STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

STATE OF SOUTH CAROLINA)

VS.)

DONTE JAROD STOKES)

DEFENDANT.)

CASE # - 2014CP380799

CERTIFICATE OF SERVICE

The attached NOTICE OF APPEAL is hereby served upon you on behalf of Donte Jarod Stokes, by U.S. Mail, prepaid postage to your following addresses:

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December 9, 2019

Orangeburg, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions

Edgar W. Dickson, Circuit Court Judge

Case No. 2014CP380799
Indictment No. 2012GS381421

Donte Jarod Stokes, Appellant,

v.

The State, Respondent.

NOTICE OF APPEAL

Donte Stokes, the Appellant, hereby appeals the Order of Judge Edgar W. Dickson dated July 24, 2019, dismissing his application for post-convicition relief. The order was filed with the Orangeburg County Clerk of Court on August 23, 2019 and received by Carl B. Grant, the court appointed PCR Attorney for Donte Stokes, on November 26, 2019. A copy of Judge Edgar W. Dickson's Order of Dismissal is attached to this Notice of Appeal and incorporated by reference herein.

December 3, 2019

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STATE OF SOUTH CAROLINA COUNTY OF ORANGEBURG	IN THE COURT OF COMMON PLEAS THE FIRST JUDICIAL CIRCUIT
Donte Jarod Stokes, S.C.D.C. No. 356131, Applicant, v. State of South Carolina, Respondent.	CASE NO. 2014-CP-38-0799 ORDER OF DISMISSAL

The above-captioned matter is before the court based on a post-conviction relief (PCR) application filed Donte Stokes, on June 30, 2014. This Court convened an evidentiary hearing into this matter on December 12, 2017 at the Dorchester County Courthouse. Applicant was present at the hearing and represented by Carl B. Grant, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Respondent. Applicant's plea counsel was Jillian Ullman (Counsel), Esquire, who was present and testified. This Court had the opportunity to listen to the testimony of Applicant and Counsel. This Court had before it the records of the Orangeburg County Clerk of Court regarding the subject conviction, the guilty plea transcript, Applicant's records from the South Carolina Department of Corrections, and the pleadings in this matter.

I. PROCEDURAL HISTORY

The Orangeburg County Grand Jury indicted the Applicant at the November 2012 term of General Sessions for Murder (2012-GS-38-1421). On July 15, 2013, the Applicant pled guilty as indicted. The Honorable Perry Buckner sentenced the Applicant to thirty-eight (38) years imprisonment. Applicant did not appeal.

A notice of appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. By order dated September 16, 2013, the Court of Appeals dismissed the appeal based on Applicant's failure to provide a written explanation as to what issues could be reviewed. See Rule 203(d)(1)(B)(iv), SCACR. The Remittitur was issued on October 3, 2013.

II. ALLEGATIONS

In his PCR application, Applicant alleged he is being held unlawfully for the following reasons:

1. Ineffective assistance of counsel
    a. Failure to investigate
    b. Involuntary guilty plea

III. SUMMARY OF TESTIMONY

Applicant testified Counsel did not come to see him enough and was not there for his preliminary hearing. He claimed he wrote the statement because he was scared for his family. Applicant stated he was at the scene, but also not really there. He admitted Counsel discussed the legal theory that the hand of one is the hand of all. He admitted it was his decision to plead no contest. Applicant asserted Counsel should have investigated more and should have had more hope because she did not think he would be found not guilty at trial. When asked what evidence Counsel could have found indicating his innocence, Applicant was unable to point to any facts or evidence tending towards innocence.

Counsel testified Applicant wrote statements admitting to his guilt. Counsel testified she had an investigator and hired an expert to help her prepare for Applicant's case. She testified the expert witness, a retired firearms examiner and scene reconstruction expert, agreed with SLED's findings. Counsel testified her investigator went out and spoke with witnesses and obtained the convenience store's security video of the incident. She testified she went over all the discovery

and potential testimony with Applicant on at least three different occasions. Further, she had Mark Wise, her second chair for Applicant's potential trial, also spoke with Applicant when she was too busy preparing for trial to speak with Applicant. Counsel testified she explained challenging his statement in a *Jackson v. Denno* hearing and any recantation would come from his contrary testimony. Counsel stated Applicant told her he pleaded under Alford because he did not intent to kill the victim when he fired the bullet. However, Counsel explained the hand of one is the hand of all and Applicant's intentional firing of the pistol while attempting to rob the victims would result in his conviction if the jury believed the State's evidence. Counsel told Applicant it was his decision whether to plead or not and she was prepared to go to trial. Counsel testified she went over all the elements and repercussions of his charges with him.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court reviewed the record in its entirety, listened to the testimony given, and heard the arguments presented at the evidentiary hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. This Court finds Counsel's testimony was credible and persuasive and Applicant's testimony lacked credibility. Therefore, this Court dismisses Applicant's application for the reasons set out below:

A. Ineffective Assistance of Plea Counsel

This Court finds the record fully supports the knowing and voluntary nature of Applicant's guilty plea. Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that

there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Thus, an applicant must show both error and prejudice to win relief in a PCR proceeding." *Roscoe v. State*, 345 S.C.16, 546 S.E.2d 417 (2001).

The court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* The Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. The transcript reflects the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. *See Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. *See Crawford v. U.S.*, 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by *U.S. v. Whitley*, 759 F.2d 327 (4th Cir.1985)). Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing. For the reasons set out below, this Court finds the record and credible testimony support Applicant had a full understanding of the charges and consequences of his guilty plea.

1. *Involuntary Guilty Plea*

Applicant asserts his guilty plea was entered involuntarily as the result of ineffective assistance of counsel. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the Applicant had a full understanding of the consequences of his plea and the charges against him. *See Boykin*, 395 U.S. at 243. In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. *See Harris v. Leeke*, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

The transcript reflects the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. *See Blackledge*, 431 U.S. at 73-74. Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. *See Crawford*, 519 F.2d at 350. Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing.

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness, and there is a reasonable probability, but for trial counsel's errors, he would not have pleaded guilty, but would have insisted on going to trial instead. *See Roscoe*, 345 S.C. at 20, 546 S.E.2d at 419. Given the Applicant's burden of proof and the analysis to be applied to this claim, the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

An applicant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." *Roddy*, 339 S.C. at 34, 528 S.E.2d at 421. "'[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.'" *Dalton*, 376 S.C. at 138, 654 S.E.2d at 874. 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.* at 137-38, 654 S.E.2d at 874.

Having reviewed the pleadings, considered the applicable law, and reflected upon the plea transcript and testimony provided at the evidentiary hearing, this Court denies and dismisses Applicant's allegation that his guilty plea was involuntary. Applicant's assertion he didn't go to trial because Counsel told him he could receive life imprisonment does not make his plea was involuntary. Likewise, Applicant's assertion Counsel should have had more hope in his case is meritless. It is not counsel's responsibility to tell their client what they want to hear, but to advise their client accurately. Here, the evidence against Applicant was also overwhelming. His own statement placed him at the incident scene firing the murder weapon. Based on the record, this Court also finds the evidence against Applicant was overwhelming and any error of Counsel would not have prejudiced Applicant. Therefore, Applicant cannot prove prejudice where the evidence against her was overwhelming. *See Harris v. State*, 377 S.C. 66, 79, 659 S.E.2d 140, 147 (2008).

This Court finds Counsel's advice was well within the range of competence required of defense attorneys. This Court also finds Applicant's guilty plea was voluntarily, intelligently,

and knowingly made, just as the plea court found. Tr. 21. Therefore, this Court denies and dismisses this allegation.

2. *Failure to Investigate*

Applicant failed to show how further investigation by Counsel would have benefited Applicant at trial. Applicant's assertion Counsel should have investigated further is purely speculative. Applicant did not prove what Counsel would have found if she had hired an investigator sooner or done further investigation. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Strickland*, 466 U.S. 668. "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." *State v. Glover*, 318 S.C. 496, 498–499, 458 S.E.2d 538, 540. "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." *Moorehead v. State*, 329 S.C. 329, 496 S.E.2d 415 (1998). The only evidence Applicant presented regarding witness testimony or further investigation was speculation on the part of Applicant. This Court finds Applicant failed to prove he was prejudiced by any lack of investigation by Counsel.

Further, Counsel testified she hired an investigator and an expert witness to review Applicant's case. Counsel testified her expert witness made the same conclusion as SLED's expert witness, indicating Applicant's guilt. Counsel testified she went over all the evidence and discovery with Applicant and Applicant's own statement placed him at the scene firing the

murder weapon. This Court finds Counsel adequately investigated this case and was not deficient.

Accordingly, this Court finds Applicant failed to prove Counsel failed to properly investigate. This Court also finds Applicant failed to prove he was prejudiced by Counsel's lack of investigation such that there was a reasonable probability the result of the proceeding would have been different had Counsel investigated further. Accordingly, this Court denies and dismisses this allegation.

IV. CONCLUSION

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

This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from 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, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

[Signature page to follow]

IT IS THEREFORE ORDERED THAT:

1. The Application for post-conviction relief is denied and dismissed with prejudice; and

2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 24th day of July, 2019.

EDGAR W. DICKSON

Chief Administrative Judge
1st Judicial Circuit
Orangeburg and Calhoun County

Orangeburg, South Carolina