Mr. Starks enlisted the help of his friend, Mr. Francois, and Mr. Francois' girlfriend, whose name is Sasha Gaskins. The plan was for them to use a ruse to gain entry to Mr. Butler's home and steal anything that they could find, whether it was marijuana, drugs, electronics, whatever.
>
> On that evening of the 24th, all of the defendants were together, including Miss Gaskins and Miss Bruster. They had dinner together, then they hung out at Mr. Starks' apartment where they talked further about doing this robbery.

The three men were all dressed in black, they had two guns that they used in the robbery and also a sword that they used in the robbery.

They rode to Mr. Butler's home and what they did was to have Miss Gaskins go to the door, knock on the door, claim that she needed help, wanted to use the phone. As she did that, Mr. Butler's girlfriend went to get the phone, allowed her to use it, Mr. Starks goes rushing in and Mr. Rice come in after him.

Your Honor, at that point the robbery and brutalization of the people lasted somewhere between two and three hours. They went in, they duct-taped them, blind — , — duct-taped their eyes closed.

At one point during the robbery, Mr. Butler's pants were pulled down and the sword was rubbed up against his genitals as he was threatened that if he didn't "give it up', "give up a stash, give up money, give up whatever he had" that they would basically castrate him.

Also during the robbery Mr. Butler's girlfriend at the time was hit in the head with a pistol, she was forced to perform oral sex on who we believe was Mr. Starks. There are circumstantial evidence to that effect, although there is no DNA indicating that. Based on the testimony, we believe that it was Mr. Starks and that we can prove that.

During that time they recovered Mr. Butler's credit cards, ATM card. Mr. Starks actually left with Mr. Francois and the women to go to an ATM machine to try to get cash, leaving Mr. Rice there with the two victims.

As I mentioned earlier, this went on for several hours. Mr. Starks and the others returned from the ATM machine. I do not believe that they were successful in that attempt. They became unloading various electronics from the home into the car.

That was all on Wednesday night. Evidently they were not satisfied with what they recovered in that robbery and began to discuss doing another one. The chosen victim this time was Joshua Harpe. There was discussion that the reason that they thought that it would work with Mr. Harpe was because he was a nice guy, he would fall for their ruse.

So two nights later, on Friday night into Saturday morning, their plan began to unfold. In that event, Mr. Harpe lived in an apartment complex that you had to take an elevator to get to his residence. What they did was have Miss Gaskins call and claim to be a girlfriend of an acquaintance and claim that she was broken down, that she needed help, and could he come get her and she explained where she was.

This was the middle of the night, obviously, but Mr. Harpe got up — I think that he was a little suspicious, because he began trying to contact the acquaintance to see what was going on with his girlfriend as he was getting ready to go and rescue her.

He gets ready. He comes down, comes out of the bottom of his apartment, where he is immediately confronted by Mr. Rice with a gun. He drops to his knees, he drops his cell phone. The other two join in and they take him back upstairs, they duct-tape him, duct-tape his eyes closed and began ransacking his apartment. They put him in the bedroom. They eventually got his dog and put his dog in a bedroom. His dog was going crazy, as you might imagine. Continued to look for anything that they could find of value.

Again, Mr. Starks found his card. Left the apartment, in Mr. Harpe's car, met back up with the girls and they went to get money from an ATM machine. I believe that time they were successful, that he had gotten the PIN number from Mr. Harpe — as he had with Mr. Butler the previous time. They were able to get some cash.

They went back and began to unload Mr. Harpe's belongings into the car where the women were. They drove away and left.

In both situations--in the situation with Mr. Butler, he thought that he recognized Reginald Rice's voice. Then in Mr. Harpe's situation, he thought that he recognized both Mr. Starks' and Mr. Rice's voice; although neither of them could see their face.

Mr. Harpe immediately got untied from his duct-tape and went next door to the nursing home, because he didn't have a phone, to call police. The police came immediately and met up with Mr. Francois and Mr. Rice, who were nearby, and stopped them. Mr. Harpe was called out to identify them. Obviously he had not seen their faces but they fit the description of clothing and otherwise.

Mr. Rice did not give a statement immediately but Mr. Francois, under questioning, broke and began to tell pieces of what happened; which obviously led to Mr. Starks. Again, because of the voice recognition, Mr. Starks was already a suspect very early on in this.

At this point the County and the City, they're realizing that they have very similar MO's in these cases and began to piece it together. Mr. Starks eventually was arrested, as were the two girls, all of whom — except for Mr. Rice gave statements which while somewhat minimized their own culpability as to who exactly planned it or who exactly did what first, but the general picture that everyone gave fit as to what happened these two nights. Again, there was some

minimization that went on in those statements but clearly there was cooperation against each other, which we believe they would be convicted on all these charges.

Since the time of their arrest, more recently, Mr. Rice has begun to cooperate. He has had one session where he told his version of what happened. It fits generally with what we had heard from the other defendants.

Search warrants were executed and much of the loot or the items that were stolen from Mr. Butler's home and from Mr. Harpe's home were recovered in Mr. Starks' apartment, and also from a friend of the two women involved. They had deposited some of the items with a friend, who we don't think had any involvement. Those items were recovered as well.

(Plea Tr. p. 33-41). After Solicitor Wilson's recitation of the facts, Applicant and his two-co-defendants agreed with the summary of facts as presented by the State. (Plea Tr. p. 41-44).

CURRENT PROCEEDING

On August 25, 2015, Applicant filed an application for post-conviction relief, alleging ineffective assistance of counsel and involuntary guilty plea without any specific allegations or facts to support these general allegations. The Charleston County Clerk of Court appointed Christopher L. Murphy, Esquire, to represent Applicant.[3] The State of South Carolina (Respondent) made its return on June 2, 6016, requesting an evidentiary hearing be held.

An evidentiary hearing was held before this Court on October 5, 2018. At the evidentiary hearing, Applicant proceeded forward on the following grounds for relief:

1. Counsel was ineffective for advising him he would receive a sentence of fifteen to twenty years; and
2. Involuntary Guilty Plea.

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the start of evidentiary hearing, Applicant moved for a continuance of this matter. Applicant's counsel informed this Court that he was prepared to go forward with the hearing but

[3] Other attorneys had previously been appointed to represent Applicant and were relieved due to conflicts.

Applicant requested he move for a continuance to give him additional time to prepare his case. This Court placed Applicant under oath and questioned him about his desire for a continuance. Applicant informed the Court he received the transcript of his motion to reconsider hearing twenty days ago and felt that was not a sufficient amount of time to properly review it. Additionally, Applicant stated his SCDC institution has been under lockdown, which has prohibited him from properly preparing his case and discussing the matter with PCR counsel. When questioned by this Court, counsel Murphy again informed the Court he felt prepared to proceed forward with the hearing. This Court denied Applicant's motion to continue his hearing, finding PCR counsel was sufficiently prepared to go forward. This Court notes PCR counsel informed the court he was ready to proceed forward with the evidentiary hearing and the transcript that Applicant alleged he needed additional time to review is only twenty-four pages long. This Court finds Applicant's failed to show any prejudice he would suffer by going forward on his application, which is more than three years old.

Applicant testified first on his own behalf. Applicant testified his parents retained plea counsel Peter D. Brown the day after he was arrested. He testified he had already began cooperating with law enforcement before counsel was retained and he continued to cooperate after counsel was retained. He testified he met with counsel once to twice a week for most of his case, but counsel visited him less frequently in the months leading up to his sentencing. He testified counsel discussed the elements of the case with him, including what his co-defendants were planning on doing. He testified he met with Solicitor Wilson and Assistant Solicitor Kidd, with counsel present, and they discussed the elements of the offenses. He testified he wanted his parents to meet with Solicitor Wilson but she refused. He testified the State did not want him to go to trial and only one of his four co-defendants (his ex-girlfriend Sasha Gaskins) went to trial. He testified he and the other three co-defendants testified against Gaskins. He testified the State

wanted him to testify that Gaskins was the mastermind of the home invasions and he refused to do so because she was not. However, he acknowledged on cross-examination that Gaskins' defense at trial was duress and he testified regarding her level of involvement. He testified he thought he would get a more lenient sentence based on his cooperation and testimony at Gaskins' trial but instead received the maximum sentence of thirty years.

Applicant testified counsel advised him going to trial was not a viable option because he had cooperated extensively with law enforcement. He testified he did not want to proceed to trial and was always interested in securing a favorable plea offer, but if he had known he would receive a thirty year sentence, which he described as the maximum sentence he could receive, he would have gone to trial. He acknowledged he was facing two consecutive life sentences plus 130 years for all his offenses and that Judge Dennis had advised him of this on the record.

Applicant testified his plea agreement was for a recommended sentence of up to thirty years and he had not been promised any specific sentence by the State. However, he testified he did not think he would receive a thirty year sentence because counsel and Solicitor Wilson told him they thought he would get less time. He testified counsel told him he could get a sentence between fifteen years (the mandatory minimum sentence for first-degree burglary) up to thirty years (the sentencing cap per the recommendation of the State), but he believed he would get a sentence between fifteen to twenty years based on his level of cooperation and culpability. He testified he was less culpable than Starks and Rice because he did not plan the home invasions, know the victims, and was not present when the sexual assault occurred. He testified everyone agreed he was less culpable and thought he would get a lesser sentence than Starks and Rice based on that. He testified he was "sold a dream that didn't happen" when he received the same thirty year sentence Starks and Rice. He testified counsel did not sufficiently advise him as to what a recommendation meant. However, he acknowledged Judge Dennis explained he could

receive a sentence of up to thirty years based on the State's recommendation and he knew he could receive a sentence of up to thirty years when he entered his guilty plea.

Applicant testified he wanted to be sentenced independently from Starks and Rice because he was less culpable. He testified he discussed this with counsel and counsel attempted to get him an independent sentencing hearing, but the State refused. He testified the families of Stark and Rice "poisoned the waters" at the sentencing hearings with their comments to the court and victims. He testified this resulted in his thirty year sentence. He testified counsel was also surprised by his sentence and filed a motion to reconsider his sentence.

He testified after counsel filed the motion to reconsider his sentence, counsel stopped communicating with him. He testified the motion was not heard for a few years and counsel kept giving him excuses for the delay, including wanting to wait for Judge Dennis to retire before the motion was heard. He testified he ultimately filed an action with the Office of Disciplinary Counsel (ODC) against counsel based on the delay in having his motion heard, and after that was resolved, he filed a motion to relieve counsel. He testified he thought the hearing in November 2014 would only be on his motion to relieve counsel, not to reconsider his sentence. He testified counsel was similarly surprised the court wanted to proceed forward with the motion to relieve counsel and asked for a continuance, which was denied. He testified neither he nor counsel were not prepared to go forward with his motion to reconsider his sentence because he did not have any witnesses there to testify on his behalf or paperwork to show the accomplishments from his time in SCDC. He testified Judge Dennis violated his due process rights by denying his motion to continue his reconsideration hearing.

Applicant also testified Judge Dennis made comments about not wanting to hear this case and he thinks Judge Dennis should have been recused. He testified Judge Dennis also made comments about expecting more from Applicant because he was from a good home and had

good grade that he believes were inappropriate and resulted in an unduly harsh sentence based on his level of culpability.

On cross-examination, Applicant testified he lied under oath when he was before Judge Dennis for his plea and sentencing proceedings. Specifically, he said he lied when he told Judge Dennis there was no promise as to his sentence and he knew what sentences he could get for each charge. He testified he also lied when he testified at Sasha Gaskins' trial when he testified numerous times that he did not have a promise for a particular sentence from the State. He acknowledged he was under oath at all of these proceedings and lied because counsel had advised him to lie. He acknowledged he did not have anything in writing from either counsel or the State promising him a sentence of less than thirty years.

After he testified, Applicant called counsel to the stand. Counsel testified he was retained by Applicant shortly after Applicant's arrest. He testified Applicant had already given a statement and begun cooperating with law enforcement by the time he was retained and Applicant continued to cooperate after he was retained. He testified a trial was not realistic for Applicant because he had already cooperated and the evidence was stacked against him. Counsel testified Applicant would have been convicted at trial based on the overwhelming evidence of his guilt. He testified Applicant had no viable defense to either home invasion. He testified he met with Applicant regularly and also had regular communication with Applicant's parents.

Counsel testified Applicant was the least culpable of the three male defendants because he did not know either of set of victims (Starks and Rice knew them from The Citadel), he did not plan the home invasions, and he was not present when the sexual assault occurred.

Counsel testified he argued heavily to the State and Judge Dennis the facts to show Applicant was less culpable to get the most lenient sentence possible for Applicant. He testified he was eventually able to secure a plea negotiation from the State for a recommended cap of

thirty years imprisonment, which essentially meant Applicant was facing a sentence between fifteen years (the mandatory minimum for first-degree burglary) up to thirty years. He testified this would allow him to argue to the plea court that Applicant should receive a lesser sentence than his co-defendants because he was less culpable. He testified he explained the plea offer to Applicant and that he would argue to the court that Applicant should get a sentence of less than thirty years. He testified he never told Applicant he would receive a sentence of less than thirty years and never made a promise as to the particular sentence Applicant would receive. He testified he also never implied he had a personal relationship with Judge Dennis that would ensure Applicant a more lenient sentence. He stressed that he has been practicing law for thirty-one years and would not have told Applicant or his parents to expect a sentence of any less than thirty years.

Counsel testified he verbally moved to sever Applicant's sentencing proceeding from his co-defendants because he wanted to independently present evidence to show Applicant was less culpable, came from a good home, had potential, and had gotten mixed up with more culpable bad influences (particularly Starks, whom he knew from home in Georgia) that led Applicant to participate in these crimes. He testified the State refused to allow Applicant to have a separate sentencing hearing, citing concern for making the victims go through numerous sentencing proceedings after already going through the trial of co-defendant Gaskins. He testified the sentencing proceeding itself went very fast. He testified he initially wanted to be the first of the three co-defendants to present his case, but ultimately the counsels for Starks and Rice vetoed him and decided to have the female attorney present first because she would have a "softer touch." He testified the sentencing proceeding did not go as planned, as the presentations from Starks and Rice were distasteful and disingenuous, which likely gave Judge Dennis a negative

impression of the defendants. He testified once he finally presented Applicant and his parents, the impression of the defendants was already negatively set.

Counsel testified he presented mitigation at the sentencing hearing in support of his argument that Applicant was the least culpable and should get less time, including both of Applicant's parents. He testified that following the plea, Applicant's mother and father both expressed gratitude towards counsel for preparing them for Applicant to receive a sentence of up to thirty years and for securing Applicant a thirty year sentence when he faced life imprisonment.

Counsel testified he was disappointed Applicant received the same sentence was Starks and Rice and he filed a motion to reconsider Applicant's sentence so that he would be able to present Applicant's case independently to again argue that Applicant was the least culpable. He testified he timely filed his motion, the State responded, and then he talked to the State and asked for the motion to sit unheard for a while to allow the victims and media attention surrounding the case to die down. He had also heard rumors that Judge Dennis may be retiring soon and was hopeful that the motion could then he heard by a visiting judge who was not predisposed to the case. He testified he explained this strategy to Applicant and his family. He testified he reached out to Applicant and Applicant's parents regularly, but then they became unresponsive.

Counsel testified Applicant filed a grievance against him with ODC. Once that was resolved, Applicant then filed a motion to relieve him. He testified once the motion to relieve counsel was filed, it got the attention of the clerk of court, who realized the motion to reconsider was also still outstanding and brought the motions to the court's attention. He testified Judge Dennis scheduled a hearing on the motion to relieve counsel and then wanted to resolve both motions at once. He testified he argued he was unprepared to go forward with the motion to reconsider and asked for a continuance, which was denied. He testified he again argued Applicant was the least culpable and should receive a more lenient sentence. He testified he

wished he could have had Applicant's family and friends present to show the emotional impact of Applicant's imprisonment, but acknowledged he had already presented Applicant's parents previously at the sentencing proceeding. He testified the only other thing he would have wanted to present was documentation of Applicant's accomplishments while in SCDC, but acknowledged that Applicant told Judge Dennis about these accomplishments.

Counsel testified he did not see any reason to ask for Judge Dennis to be recused from hearing Applicant's case. He elaborated that he actually would have selected Judge Dennis to hear this case if he had any input because he believed Judge Dennis had the ability to listen to the facts of the case and potentially give Applicant a lesser sentence based on his decreased culpability.

Applicant testified again following Counsel's testimony. He testified he understands this Court cannot change his sentence. He testified he agrees with Counsel that he has no defense to these crimes. However, he testified he would have proceeded to trial if he had known he would receive a thirty year sentence. He testified Counsel drew a diagram with fifteen years on one side and thirty years on the other side and explained that he thought Starks would likely receive around thirty years because he was the most culpable, Rice would likely receive between twenty to thirty years since he was the second most culpable, and he thought Applicant would likely receive between fifteen to twenty years. He testified Counsel was disappointed after sentencing and told Applicant he should have had his own sentencing hearing. He testified Counsel never told him the strategic reasons for delaying the sentencing hearing and if he had, then Applicant would not have filed the motion to relieve counsel. He testified he felt unprepared to go forward at the motion to reconsider hearing, which he described as chaotic.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented at the evidentiary hearing, which allowed the Court to scrutinize the credibility of all witnesses presented. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Applicant has alleged plea counsel, Peter D. Brown, was constitutionally ineffective for promising him he would receive a sentence between fifteen to twenty years imprisonment. He also argues his plea was involuntary. Both allegations are addressed below.

Ineffective Assistance of Counsel

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (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 [it] cannot be relied upon as having produced a just result." Strickland, 466 U.S. 668. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland does not guarantee perfect representation, only a " 'reasonably competent attorney.' " 466 U. S. at 687 (quoting McMann v. Richardson, 397 U. S. 759, 770 (1970)). Representation is constitutionally ineffective only if it "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair trial. Strickland, 466 U.S. at 686. Just as there is no expectation that competent counsel will be a flawless strategist or tactician, an

attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities. Id.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. 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.

Although courts may not indulge "post hoc rationalization" for counsel's decision making that contradicts the available evidence of counsel's actions, Wiggins, 539 U. S., at 526–527, neither may they insist counsel confirm every aspect of the strategic basis for his or her actions. There is a "strong presumption" that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than "sheer neglect." Yarborough v. Gentry, 540 U. S. 1, 8 (2003) (per curiam). After an adverse verdict at trial even the most experienced counsel may find it difficult to resist asking whether a different strategy might have been better, and, in the course of that reflection, to magnify their own responsibility for an unfavorable outcome. Strickland,

however, calls for an inquiry into the objective reasonableness of counsel's performance, not counsel's subjective state of mind. Id. at 688; Harrington v. Richter, 562 U.S. 86 (2011).

With respect to prejudice, an applicant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694. It is not enough "to show that the errors had some conceivable effect on the outcome of the proceeding." Id. at 693. Counsel's errors must be "so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Id. at 687. See Harrington, 562 U.S. 86.

"Surmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 559 U.S. 356, 371 (2010), and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." United States v. Timmreck, 441 U.S. 780, 784 (1979). An ineffective assistance of counsel claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so the Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. Strickland, 466 U.S. at 689–690. Even under de novo review, the standard for judging counsel's representation is a most deferential one. Unlike a later reviewing court, the attorney observed the relevant proceedings knew of materials outside the record and interacted with the client, with opposing counsel, and with the judge. It is "all too tempting" to "second-guess counsel's assistance after conviction or adverse sentence." Id. at 689; see also Bell v. Cone, 535 U. S. 685, 702 (2002); Lockhart v. Fretwell, 506 U. S. 364, 372 (1993). The question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Strickland, 466 U.S at 690.

In assessing prejudice under Strickland, the question is not whether a court can be certain counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. Wong v. Belmontes, 558 U. S. 15 (2009); Strickland, 466 U.S. at 693. Instead, Strickland asks whether it is "reasonably likely" the result would have been different. Id. at 696. This does not require a showing that counsel's actions "more likely than not altered the outcome," but the difference between Strickland's prejudice standard and a more-probable-than-not standard is slight and matters "only in the rarest case." Id. at 693, 697. The likelihood of a different result must be substantial, not just conceivable. Id. at 693. Harrington, 562 U.S. 86.

Based on this standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel. Applicant has alleged counsel promised him a sentence of fifteen to twenty years imprisonment. Specifically, this Court finds Applicant has failed to establish deficiency of counsel or any resulting prejudice. Addressing deficiency first, this Court finds Counsel's performance was effective and in accordance with his constitutionally proscribed duties to his client. Counsel testified he never promised to Applicant or his family a particular sentence and consistently advised both Applicant and his family that Applicant should expect to receive the full thirty year sentence pursuant to the recommendation, but that he would argue Applicant should receive less based on his decreased culpability. This Court finds counsel's testimony as to this issue credible and affords it great weight. This Court similarly finds Applicant's testimony as to this issue to lacks credibility and notes Applicant testified that he has previously lied under oath to multiple courts when he believes it will benefit him. This Court finds counsel appropriately advised Applicant of the potential sentences he was facing and properly explained the plea offer from the State to Applicant, including that he could receive a sentence of up to thirty years.

Additionally, this Court finds Applicant cannot establish any requisite prejudice, as he was properly sentenced within the recommended sentencing range as agreed upon with the State during plea negotiations. While it is clear Applicant and counsel hoped Applicant would receive a sentence of less than thirty years, counsel never promised Applicant a particular sentence and therefore, Applicant cannot show that he would not have pled guilty but for this non-existent promise of a lesser sentence. See Holden v. State, 393 S.C. 565, 575–76, 713 S.E.2d 611, 617 (2011) (internal citations omitted), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) ("However, wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made.")

Based on the foregoing, this Court finds Applicant has failed to meet his requisite burden of establishing Counsel was constitutionally ineffective. This allegation of ineffective assistance of counsel is denied and dismissed with prejudice.

Involuntary Guilty Plea

Applicant further alleges his guilty plea was not voluntarily entered. This Court finds Applicant's guilty plea was freely and voluntarily made. In evaluating issues concerning guilty pleas, this Court will consider the entire record, including the transcript of the guilty plea proceeding and the evidence presented at the post-conviction relief hearing. Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2000). Voluntariness of a guilty plea is not merely determined by an examination of a specific inquiry by the plea court alone but rather is determined by the record of both the guilty plea proceeding and the post-conviction relief hearing. Id. In order to find a guilty plea was knowingly and voluntarily entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969). 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 v. State, 376 S.C. 130, 137–38, 654 S.E.2d 870, 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).

This Court finds this allegation is without merit, and Applicant has failed to carry his burden of proving his guilty plea was involuntarily made. This Court further finds Applicant's plea was entered into freely and voluntarily. This Court finds Applicant knew the charges he was facing and understood the plea offer from the State was for a recommended sentence of up to thirty years, which he accepted in exchange for his cooperation. This Court also finds Applicant was properly and fully advised of his constitutional rights and knowingly and voluntarily waived those rights to accept a favorable negotiated plea based on the advice of competent counsel.

Therefore, this Court finds Applicant had a full understanding of the consequences of his plea and the charges against him, and the plea court correctly found Applicant's plea was freely, voluntarily, and intelligently made. This allegation is denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds Applicant has not established any other constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief is denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a

right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and

2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 18 day of October, 2018.

MICHAEL G. NETTLES
Presiding Judge
Ninth Judicial Circuit

Florence, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

STEPHEN FRANCOIS, #345325 Applicant,

v.

STATE OF SOUTH CAROLINA, Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one copy in the United States mail, postage prepaid, addressed to:

Christopher L. Murphy, Esquire
Murphy Law Offices, LLC
234 Seven Farms Drive, Suite 128
Charleston, SC 29492

This 31st day of October, 2018.

Jennifer Jennison
Legal Assistant for Respondent

SWORN to before me this 31st day of October, 2018.

Notary Public for South Ca
My Commission Expires:

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Michael G Nettles, Circuit Court Judge

Case No.: 2015-CP-10-4723

RECEIVED

NOV 14 2018

S.C. SUPREME COURT

Stephen Francois, #345325 ..... Appellant

v.

State of South Carolina ..... Respondent

PROOF OF SERVICE

I certify that I have served APPELLANT'S NOTICE OF APPEAL by delivering a copy via U.S. Mail First-Class postage prepaid on the 8th day of November, 2018, on the following:

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