THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Post Conviction Relief

Roger E. Henderson, Circuit Court Judge

RECEIVED
Apr 13 2020
S.C. SUPREME COURT

Lower Court Case No.: 2016-CP-40-03523

Shawn Bethea #338877,..... Petitioner

vs.

State of South Carolina, ...Respondent.

NOTICE OF APPEAL

The Appellant, Shawn Bethea #338877, appeals the Order of Dismissal signed by the Honorable Roger E. Henderson, dated March 12, 2020 and filed on March 25, 2020. Appellant received written notice of entry of this order on March 25, 2020.

Respectfully submitted.

Tommy A. Thomas
Attorney for Petitioner
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

April 13, 2020

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2016CP4003525

Shawn Bethea	State Of South Carolina
PLAINTIFF(S)	DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Non-suit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court

RICHLAND COUNTY
FILED
2020 MAR 25 PM 2:34
JEANETTE W. McBRIDE
C.C.C.P.G.S.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

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

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

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____ **Judge Code** _____ **Date** _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ **day of** _____, **20** _____ and a copy mailed first class or placed in the appropriate attorney's box on this 25 March 2020 to attorneys of record or to parties (when appearing pro se) as follows:

Tommy Arthur Thomas

Lindsey Ann McCallister

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Shawn Bethea, S.C.D.C. No. 338877, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2016-CP-40-03525 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief filed by Shawn Bethea ("Applicant") on June 8, 2016. Respondent made its return on or about February 8, 2017. The Court convened an evidentiary hearing into the matter on August 20, 2019, at the Richland County Judicial Center in Columbia, South Carolina. Applicant was present at the hearing and represented by Tommy A. Thomas, Esq. Johnny Ellis James Jr., Esq., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Seth C. Rose, Esq. ("Counsel"), and an associate of Applicant's, Jamie Moses, also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the South Carolina State Grand Jury Clerk of Court regarding the subject convictions, the pleadings, and the exhibits introduced at the evidentiary hearing. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the South Carolina State Grand Jury Clerk of Court. Applicant was indicted at

the July 2014 term of the South Carolina State Grand Jury for four counts of armed robbery, and two counts of possession of a weapon during the commission of a violent crime (2014-GS-47-00014). Seth C. Rose, Esq. represented Applicant. Lawrence G. Wedekind, Esq., of the South Carolina Attorney General's Office, prosecuted the case. On June 8, 2015, Applicant pled guilty to one count of armed robbery.[1] Consistent with the State's recommendation of a sentence of no more than twenty years, the Honorable James R. Barber, III sentenced Applicant to imprisonment for a term of fourteen years. Applicant did not appeal the plea or sentence.

Present Application

In his post-conviction relief application, as amended by filing on May 15, 2017, Applicant alleges by and through PCR counsel that he is being held unlawfully for the following reasons:

1. Ineffective assistance of counsel, for:
    a. "Failure to properly investigate the case."
    b. "Failure to use the fact that the victim identified a suspect that did not match the Applicant."
    c. "Failure to use the fact that Applicant was told that if he cooperated with a police investigation that he would receive a five (5) year sentence."
        i. "The Applicant cooperated with the police and accepted the plea offer of five (5) years. However, he received a fourteen (14) year sentence at sentencing."
        ii. "That the Applicant has witnesses to corroborate the fact of his cooperation."
        iii. "The Applicant plead under hand of one, hand of all accomplice liability and Co-Defendant's charges were dropped."
2. Involuntary guilty plea, in that:
    a. "The Applicant was told that if he entered into a plea before Judge Barber that a Post-Trial Motion would be filed and that he would receive the five (5) year deal before a different Judge."
    b. "That the Applicant was forced by counsel into a plea before Judge Barber. That it was not freely and voluntarily given."

[1] The remaining counts were dismissed as part of Applicant's plea.

Applicant requests relief as follows:

- "New Trial"

At the evidentiary hearing, Applicant proceeded forward on the allegations as set forth in the May 15, 2017, amendment.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Summation of Record and Credibility Findings

The Court notes the below portions of the record and the testimony presented as particularly relevant to the allegations presented and passes upon its credibility and probative weight as follows:

1. Plea Proceeding

Near the outset of the plea colloquy, the plea court confirmed that Applicant understood the potential sentence for each armed robbery charge was thirty years, and the potential sentence for each weapon charge was five years. (Tr. 4, ll. 13-23). Upon further inquiry, Applicant confirmed he understood he was entering a plea to a single count of armed robbery and that the remaining charges would be dismissed *nolle prosequi*. (Tr. 4-5). Applicant affirmed to the court that he had spoken with Counsel about the matter, told Counsel everything he knew about it, that Counsel had answered all of Applicant's questions and done everything he was asked to do, and that Applicant was satisfied with Counsel's services. (Tr. 5-6). Applicant further affirmed he

understood the State's recommendation was a sentencing cap of twenty years, and that the plea court was not bound by the recommendation. (Tr. 6, ll. 13-20).

After appraising Applicant of his various rights, the plea court inquired:

> Q. All right. Now, other than the state's willingness to dismiss a number of charges against you, and we've gone over those – unlawful possession of a weapon charge during the commission of a violent crime and three armed robberies – has the state or anyone else offered or promised you anything to get you to plead guilty?
>
> A. No, sir.
>
> Q. In addition, they are making a recommendation of a cap of twenty years. Have they promised you anything else to get you to plead guilty?
>
> A. No, sir.
>
> Q. Has anybody threatened you, coerced you, forced you, or pressured you into pleading guilty?
>
> A. No, sir.
>
> Q. You're pleading guilty freely and voluntarily?
>
> A. Yes, sir.
>
> Q. And you're pleading guilty because you are guilty?
>
> A. Yes, sir.

(Tr. 8-9). Applicant affirmed his answers were truthful and complete. (Tr. 10, ll. 18-19).

After the plea court read the indictment and elicited Applicant's "guilty" plea, the Assistant Attorney General further clarified that armed robbery would constitute a most serious conviction and bore a statutory minimum sentence of ten years. (Tr. 10-11). The prosecutor noted that there had been "tangential negotiations with the defense regarding an unsolved homicide case," but that there was "no deal that's any way, shape, form touching upon any charges that may come out of the homicide investigation." (Tr. 11-12). The plea court

confirmed Applicant understood the import of the "most serious" classification. (Tr. 12, ll. 12-24).

Counsel offered extensive and factually specific mitigation near the close of the plea proceeding. (Tr. 19-24). Counsel emphasized that there were other individuals charged with the robbery and asserted that Applicant "was not the individual that went across that parking lot with the weapon and robbed Mr. Ballentine. We are pleading guilty under the hand of one, hand of all." (Tr. 19, ll. 22-25). Counsel described Applicant as a lookout, and asserted that there were no eyewitnesses who could point Applicant out. (Tr. 19-20). Counsel discussed Applicant's unfortunate upbringing: no paternal presence, frequently absent mother, and an unguided life on the streets. (Tr. 21-22).

Counsel explained to the plea court that Applicant was "cooperating with the sheriff's department on an unsolved murder" and had given proffers as part of that unrelated investigation. (Tr. 22, ll. 17-23). Counsel framed Applicant's cooperation as sufficient to break open the case, and presented Deputy Chief David Wilson, of the Richland County Sheriff's Department. (Tr. 22-24). Wilson summarized the 2008 cold case, that Applicant was a cooperating witness, and testified "we would not oppose a sentence at the lower end of that ten to twenty-year range, but obviously that's up to Your Honor." (Tr. 24, ll. 12-25). After brief additional remarks by Lt. Vince Coggins, the plea court asked if Applicant had been helpful, to which Wilson replied in the affirmative and that he expected to bring charges within a month. (Tr. 25, ll. 1-18). The plea court inquired if Applicant understood that his continued cooperation was expected, to which Applicant answered that he understood. (Tr. 25, ll. 19-25).

Applicant directly addressed the plea court and echoed Counsel's statement that he was "pleading guilty under the hands of one, the hands of all[,]" and that he was not the man who had

held the gun, but rather had remained in the car. (Tr. 26, ll. 19-25). Applicant apologized to the victim. (Tr. 26-27). After an assertion of personal growth, the plea court noted the victim's presence in the courtroom, and Applicant more directly apologized to Olin Ballentine, who forgave him. (Tr. 27-28).

2. Evidentiary Hearing

At the evidentiary hearing, Applicant explained that he initially retained attorney Victor Li to represent him on the charges, but fired him because Li always wanted to talk about the cold case murder, which was not what Applicant hired him to do. Applicant testified he considered going to trial because he believed he was not guilty, but also asserted he never really went over discovery with Counsel and wasn't trying to prove his innocence. After reliving Li, Applicant hired Counsel, and enjoyed a good relationship with him initially—Counsel and Applicant shared productive conversations and Counsel would even come visit Applicant at night. Counsel told Applicant he would get him a deal.

Applicant claimed he did not actually know anything about the cold case murder until he talked to Counsel and that Counsel had told him everything he knew about the matter. Applicant testified he nonetheless spoke with law enforcement in an effort to get a better deal. Applicant testified that Counsel told him that if Applicant did as Counsel directed, Applicant would receive a sentence for time-served. Applicant explained that he had heard about the cold case but did not possess any personal knowledge about it, and that Counsel would tell him things about the case for Applicant to pick up on.

Applicant testified he never received any plea offers. Applicant explained that the evidence in the case had nothing to do with him, that he did not fit the description of the perpetrator, and that the State possessed no evidence to convict him. Applicant asserted he did

everything Counsel told him to do, but that a couple of days before trial Counsel informed him that the five-year plea offer was no longer available and that the State would only offer a sentence of between ten and twenty years. Applicant testified he rejected the ten-to-twenty offer and that he wished to take his chances at trial. Applicant claimed Counsel tricked him into cooperating with law enforcement and that Applicant never received any benefit. Applicant further claimed Counsel refused to represent him in any trial proceeding, and that if he proceeded to trial, Judge Barber would become angry and take it out on Applicant in sentencing. Applicant testified he only pled guilty because the case was one of "hand of one, hand of all," and that pleading was his only option.

Applicant asserted Counsel advised him that if he accepted the plea offer and entered a guilty plea before Judge Barber, that Counsel would file a motion and bring him back later for a better sentence. On the day of the plea, Counsel produced a letter establishing that he would continue to represent Applicant through any future "1. YOA revocation proceeding[,] 2. Motion to reconsider sentencing[,] 3. Legal Counsel as relates to a RCSD Pending Murder Investigation." (Applicant's Exhibit #1). Applicant accepted Counsel's letter as an assurance, and read it to mean that Counsel had already filed a motion to reconsider, and so he entered the guilty plea. Applicant testified no motion or appeal was filed and he was never brought back before another judge.

On cross-examination, Applicant acknowledged he met "a lot" with Counsel prior to the plea, and that communication with Counsel was good until the end. Applicant denied ever going over his discovery with Counsel, and asserted they only discussed the cold case. Nonetheless, Applicant recalled that communication was good, and that Counsel advised him not to worry about his charges, and that the State was not interested in the case. Applicant admitted he did not

tell Counsel what occurred on the night of the robbery and gave Counsel no leads or potential witnesses to follow up upon. Applicant asserted he knew his co-defendants could have fit the description of the perpetrator because he knew his co-defendants personally and had attended high school with them. Applicant knew the description of the perpetrators from his discovery.

Applicant testified Counsel said he was pushing for five years at their first meeting. Applicant subsequently learned he could only get the five years if he cooperated with the cold case. Applicant admitted he had been lying to law enforcement, and opined that law enforcement knew he was lying. Applicant acknowledged he knew the sentencing range was ten to twenty years going into his plea, but he did not believe he would actually be stuck with that sentence. Applicant claimed Counsel told him not to reveal the promise of a lesser sentence to the court, and so Applicant lied to Judge Barber. Applicant testified he was not happy with Counsel at the plea, but hoped that his plan would work. Counsel had told Applicant he would have been tried alongside his co-defendants and that he believed they would lose at trial. Applicant acknowledged he had been facing in excess of one-hundred-and-twenty years if he were convicted on all counts at trial, and that he ultimately received a fourteen year sentence.

On redirect examination, Applicant explained that he weighed more and was shorter than the description of the perpetrator that was given by the victim. Applicant reasserted his claim that Counsel refused to represent him at trial.

Jamie Moses, Applicant's then-girlfriend, also testified on Applicant's behalf. Moses testified she was not related to Applicant and had known nothing about Applicant's plea. Moses testified she talked to Counsel after the plea and that he told her he would have Applicant brought back to court in front of another judge. On cross-examination, Moses clarified that she and Applicant were no longer together.

Counsel testified that he represented Applicant on his charges. Counsel recalled that he received calls from a girlfriend, but not Moses, who he met once and who retained him on Applicant's behalf. Counsel explained he had practiced primarily criminal law since 2007. Counsel stated he took meticulous notes as the "writing was on the wall" at the outset of the representation, as Applicant openly admitted from the start that he had filed a grievance against another attorney. Counsel recalled he spoke to the Attorney General prosecuting the case, who expressed his belief that Applicant was a gang member, had been involved in a gang-rape and murder, and was a dangerous individual who would get no breaks.

Counsel recalled that the charges arose from two different robberies that wound up linked by some common evidence. Counsel explained that Applicant was alleged to have stolen $60,000 from an ATM, and that the State's case was supported primarily by one witness to the crime and recordings of Applicant's jail phone calls, in which Applicant attempted to bribe witnesses of the prior armed robbery with the proceeds he bragged of taking from the ATM. Counsel noted that Applicant robbed victims who knew him from high school. Counsel opined that Applicant would have only been satisfied if he received acquittals on all of his charges, and recalled telling Applicant that he could not force the Attorney General's Office to give offers. Counsel was concerned that Applicant would be tried twice—once for each of the armed robberies—and end up with a life-without-parole sentence, as the prosecution desired.

Counsel testified he received and shared with Applicant video recordings provided in discovery, as well as the recordings of the jail calls. Counsel asserted he and Applicant reviewed all of the evidence. Counsel recalled he managed to locate one of the victims from one of the robberies in the hope of testing his amenability to letting Applicant plead down to strong-arm robbery, but the victim was afraid of Applicant and was opposed. Counsel asserted he left no

stone unturned. Counsel recalled Applicant did give his version of events, and that he had remained in the car during the robbery of the ATM and the ATM attendant. Applicant provided Counsel with no leads or witnesses to investigate and no funds were provided for any private investigator.

Counsel testified it had been Applicant's decision to cooperate with respect to the cold case murder, and that Applicant understood there was no associated guarantee because of his history as a gang member. Counsel denied he ever told Applicant to lie, but to the contrary warned him against lying. Counsel additionally denied telling Applicant what to say to law enforcement, and noted that Applicant had already provided conflicting statements to law enforcement before Counsel was retained. Counsel never received any offer for Applicant to plead to any lesser offense. Counsel recalled that the State felt the case was a slam dunk, even though Applicant never said in the jail calls precisely when, where, or how he obtained the $60,000, only that he had stolen sixty bands. Counsel testified he had been prepared to proceed to trial before Applicant decided to plead guilty, but that there was a great possibility Applicant would be convicted. Applicant was upset with Counsel because he could not get the charges reduced, and because he would not file a series of frivolous motions Applicant had prepared, and so Counsel offered to withdraw from representation.

As to the question of filing a motion for reconsideration, Counsel explained that *if* Applicant provided substantial assistance to law enforcement, and *if* charges were brought based thereon, and *if* Applicant testified at the resulting trial, there could be a potential reduction in his sentence. Counsel cavalierly opined that anything could be achieved so long as there was consent between the parties. Counsel denied there was any promise of reconsideration on the

front end. No charges ever resulted from Applicant's cooperation and thus no trial ever came to pass in which Applicant could have testified.

Counsel testified Applicant received the ten-to-twenty offer the day of trial, and that Counsel managed to obtain the assistance of the Richland County Sheriff's Office for mitigation. Counsel opined that without the RCSO assistance in mitigation, Applicant would have received closer to a twenty year sentence. Counsel mused in frustration that he had always expected his first PCR would be the result of "getting hammered" in a difficult trial. Counsel denied he ever told Applicant he would receive an ultimate sentence of five years, and that such a sentence was impossible.

On cross-examination, Counsel explained that the prosecutor for the case was reported to him to be very aggressive, and keen to pursue LWOP cases and sentences. Counsel recalled that one of the victims was expected to identify Applicant if the case proceeded to trial. Counsel admitted he was initially concerned about his safety with Applicant, but that the feeling dissipated after dealing with Applicant for a while. Counsel never broached the subject of gang affiliation with Applicant. As to the cold case murder, Counsel explained that the State never went so far as to accuse Applicant of killing anybody, but merely that he was somehow involved. Law enforcement deemed Applicant's assistance to not be substantial, but Counsel noted that Applicant still got all but one of his armed robberies dropped and received the benefit of the recommended sentencing cap. Counsel testified he would have remained Applicant's attorney in the event that somebody was charged based on Applicant's assistance, and that Applicant had been concerned about the subject. Counsel noted that, theoretically, Applicant could still assist with the cold case. Counsel denied law enforcement ever promised any specific benefit or number, and testified that there was no basis to file any motion for reconsideration. Counsel

testified he wished Applicant no ill will, but was hurt by Applicant's testimony, and opined that he had saved Applicant's life.

Applicant testified again in rebuttal. Applicant denied he was ever charged for murder, denied he was a high ranking gang member, denied he had any gang tattoos, and asserted that SCDC had never classified him as a gang member. Applicant testified Counsel never told him he was suspected of being a perpetrator or participant in the cold case murder. Applicant denied he ever confessed to anything to Counsel. Applicant asserted there were no eyewitnesses to the robbery because the victim could not have identified the perpetrator, who was wearing a mask. Applicant denied he ever admitted to robbing the bank in the jail calls, denied the calls provided as Counsel described, and asserted the calls did not prove his guilt. Applicant testified he demanded his money back from Counsel, but Counsel only offered to return a small amount, so Applicant stroked Counsel's ego instead in order to ensure Counsel would stay on through trial.

3. Credibility and Weight

The Court finds that the present matter represents an appropriate circumstance to issue broad credibility findings as to the testimony of each of the witnesses at the evidentiary hearing, rather than attempt to parse out in detail which portions of each witness' testimony are credible and which portions are not.

The Court finds Applicant's testimony to not be credible in its entirety and affords it zero probative weight. While in many post-conviction relief actions less-than-credible witnesses can be said to be truthful in at least some respects or as to certain details, Applicant's testimony affords few such opportunities to give credit. Applicant freely and cavalierly admits to lying to law enforcement and to the plea court, and endeavors to pull Counsel into his morass of falsehoods in an obvious and self-serving effort to try and obtain an offer never made and force a

bargain to which no party has ever agreed. In his effort to do so, Applicant dissolves not only his own credibility before this Court, but potentially debases the viability of the cold case investigation that at one point sought to rely upon him. Applicant's pervasive dishonesty is to be condemned.

The Court finds the testimony provided by Jamie Moses is not credible or probative in light of its scant detail. The Court is without sufficient information to meaningfully compare the substance of Moses' testimony to anything else. Moses did not offer what it was she said to Counsel, or the conditions of their conversation so as to elicit Counsel's alleged answer. Without further detail, and in light of the facts and circumstances provided by the record as a whole, Moses' testimony does not materially address any of the allegations. The Court affords Moses' testimony no probative weight.

The Court finds the testimony provided by Counsel to be highly credible and affords it substantial probative weight. Counsel was thorough and forthright in each of his answers, and eagerly offered information beyond the narrower scope of the questions asked of him. Counsel's candor to the Court was palpable and informative.

B. Ineffective Assistance of Counsel & Involuntary Guilty Plea

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his 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, 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 v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel's performance was deficient. Strickland, 466 U.S. at 686; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP. 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 the 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). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109-10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." Yarborough, 540 U.S. at 6; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable."). 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 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. "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.'" Harrington, 562 U.S. at 111-12 (quoting Strickland, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." Id. at 112. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." United States v. Basham, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting Elmore v. Ozmint, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, 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)).

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. Strickland, 466 U.S. at 696. 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. Id. at 696-97.

Applicant further claims his plea was not entered knowingly or voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of the plea and the charges against him or her. Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991); see also Boykin v. Alabama, 395 U.S. 238, 243 (1969) (Courts must make sure defendants have "a full understanding of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought, and forestalls the spin-off of collateral proceedings that seek to probe murky memories."). 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).

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 that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001); Richardson v. State, 310 S.C. 360, 363, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

1. Failure to Investigate

Applicant broadly alleges Counsel was ineffective in failing to adequately investigate his case. "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 690-91. "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Id. at 691. "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Id.

"The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Id. "Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant." Id. "In particular, what investigation decisions are reasonable depends critically on such information."

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the

alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Applicant offers nothing that Counsel could have or should have investigated in furtherance of his defense. Counsel, on the other hand, demonstrated through his testimony a thorough command of the facts and circumstances of Applicant's charges, and credibly testified to fully reviewing the evidence against Applicant in its entirety. Applicant at no point offered any testimony to establish that *but for* Counsel's failure to investigate any particular thing, he would not have pled guilty but would have insisted upon going to trial. Applicant has produced no probative evidence towards meeting his burden as to either prong of Hill, and accordingly his demand for relief by way of this allegation is **DENIED**.

2. Failure to Utilize Identification

Applicant alleges Counsel was ineffective in failing to use "the fact that the victim identified a suspect that did not match the Applicant." Applicant repeatedly acknowledged both at the plea and the evidentiary hearing that he pled guilty under a theory of hand of one, hand of all, such that the victim's identification of his assailant was of limited import. Applicant indicated he was aware of the identification issue prior to choosing to plead guilty. Counsel utilized the argument that Applicant was only a lookout and was not the person who pointed a gun at the victim in mitigation. This Court finds Counsel did utilize the identification, and Applicant presents no evidence to show any relation between Counsel's use of the identification and his decision whether to plead guilty. Accordingly, Applicant has failed to present any evidence to meet his burden as to either prong of Hill, and his claim for relief by way of this allegation is **DENIED**.

3. Misadvice as to Expected Sentence, Coercion to Scheme

Applicant alleges Counsel was ineffective, and his guilty plea was not voluntarily entered, because Counsel misadvised him that he would be able to receive a sentence of five years in exchange for his plea and cooperation, and thereafter forced him to plead before Judge Barber as part of a scheme to effectuate as much. This allegation is resolved by the Court's credibility findings as set forth in Section II.A., above, and by the record: Applicant was never promised five years by Counsel. The State never offered Applicant the opportunity to plead down to any lesser offenses and never offered any recommendations other than the ten-to-twenty range that Applicant ultimately accepted. Applicant denied during the plea he was ever promised anything other than the sentence recommendation he ultimately received. Counsel advised Applicant correctly that if he provided substantial assistance, and if it resulted in charges against the perpetrators of the cold case murder, and if Applicant continued to cooperate through testimony, he could receive an undefined benefit. Counsel never advised Applicant of any scheme to resentence him before another judge, never advised Applicant to keep the scheme under wraps, and never advised Applicant to lie to the plea court. Counsel did not force Applicant to plead guilty before Judge Barber. Applicant did not plead guilty because he was swindled by false promises, but rather (1) because he was guilty, as he stated at the plea proceeding, and (2) because he wished to accept the State's offer to drop all but one of the charges and recommend a sentencing cap which would provide for his eventual release from custody during his prime years of life. Accordingly, Applicant has failed to present any evidence to meet his burden as to either prong of Hill, and his claim for relief by way of this allegation is **DENIED.**

III. CONCLUSION

Based on all the foregoing, this Court finds and concludes that 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 notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel 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), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 17th **day of** March**, 2020.**

ROGER E. HENDERSON
Presiding Judge
Fifth Judicial Circuit

Chesterfield, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND SHAWN BETHEA, #338877 Plaintiff, vs. STATE OF SOUTH CAROLINA Defendant.	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT CASE NO: **2016-CP-40-03525** **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**

Plaintiff's Attorney:	Defendant's Attorney:
Tommy A. Thomas, Esquire Address: Post Office Box 88 Irmo, SC 29063 Phone: _____Fax _____ E-mail: _____Other: _____	Johnny E. James Jr., 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.

Signature of Attorney for ☐ Plaintiff /☒ Defendant — March 5, 2020 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)