STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

CERTIORARI TO SPARTANBURG COUNTY
Court of Common Pleas

The Honorable R. Lawton McIntosh, Post-Conviction Relief Judge
The Honorable Roger L. Couch, Plea Judge

Appellate Case No. 2019-001130

Stephanie Leigh Howard, ... Petitioner,

v.

State of South Carolina, ... Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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II. Did the PCR court properly find Petitioner failed to establish that counsel was constitutionally ineffective, where counsel properly reviewed discovery with Petitioner, properly investigated the facts and circumstances of the case, and properly advised Petitioner about her guilty plea?

STATEMENT OF THE CASE

Petitioner Stephanie Leigh Howard is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. During its August 2016 term, the Spartanburg County Grand Jury indicted Petitioner for bank robbery (2016-GS-42-4433). Assistant Public Defender Andrea Price of the Spartanburg County Public Defender's Office represented her. On January 25, 2017, Petitioner appeared before pled the Honorable Roger L. Couch, circuit court judge, and pled guilty as indicted without any negotiations from the State. Judge Couch sentenced her to imprisonment for twelve years.

On January 27, 2017, Petitioner retained William H. Rhodes, Esquire, and M. Noel Turner, III, Esquire, to file a motion to reconsider the sentence on her behalf. [1] On February 2, 2017, Judge Couch held a hearing on the motion. In support of the motion, current counsels presented medical records to support a request for sentence reduction. Thereafter, Judge Couch denied the motion and declined to reconsider her sentence. Applicant did not pursue a direct appeal.

On December 5, 2017, Petitioner filed an application for post-conviction relief. Respondent made its Return on January 16, 2018. The circuit court convened an evidentiary hearing into the matter on January 14, 2019, before the Honorable R. Lawton McIntosh at the Spartanburg County Courthouse. Petitioner was present at the hearing and represented by current counsel. Assistant Attorneys General Jordan Cox and Johnny Ellis James Jr., represented Respondent. Petitioner testified on her own behalf. At the hearing, Petitioner asserted she was not competent to assist plea counsel to prepare for trial, not competent to enter a guilty plea, and could

[1] Both counselors Rhodes and Turner continued to represent Petitioner throughout the post-conviction relief process before the circuit court, and are counsel of record on this appeal. As discussed below, Petitioner expressly waived claims against Rhodes and Turner, who were the last attorneys to handle her general sessions matter.

have pursued a M'Naughten defense. Petitioner knowingly, voluntarily, and intelligently waived any possible allegations of ineffective assistance of post-hearing counsel; and decided to proceed forward with current counsel. Testimony was presented from Petitioner, plea counsel, and an expert in forensic psychiatrics. Judge McIntosh issued an order filed June 13, 2019, denying and dismissing the application with prejudice.

STATEMENT OF THE FACTS

On May 10, 2016, Petitioner entered a First Citizens Bank in Spartanburg County. App. 52. Petitioner was wearing a hat over hear head, surgical mask, medical gloves, and sunglasses. App. 52. Petitioner placed a large purse on the counter, and told a bank teller to put money in the bag. App. 52. Petitioner told another bank teller to get money from her drawer. App. 52-3. Petitioner was able to secure money in the purse before leaving the scene in a silver vehicle. App. 53.

Thereafter, a bank employee notified police she recognized the person who robbed the bank. App. 53. The bank employee said she recognized Petitioner, a customer, who visited earlier in the day. App. 53. During the robbery, this bank employee passed a note to a customer to call 9-1-1. App. 53.

Subsequently, Investigator Jeff Kirby and Investigator Eric Gallman, of the Spartanburg County Public Safety and Police Department, identified a vehicle that matched the description of one the suspect was driving away from the crime scene. App. Pp. 53. They conducted a traffic stop, and identified Petitioner as the driver. App. 53. The investigators found the surgical mask, the bag, the gloves, and all the money inside of this vehicle. App. 53. The money totaled at approximately $6, 642. App. 53.

Finally, Petitioner was taken in for questioning. App. 53. Petitioner then provided law enforcement with a full confession. App. 53. Thereafter, Petitioner claimed it came down to being under immense financial stress. App. 54.

STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). On appellate review, courts defer to a post-conviction relief court's findings of fact and will uphold them if there is any evidence in the record to support them. Id. at 180, 810 S.E.2d at 839 (citing Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). However, pure questions of law will be reviewed *de novo* without deference to the lower court. Id. at 180-81, 810 S.E.2d at 839-40. Appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). An applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. 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. at 688.

In the context of a guilty plea, an applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he/she would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985). 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) ("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."). Statements made during a guilty plea should be considered conclusively, unless an applicant presents valid reasons why he or she should be allowed to depart from the truth of his

statements. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975)).

ARGUMENT

I. The PCR court correctly found Petitioner failed to establish her plea was involuntarily entered, where Petitioner failed to present any probative evidence she was incompetent at the plea or otherwise establish her plea was not knowing, voluntary, or intelligently entered.

The PCR court correctly found Petitioner failed to establish her plea was involuntarily entered, where Petitioner failed to present any probative evidence she was incompetent at the plea or otherwise establish her plea was not knowing, voluntary, or intelligently entered.

Petitioner asserts the PCR court erred in finding her plea was voluntary, and that she was competent. Specifically, Petitioner complains the PCR failed to properly consider Garren v. State, 423 S.C. 1, 813 S.E.2d 704 (2018), before finding she was competent and did not require a mental evaluation to enter her plea. App. 34. Petitioner also complains the PCR court erred in finding she presented no credible evidence to overcome the truthfulness of her plea statement that no conditions impacted her decision-making ability. App. 38. Moreover, Petitioner complains the PCR court erred in finding her expert witness did not present credible testimony. App. 37. Finally, Petitioner contends the PCR court had no grounds to find she was competent to both assist and understand legal proceedings. App. 37. These complaints are without merit. Therefore, this Court should deny certiorari.

A guilty plea must be knowing and voluntary with the record establishing an applicant had a full understanding of the consequences of their plea and the charges against them. Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). A colloquy from the plea court can cure any alleged deficient advice given to the applicant by counsel. See Wolfe v. State 326 S.C. 158, 165, 485 S.E. 2d 418 (1997) (stating counsel's deficient performance can be cured by the plea court's colloquy).

The PCR court correctly found Petitioner failed to establish her plea was involuntarily entered, where Petitioner did not present any probative evidence she was incompetent at the plea,

or otherwise establish her plea not knowing, voluntary, or intelligently entered. The PCR court sufficiently relied upon Counsel's personal observations to conclude Petitioner did not need a mental evaluation, and was competent to assist and understand in legal proceedings. The PCR sufficiently relied upon the expert's credibility, basis, and reasoning to reject his medical conclusions.

First, Petitioner asserts the PCR court erroneously failed to apply Garren to her circumstances. Pet. 8. This allegation is without merit.

In Garren, this court reversed the grant of post-conviction relief on claims of constitutional ineffective assistance of counsel and involuntary plea, after finding no evidence of incompetence. Garren, 423 S.C. at 18, 813 S.E.2d at 713. In that case, the defendant failed to identify the specific type, dosage, or potential mind-altering effects of the medication causing incompetence. Garren, 423 S.C. at 5-7, 813 S.E2d at 707-8. The defendant also told the plea court, under oath, he was not on drugs or alcohol. Id; App. Pp. 45, L. 7. Based upon personal observations, plea counsel testified a mental evaluation was unnecessary because the defendant appeared to be competent before, during, and after the plea hearing. Garren, 423 S.C. at 13, 813 S.E2d at 710. Plea counsel never thought the defendant showed signs of a failure to understand legal proceedings. Garren, 423 S.C. at 16, 813 S.E. 2d at 712. At the plea hearing, plea counsel did say the defendant had mental health issues based upon *previous* prescription drug abuse. Id. However, plea counsel opined the defendant noticeably improved after getting *off* pills in jail. Id. Accordingly, this court found no probative evidence to support finding that he was deficient based upon not seeking a competency evaluation. Id. Moreover, this court found no probative evidence supported finding the defendant demonstrated a reasonable probability she would have been found incompetent through a mental evaluation. Id.

In comparison, Petitioner asserts the fact that she took "psychotropic antipsychotic medication" that "***could*** affect cognition and competency" required Counsel to order an evaluation. Pet. 8. (emphasis added). However, like Garren, Counsel concluded a mental evaluation was not necessary based upon personal observations. App. Pp. 183, L. 18-20. Counsel observed no symptoms of incompetency before, during, or after the plea hearing. App. Pp. 185, L. 3. Counsel never thought Petitioner failed to understand the legal proceedings. App. Pp. 183, L. 12-7. These factual similarities, with Garren, make it reasonable to conclude a trial court could find Counsel did not deficiently fail to request Petitioner get a mental evaluation. Accordingly, the PCR court justifiably found Counsel was not deficient based upon failing to request a mental evaluation for Petitioner. App. 34-5. Therefore, Petitioner's argument fails on the merits because there is probative evidence to support the PCR court's finding and it is not based upon any error of law.

Additionally, in comparison, Petitioner asserts she had actual medical issues of which Counsel should have notified the plea court. Pet. 8. However, like Garren, Counsel referenced Petitioner's medical issues at the plea hearing. Specifically, Counsel said Petitioner had mental health issues causing extreme depression, suicide attempts, and admission to the hospital. App. Pp. 57, L. 2-16. Likewise, Counsel opined Petitioner's mental health issues improved based upon getting a job. App. Pp. 57, L. 13-6. Counsel produced a note from Petitioner's employer, at the time she entered this plea, saying she was a good employee. Id. Thereafter, Petitioner filed a motion to reconsider sentencing based upon medical issues. App. Pp. 2-3. In fact, Petitioner's ***current counsel*** presented all of her medical records at the hearing for sentence reconsideration. Supp. App. Pp. 5. However, the plea court denied reconsideration based upon already being on notice of Petitioner's medical issues. Supp. App. Pp. 12-3. The record reflects the plea court was satisfied with the "extent" of Counsel's disclosure in light of all the records presented at

Petitioner's reconsideration hearing. Supp. App. Pp. 12-3. Accordingly, like Garren, it is reasonable to conclude a court could find Counsel's method in communicating medical issues was not probative evidence of deficient performance. Therefore, the PCR court correctly found Counsel put the plea court on notice of medical issues. App. 34-5. Petitioner's argument fails on the merits because there is probative evidence to support the PCR court's finding.

Finally, Petitioner mischaracterizes the evidentiary standard applied in Garren to assert taking medication prescription, at the time of her plea, proved she was incompetent. Pet. 17-8. However, unlike Garren, the PCR court found Petitioner was legally competent at the time of her plea. App. 36-8. Therefore, unlike Garren, the record on appeal to see if any probative evidence supports finding her competent. Jordan, 406 S.C. at 448, 752 S.E.2d at 540 (reaffirming the appellate standard, in PCR, for questions of fact is whether there is any probative evidence to support PCR court's factual findings). Therefore, Petitioner's evidentiary comparison to Garren is improper and without merit.

Second, Petitioner contends the PCR court erred in finding she presented no credible evidence to rebut the truthfulness of her plea hearing statements. Statements made during a guilty plea should be considered conclusively, unless an applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. Dalton, 376 S.C. at 137-38, 654 S.E.2d at 874. Appellate courts give great deference to a trial judge's findings where matters of credibility based upon the lack of opportunity to directly observe the witnesses. Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 522 (1993).

Here, Petitioner provided several contradictory reasons for her plea hearing statements. Petitioner recalled expecting home detention throughout conversations with the plea court. App. Pp. 136, L. 12-3. App. Pp. 138, L. 5-6. App. Pp. 161, L. 9. Petitioner testified every response to

the plea court being "truthful." App. Pp. 141, L. 8. Petitioner claimed Counsel advised her to be truthful. App. Pp. 140, L. 10. However, she later claimed Counsel provided no advice on this matter at all. App. 142, L. 10-2. Petitioner testified her answers were based upon previous instructions. App. Pp. 140, L. 6-10. However, she later claim her answers were unprepared. App. Pp. 142, L. 10-22. In fact, Petitioner testified she had no idea what to say beforehand. App. Pp. 142, L. 10-22. Additionally, she could not remember *any* plea court discussions. App. Pp. 149, L. 1-4. However, Petitioner remembered saying she was not on medication that impacted decision-making abilities. App. 140, L. 18-24.

Accordingly, Petitioner provided testimony that can only be described as consistently inconsistent. Therefore, the PCR court justifiably found she provided no credible evidence to rebut plea statements about her competency. App. Pp. 38. Therefore, it accurately found Petitioner truthfully told the plea court she was not suffering from conditions impacting her decision-making ability. App. 38.

Third, Petitioner asserts the PCR court did not articulate a valid reason to reject the testimony from the sole expert witness. Petitioner argues the PCR court's decision resulted from disliking the expert's testimony, and the PCR court cannot legitimately dismiss testimony based upon disliking it. Petitioner alleges the PCR court inaccurately summarized testimony, and failed to understand complex information. Finally, Petitioner proclaims the expert was wrongfully dismissed because he solely provided consistent and uncontradicted testimony.

Substantively, Petitioner claims the expert's testimony did not conflict with any other evidence or testimony.[2] Pet. 20. "Testimony of witnesses, although uncontradicted, is not binding, and [factfinder] has right to examine the evidence in light of all the circumstances and to give it such weight as [factfinder] may think it is entitled." Terwilliger v. Marion, 222 S.C. 185, 72 S.E.2d 165 (1952) (holding a factfinder can consider all circumstances of the case in determining the amount weight to give contradicted testimony from any witness).

Here, Counsel contradicted the expert several times. Specifically, Counsel opined Petitioner exhibited sufficient ability to interact and understand before trial. App. Pp. 183, L. 9-12; App. Pp. 183, L. 18-20; App. Pp. 185, L. 3; App. 183, L. 12-7; App. Pp. 189, L. 24. App. Pp. 190, L. 1-4. Accordingly, the PCR court justifiably considered Counsel's testimony in determining the credibility of this expert. App. 37.

Additionally, Petitioner speculates the PCR court failed to properly evaluate the expert. Otherwise, she opines, it would not have found evaluation methods inferior, when compared Ramirez v. State, 419, S.C. 14, 795 S.E.2d 841 (2017). In Ramirez, the expert conducted a psychological examination over five sessions, each lasting between three to four hours. Ramirez, 419 S.C. at 18, 795 S.E. at 843. He also reviewed applicant's medical records, administered psychological tests, and interviewed family members. Id. He found the applicant suffered from mental retardation, inability to speak, attention deficit hyperactivity disorder, and completed eighth grade at the age of sixteen. Id. Based on personal observation, the expert concluded the applicant suffered from poor judgement, impulsive behavior, limited language skills, limited comprehension

[2] Petitioner concedes the expert's conclusion, that she was incompetent *at* her plea hearing, conflicts with other evidence and testimony in the record. Pet. 20.

skills, and easy confusion. Id. The expert determined this applicant's intellectual abilities fell within the range of a four to seven year old child. Id. He determined the applicant had an IQ within the range of mental retardation. Ultimately, the expert submitted his report to counsel before applicant's plea hearing. Id.

Here, the expert did not evaluate Petitioner before she pled guilty. App. 246, L. 22. The expert did not evaluate Petitioner until sixteen months after her plea hearing. App. 246, L. 15. The expert evaluated her one time for three hours. App. 219, L. 24. He determined she was goal oriented, coherent, genuine, forthcoming, and alert to her surroundings. App. Pp. 248, L. 2-15. He determined she had no short-term or long-term memory issues. App. 248, L. 19. He determined she did not have intelligence issues. App. 234, L. 23. He determined she knew it was legally and morally wrong while robbing the bank. App. Pp. 251, L. 22. He also determined she factually understood the plea hearing. App. 250, L. 2. He determined she was stabilized, fit to stand trial, and held criminally responsible. App. 253, L. 22. He later determined she was stabilized on the date of this evidentiary hearing. App. 231, L. 1-3. However, he also said she took medication causing brain fog. App. 227, L. 3-7. He determined it to be the same brain fog she suffered from previous medications. App. 227, L. 3-7. Finally, he concluded brain fog made her incompetent at the plea hearing.

Accordingly, the expert witness provided inconsistent statements opening the door to scrutiny from the factfinder. The expert evaluated Petitioner after she pled guilty. He determined she was fit for trial at this evaluation. However, the expert later claimed she ***never*** stopped suffering from brain fog. Therefore, the PCR court justifiably scrutinized the expert's basis and reasoning. App. 37. This allegation is without merit.

Ultimately, Petitioner appears to argue post-conviction relief ***must*** be granted when an applicant presents an expert witness to provide testimony in support of her findings. Specifically, Petitioner argues a factfinder ***must*** accept medical conclusions from a witness who is qualified, without objection, as an expert. This is not the standard. A factfinder has the authority and discretion to consider the credibility of any witness. Drayton, 312 S.C. at 9, 430 S.E.2d at 522. Here, the expert's medical conclusions were favorable to Petitioner. Therefore, Petitioner is merely dissatisfied this factfinder, a circuit court ***judge,*** did not accept them at face value. Respondent cannot think of any other explanation for Petitioner to argue testimony should not be assessed for credibility. Accordingly, Petitioner's argument fails on the merits.

Fourth, Petitioner contends the PCR court erred in finding she was legally competent to assist Counsel and understand the nature of her proceedings. To establish prejudice based upon Counsel not requesting a mental evaluation, Petitioner must demonstrate a reasonable probability she was incompetent at the time of the plea. Garren, 423 S.C. at 13, 813 S.E.2d at 710.

Here, the PCR court relied on Counsel's testimony, among other things, to finding Petitioner was legally competent during legal proceedings. App. 37. She did not think Petitioner exhibited any symptoms to require further assessment. App. Pp. 183, L. 18-20. She never thought Petitioner needed to be evaluated. App. Pp. 185, L. 3. Counsel explained Petitioner was able to explain what happened, Counsel's role, Counsel's duties, and Counsel's limitations. Counsel could not recall having an issue with Petitioner's ability to understand the proceedings, legal advice, or anything similar. App. 183, L. 12-7. Counsel never thought Petitioner was incompetent to stand trial or plead guilty. App. Pp. 189, L. 24. App. Pp. 190, L. 1-4. Counsel observed Petitioner on Seroquel, a medication with possible side effects of brain fog. App. 136-7, L. 22-5,

1-7. Based upon observations, Counsel concluded Petitioner did not appear inebriated, under the influence, or demonstrate negative behavior. App. Pp. 200, L. 4-7.

Accordingly, the PCR court found Counsel's experience, observation, and evaluation of Petitioner to be credible.[3] Counsel personally observed and concluded Petitioner to be competent at every relevant stage of legal proceedings. Therefore, probative evidence in the record supports the PCR court's find that Petitioner was legally competent to assist and understand during her legal proceedings.

Fifth, Petitioner argues she was firmly convinced her sentence would be home detention.[4] "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." Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997) (finding testimony that applicant expected reduced sentence was insufficient where unclear if anyone actually said or promised he would).

At the plea hearing, Petitioner affirmed she understood this charge carried a range of zero to thirty years. App. Pp. 43, L. 16. Petitioner also said she understood this charge carried mandatory incarceration for eighty-five percent of the sentence before parole eligibility. App. Pp. 45, L. 1. At the evidentiary hearing, Petitioner reaffirmed she understood exposure between zero and thirty years during the plea hearing. App. Pp. 136, L. 9. Petitioner also remembered the plea court advising her she was exposed to a sentence from zero to thirty years. App. Pp. 136, L. 12.

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[3] Counsel had been a lawyer for twelve years at the Spartanburg County Public Defender's Office. App. 170, L. 17.

[4] Home detention is not an authorized substitution to serving the mandatory minimum for "violent" crimes. State v. Simpson, No. 2016-002210, 2020 WL 86625, at 5 (S.C. Ct. App. Jan. 8, 2020).

Moreover, Petitioner remembered the plea court did not mention home detention. App. Pp. 136, L. 25. Finally, she remembered understanding the consequences of pleading to a serious offense. App. 137, L. 13-9.

Accordingly, Petitioner's expectation looks more fraudulent than firm. The record reflects she acknowledged accurately understanding sentence exposure multiple times. It reflects Petitioner knew she was exposed to mandatory incarceration. It reflects Petitioner knew she was exposed to delayed parole eligibility. Finally, Petitioner remembered the plea court stating her sentence range was zero to thirty years. Accordingly, the PCR court properly concluded the plea court conducted a sufficient colloquy about the potential minimum sentence, maximum sentence, mandatory incarceration, and parole eligibility. App. 29. Furthermore, the PCR court justifiably found Petitioner failed to rebut truthfulness of plea hearing statements where she acknowledged understanding exposure. App. 29. Petitioner's belief constituted nothing more than wishful thinking. As a result, Petitioner's argument fails where the PCR court justifiably found she did not establish a failure to understand sentencing exposure upon entering the guilty plea.

II. The PCR court correctly found Petitioner failed to establish that counsel was constitutionally ineffective, where counsel properly reviewed discovery with Petitioner, properly investigated the facts and circumstances, about her case, and properly advised Petitioner of her constitutional rights.

The PCR court correctly found Petitioner failed to establish that counsel was constitutionally ineffective, where counsel properly reviewed discovery with Petitioner, properly investigated the facts and circumstances, and properly advised Petitioner of her constitutional rights.

Petitioner contends Counsel did not review her medical records before entering in a guilty plea. At the evidentiary hearing, Counsel testified she received and reviewed all relevant medical records in discovery. App. 177, L. 16. However, Counsel determined a mental evaluation was not necessary for Petitioner. App. 179, L. 6. Ultimately, Counsel said Petitioner frequently communicated her guilt and determination to plea. App. Pp. 179, L. 14-6.

Petitioner contends she did not know the circumstances of her plea agreement. At the evidentiary hearing, Petitioner recalled two plea offers were made. App. Pp. 147, L. 11. Petitioner remembered turning down the first offer for five to seven years imprisonment. App. Pp. 147, L. 13. Petitioner recalled it was her decision to turn down the second offer, one year followed by home detention. App. Pp. 147, L. 14-24. Petitioner expected a third offer for home detention. App. Pp. 148, L. 2. However, Petitioner knew a third offer never materialized before pleading guilty. App. Pp. 148, L. 2. Petitioner remembered entering a straight up plea, without recommendation from the State. App. Pp. 137, L. 3-9. Petitioner recalled Counsel requested a home detention sentence be imposed by the plea court. App. Pp. 148, L. 8. Petitioner conceded she knew the plea court did not have to go along with Counsel's recommendation. App. Pp. 148, L. 22.

Petitioner argues she did not possess sufficient knowledge to understand the term straight up plea. The plea court advised Petitioner the State was not going make a recommendation in regards to the sentence. App. Pp. 46, L. 11-7. The plea court also advised Petitioner it could sentence her to the maximum amount allowed by law. App. Pp. 46, L. 11-7. Petitioner affirmed she understood both. App. 46, L. 19. Immediately after, Petitioner told the plea court her decision was to plead guilty. App. Pp. 46, L. 24. Subsequently, Petitioner said she had sufficient information and time to consider these decisions. App. Pp. 49, L. 13. Ultimately, Petitioner declined to amend, reconsider, or recant her statements just before the plea was accepted. App. Pp. 56, L. 14. Accordingly, the PCR court properly found Petitioner's attempt to rebut subsequent understanding of these terms.

Accordingly, the PCR court properly found Petitioner failed to establish constitutionally ineffective assistance of counsel. Specifically, the PCR court appropriately found Petitioner did not rebut the truthfulness of her plea hearing statements. Moreover, the PCR court appropriately found Counsel did due diligence in reviewing discovery, plea negotiations, and discussing terms of the straight up plea. As a result, Petitioner's argument fails on the merits.

CONCLUSION

For all the foregoing reasons, the State requests this Court deny the petition for a writ of certiorari and affirm the post-conviction relief court's dismissal of Petitioner's application for relief. However, should this Court grant certiorari, Respondent requests permissions to fully brief the issues herein.

Respectfully submitted,

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February 14, 2019

STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI TO SPARTANBURG COUNTY
Court of Common Pleas
J. Mark Hayes II Circuit Court Judge

Appellate Case No. 2019-001130

STEPHANIE L. HOWARD, PETITIONER

v.

STATE OF SOUTH CAROLINA, RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Return to Petition for Writ of Certiorari** has been served upon the applicant by placing two copies in the mail addressed to:

William H. Rhodes
Burts Turner & Rhodes
260 N. Church St.
Spartanburg, SC 29306

This 14th day of February, 2020.

Meghan Young
Legal Assistant for Respondent