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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO GREENWOOD COUNTY
Court of Common Pleas
Frank R. Addy, Jr., Plea Judge
Thomas A. Russo, Post-Conviction Relief Judge

Appellate Case No. 2019 – 001115

TRAVIS SENTELL WILLIAMS,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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ISSUES RAISED ON CERTIORARI

Petitioner's Issue Presented

Trial counsel erred in failing to file a motion to withdraw petitioner's guilty plea based on the sentence issued by the plea judge because counsel failed to fully explain to petitioner all possible sentencing consequences in the case.

Respondent's Counterstatement of Issue Presented

Counsel was under no constitutional obligation to withdraw the guilty plea and the PCR court properly found Counsel was not constitutionally ineffective in handling Petitioner's plea because any misconception Petitioner had regarding the sentence he believed he would receive was cured by the extensive colloquy with the plea judge, and Petitioner failed to show any resulting prejudice from Counsel's alleged deficiency.

STATEMENT OF THE CASE

In November 2017, the Greenwood County Grand Jury indicted Petitioner, Travis Sentell Williams, for criminal domestic violence of a high and aggravated nature (CDVHAN), attempted murder, resisting arrest, and second-degree harassment. (App. 105–06.) Public Defender Janna A. Nelson (Counsel), of the Eighth Circuit Public Defender's Office, represented Petitioner. Assistant Solicitor Carson Penney, of the Sixteenth Circuit Solicitor's Office, prosecuted the case. (App. 1.)

On February 5, 2018, Petitioner pleaded guilty to CDVHAN before the Honorable Frank R. Addy, Jr.. In exchange for his guilty plea, the State dropped Petitioner's remaining charges of attempted murder, resisting arrest, and second-degree harassment. (App. 3.) However, there were no recommendations or negotiations as to the sentence. Judge Addy accepted Petitioner's guilty plea and sentenced Petitioner to a term of eighteen years.[1] On February 15, 2018, Counsel filed a motion to reconsider Petitioner's sentence. (App. 70.) On February 18, 2018, Judge Addy denied Petitioner's motion to reconsider without oral argument. (App. 93.) Petitioner did not pursue a direct appeal.

On June 22, 2018, Petitioner timely commenced the underlying post-conviction relief (PCR) action. (App. 10.) In his application, Petitioner raised the following allegations:

1. Ineffective Assistance of Counsel
   a. Attorney/Counsel assured [Petitioner] that he would not receive beyond 15 years pursuant to her conversation with the judge. However, [Petitioner] received 18 years.
2. Involuntary Guilty Plea
   a. [Petitioner] didn't have a full understanding of consequences of plea.

[1] Petitioner was on probation at the time of his guilty plea for an unrelated charge. Judge Addy revoked Petitioner's probation in full and sentenced him to a term of three years to run concurrent with Petitioner's eighteen year sentence.

(App. 35.) On June 4, 2019, an evidentiary hearing was convened before the Honorable Thomas A. Russo. (App. 23.) Petitioner was present and represented by Ashley A. McMahan (PCR Counsel). (App. 23.) Assistant Attorney General Janell Gregory represented the State. (App. 23.) At the outset of the hearing, the State outlined the claims Petitioner included in his application. PCR counsel made no mention of what claims Petitioner was moving forward with; however, the record of the evidentiary hearing shows the allegations were the same as those included in Petitioner's original application. (App. 52–53.) Petitioner and Counsel testified on behalf of Petitioner, and Assistant Solicitor Penny testified on behalf of the State. On June 19, 2019, Judge Russo, finding Counsel was not ineffective for assuring Petitioner would not receive more than fifteen year sentence because of her conversation with the plea judge and that Petitioner's guilty plea was freely and voluntarily made, denied relief and dismissed the action with prejudice. Petitioner appealed.

STATEMENT OF THE FACTS

Petitioner's charge stems from a domestic dispute with his wife (Victim). On August 16, 2016, Petitioner beat Victim at the Ideal Motel in Greenwood County. (App. 6.) Petitioner accused Victim of cheating on him, but when she denied it, Petitioner then attacked. (App. 6.) Victim attempted to defend herself, but Petitioner strangled her until she lost consciousness. (App. 6.) Victim eventually regained consciousness, and Petitioner was still beating her. (App. 6.) Tereafter, Victim took a shower with Petitioner hoping to appease him. However, after showering with Petitioner, Victim refused Petitioner's sexual advances. (App. 6.) After being rejected, Petitioner strangled Victim again, and he beat her in the head and face with his fist. (App. 6.) As he beat her, Petitioner sat on Victim's chest and pinned her arms down with his legs. (App. 6.) Victim gasped that Petitioner was going to kill her, and Petitioner exclaimed he planned on killing her anyway. (App. 6.) Petitioner continued to beat Victim until she passed out. (App. 6-7.) The beating was so violent it shattered Victim's jaw in two places. (App. 6.)

When Victim woke up, Petitioner was crying. Petitioner then told Victim that he had to kill her because he disfigured her face and everyone would know he beat her. (App. 7.) Petitioner continued crying and told Victim he could not look at her face. (App. 7.) Victim then saw her face in the mirror and begged Petitioner to take her to the hospital. (App. 7.) Victim assured Petitioner she would stay silent about what happened, but she needed to go to the hospital. (App. 7.) Petitioner refused to take her to the hospital. (App. 7.) Petitioner demanded Victim to get off the bed so he could flip the mattress because it had blood on it. (App. 7.) Petitioner demanded Victim lie down on a towel so she would not get blood on the bed, and he told her that if she got blood on the bed he would assume she was trying to set him up. (App. 7.) However, Victim could not lie down because she could barely breathe and told Petitioner she could not breathe and told

him she needed medical attention. (App. 7.) Victim desperately promised Petitioner she would stay silent about what happened. (App. 7.)

Petitioner and Victim left the hotel together, and, at one point, Victim attempted to escape by jumping out of the car. (App. 7.) However, Petitioner grabbed Victim and told her if she tried to escape again, he would kill her. (App. 7.) Petitioner took Victim to his grandmother's house and told her they had been in a car accident. (App. 7.) At this point, Victim's face was severely swollen, and she still struggled breathing and speaking. (App. 7.) Petitioner's grandmother unsuccessfully attempted to extract mucus from Victim's throat. (App. 8.) Victim promised to tell the medical staff that she was injured in a car accident if Petitioner took her to the hospital. (App. 7-8.)

Petitioner eventually took Victim to the neighboring Lauren's County hospital reasoning that if he took Victim to the Greenwood County hospital, people would suspect he beat her. (App. 8.) Petitioner told the triage nurse that Victim was injured in a car accident in North Carolina. (App. 8.) By the time she arrived at the hospital, Victim could not speak, and when the staff asked her what happened, she could only cry. (App. 8.) Later that day, medical staff transported Victim to Greenville Memorial's trauma intensive-care unit (ICU). (App. 8.) Victim cannot remember being transported. (App. 8.) Victim remained in the hospital for sixteen days, and when released, she required a tracheotomy tube to breath and a feeding tube to eat because her jaw was wired shut. (App. 18.)

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, 839 (2018). When reviewing factual findings, the appellate courts defer to the post-conviction relief court's factual findings and will uphold them if there is any probative evidence in the record to support them. *Buckson v. State*, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); *Smalls*, 422 S.C. at 180-81, 810 S.E.2d at 839-40 (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)). Additionally, appellate court's defer to a PCR court's credibility findings because appellate court's lack the opportunity to directly observe the witnesses. *Foye v. State*, 335 S.C. 586, 589, 518 S.E.2d 265, 267 (1999). However, questions of law are reviewed with no deference to the lower court. *Smalls*, 422 S.C. at 180-81, 810 S.E.2d at 839-40. Appellate courts will reverse if the PCR court's decision is controlled by an error of law. *Goins v. State*, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

Counsel was under no constitutional obligation to withdraw the guilty plea and the PCR court properly found Counsel was not constitutionally ineffective in handling Petitioner's plea because any misconception Petitioner had regarding the sentence he believed he would receive was cured by the extensive colloquy with the plea judge, and Petitioner failed to show any resulting prejudice from Counsel's alleged deficiency.

On appeal, Petitioner argues Counsel should have filed a motion to withdraw the guilty plea and that Counsel's error in handling the plea violated Petitioner's right to effective assistance of counsel during the plea process as guaranteed under the Sixth Amendment. Specifically, Petitioner argues Counsel was deficient because she failed to explain to petitioner that conversations with the plea judge did not translate into an automatic confirmed plea bargain for a fifteen-year sentencing cap. Further, Petitioner argues that Counsel's error violated Petitioner's right to competent legal representation at his plea proceeding because Petitioner pleaded guilty without an understanding of the sentencing consequences in his case and that but for Counsel's error in this regard, a reasonable probability exists that Petitioner would have pleaded not guilty and exercised his right to a trial by jury in the case or received a favorable result upon a hearing on a motion to withdraw his guilty plea. However, Counsel was under no constitutional obligation to file a motion to withdraw the guilty plea because the PCR court found Counsel was not constitutionally deficient in handling the plea, that any misconception petitioner had regarding the sentence he believed he would receive was cured by the extensive colloquy with the plea judge, and Petitioner cannot show any resulting prejudice from Counsel's alleged deficiency. These findings are not controlled by an error of law and are supported by ample probative evidence in the record. Therefore, this Court should deny certiorari.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Petitioner, like all other defendants, the right to effective assistance of counsel. *Strickland v.*

Washington, 466 U.S. 668 (1984); *Taylor v. State*, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel's performance was deficient; and second, that the deficient performance prejudiced the applicant. *Id.* at 668; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." *Cherry v. State*, 300 S.C. 115, 117–18, 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*, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, "does not guarantee perfect representation[—]only a 'reasonably competent attorney.'" *Harrington v. Richter*, 562 U.S. 86, 110 (2011) (quoting *Strickland*, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686. Just as there is "no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote

possibilities." *Harrington*, 562 U.S. at 110.

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." *Strickland*, 466 U.S. at 689; *see also Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. *Id.* (quoting *Strickland*, 466 U.S. at 690).

Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. *Id.* Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Reviewing courts "must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed at the time of counsel's conduct." *Strickland*, 466 U.S. at 690. An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment." *Id.* The

reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." *Id.*

The *Strickland* standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; *see also Harrington*, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. *Harrington*, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," **not** whether it deviated from best practices or most common custom. *Id.* (quoting *Strickland*, 466 U.S. at 690) (emphasis added).

The second, or "prejudice" prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. Thus, it is not enough "to show the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to deprive the defendant of a fair trial." *Id.* at 687 (emphasis added). In the context of a guilty plea, the second prong focuses

on whether counsel's constitutionally ineffective performance affected the outcome of the plea process. *Hill v. Lockhart,* 474 U.S. 52, 59 (1985). In other words, the applicant must prove prejudice by showing that, but for counsel's inadequacy, there is a reasonable probability he would not have pleaded guilty and, instead, would have insisted on going to trial. *Suber v. State*, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007); *Wolfe v. State*, 326 S.C.158, 485 S.E.2d 367 (1997). "When determining issues relating to guilty pleas, this Court will consider the entire record, including the transcript of the guilty pleas and the evidence presented at the PCR hearing." *Roddy*, 339 S.C. at 33, 528 S.E.2d at 421.

First, Petitioner alleges Counsel was deficient for failing to move to withdraw his guilty plea. However, Counsel knew there was no agreement as to sentencing and explained that prior to the plea hearing to Petitioner, so when the plea judge sentenced Petitioner accordingly and within the statutory limits, Counsel had no grounds to move to withdraw the guilty plea.

This Court has held that defense counsel is ineffective for failing to withdraw a defendant's guilty plea when the State disregards the plea deal and requests a different sentence than agreed upon. *Thompson v. State*, 340 S.C. 112, 531 S.E.2d 294 (2000); *Jordan v. State*, 297 S.C. 52, 374 S.E.2d 683 (1988). In *Jordan*, this Court determined plea counsel was ineffective for failing to move to withdraw his client's plea or otherwise enforce the prior plea agreement for a recommended probationary sentence. *Id.* This Court found, "In the present case, Jordan insisted on proceeding to trial. Jordan only agreed to plead guilty when he believed the solicitor would neither oppose nor recommend probation. When the solicitor disregarded the agreement, Jordan's attorney failed to draw Judge Eppes' attention to the plea bargain and then failed to move to withdraw Jordan's guilty plea. We hold that the conduct of Jordan's counsel in not protecting

Jordan's right to enforce the plea agreement with the Solicitor's office fell below 'prevailing professional norms.'" *Id.* at 54, 374 S.E.2d at 685.

This case is distinguishable from *Jordan*. Here, the only plea agreement that existed was the State would agree to drop Petitioner's remaining charges of attempted murder, resisting arrest, and second-degree harassment in exchange for Petitioner's guilty plea to CDVHAN. (App. 3.) There were no recommendations or negotiations as to the sentence. Although Counsel advised Petitioner it was her understanding the sentence would be in the range of seven-to-fifteen years, she also informed Petitioner he was pleading guilty, straight up, and consequently facing the maximum of twenty years. (App. 68–69.) The PCR court found that Petitioner was fully aware of the sentence he faced. Counsel testified she explained that no promises on the range were made. The judge put on the record there were no agreement on sentencing besides the statutory range. (App. 4.) The plea judge asked Petitioner if he understood that he could sentence him to whatever he wanted. (App. 4.) Petitioner affirmed that he understood there was no sentence cap and that the plea judge could sentence him how he wanted. (App. 4.) Therefore, because Petitioner knew he was facing a twenty-year sentence and no sentence cap was agreed upon, Counsel had no duty to move to withdraw the guilty plea because the Judge sentenced him according to the plea agreement: CDVHAN plea with no sentencing negotiation. Had there been an negotiated or recommended sentencing agreement, and had the Solicitor or Judge violated the agreement, then Counsel should have moved to withdraw the guilty plea; however, no such agreement existed in this case and therefore, Counsel was not deficient for refraining to move to withdraw the guilty plea.

Second, Petitioner argues on appeal that Counsel was deficient because she failed to explain to petitioner that conversations with the plea judge did not translate into an automatic

confirmed plea bargain for a fifteen-year sentencing cap. Petitioner argues that because of counsel's alleged deficiency, Petitioner pleaded guilty without an understanding of the sentencing consequences. However, relying on *Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997), the PCR court found any misconception petitioner had regarding the sentence he believed he would receive was cured by the extensive colloquy with the plea judge.

In *Wolfe*, Wolfe pleaded guilty to assault and battery with intent to kill (ABIK) and possession of a firearm or knife during the commission of a violent crime. Wolfe received the maximum possible sentence of twenty years for ABIK and five years for the weapon charge. *Id.* at 162, 485 S.E.2d at 369. Wolfe later filed a post-conviction relief action alleging, in part, that his guilty plea was induced by his trial counsel's representation to him that the trial judge would give him a reduced sentence if he pleaded guilty to the charges. *Id.* at 164, 485 S.E.2d at 370. Wolfe testified at the evidentiary hearing that trial counsel informed him that he has not known this judge to "backstep on a representation that he would impose a reduced sentence." *Id.* at 165, 485 S.E.2d at 371. Wolfe further testified trial counsel told him "the trial court's questions concerning the plea were 'routine' questions." *Id.*

The Supreme Court of South Carolina held "any possible misconceptions on Wolfe's part were cured by the colloquy during the actual guilty plea hearing. . . . the judge repeatedly asked Wolfe about the range of sentencing, and asked Wolfe *twice* whether he understood that there were no promises and that no sentencing recommendations were binding on the judge. Wolfe indicated he understood there were no such promises." *Id.* at 164-165, 485 S.E.2d at 370. The Court also noted trial counsel's statement to the judge during the guilty plea hearing that there had been no promises made as to the actual sentence the trial court would impose on Applicant. *Id.* The Court further noted, "The transcript of Wolfe's guilty plea hearing reflects that the trial judge questioned

Wolfe extensively about the plea, asking him, *inter alia*, whether he understood that he could get twenty years for ABIK and five years for possession of a firearm or knife during the commission of a violent crime and whether he had been promised anything for pleading guilty." *Id.* at 161, 485 S.E.2d at 369. Ultimately, the Court found Applicant's "[w]ishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentence, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made." *Id.* at 165, 485 S.E.2d at 371.

In the present case, Petitioner's case is nearly identical to that of *Wolfe*. Here, Petitioner alleges Counsel was ineffective for failing to tell him that a chambers conference with the plea judge did not translate to a confirmed plea bargain of a fifteen-year sentence cap. However, similar to Wolfe, the plea judge in at Petitioner's plea hearing conducted an extensive colloquy with Petitioner, which included the following:

> Plea Judge: You understand that the carries up to [twenty] years. Whatever sentence you receive is entirely up to me. You understand that, sir?
>
> Petitioner: Yeah.
>
> Plea Judge: I'll have to hear from both side[s]. Whatever I feel is appropriate is what you'll end up having to do. You understand, sir?
>
> Petitioner: I do.

(App. 4.) During the colloquy, Petitioner testified – other than the dismissal of the attempted murder charge – he had not been promised anything or "held out any other hope of reward" in exchange for his guilty plea. (App. 15.) Petitioner also testified he was pleading guilty of his own free will, wanted to waive his constitutional rights, and told the plea judge he was "positive" he did not want a jury trial. (App. 9-13, 16.)

Prior to imposing the sentence, the plea judge stated, “when we met in chambers last month I was not able to give you guys any sort of indication on a number in terms of sentencing - - a definitive sentencing thing.” (App. 27.) Counsel, the State, and the plea judge then had a sidebar conversation and the plea judge went back on the record to state, “When we spoke at the bench, the attorneys related to me what I had discussed in chambers by way of the sentencing range. The last time that we met about this case in chambers . . . as I recall it, was that I would really have to just eyeball the situation then make a decision. Hear from everybody, but I was not able to commit to anything definitive in the way of a sentence for [Petitioner].” (App. 28.) The plea judge then, after addressing Victim and Petitioner’s extensive criminal history, imposed an eighteen year sentence on Petitioner. (App. 28-31.)

On February 15, 2018, Counsel filed a motion to reconsider Petitioner’s sentence. In that motion Counsel conceded that, although the plea judge provided a range of seven to fifteen years, he told her and Penney that he would need to “eyeball” the case. (App. 28.) In the order denying Petitioner’s motion, the plea judge stated he “definitely recalls informing all concerned that the Court would have to ‘eyeball’ the situation and could not firmly commit to any particular sentence. (App. 97.) The Court’s plea colloquy with [Petitioner] was thorough, and [Petitioner] indicated that he had sufficient time to decide how he wanted to proceed concerning his charges.” (App. 98.)

The PCR Court found Counsel’s testimony and Penney’s testimony with respect to this allegation very credible, whereas Petitioner’s testimony was not credible. (App. 98.) As a result, the PCR court found, as in *Wolfe*, any misconception Petitioner was under regarding the sentence he believed he would receive was cured by the extensive colloquy with the plea judge. (App. 98.) Further, the record clearly shows Petitioner understood and acknowledged the potential twenty-

year sentence he faced for his charge and that he was not promised anything in exchange for his guilty plea or coerced into pleading guilty. (App. 15.) These findings should be given great deference on appeal. *See Foye*, 335 S.C. at 589, 518 S.E.2d at 267 (stating the reason appellate courts give great deference to the post-conviction relief court's findings is because the court has the opportunity to directly observe the witnesses). Therefore, Petitioner cannot show counsel was constitutionally deficient and this Court should deny certiorari.

Lastly, Petitioner argues on appeal that he was prejudiced by Counsel's alleged deficiency because but for counsel's error in this regard, a reasonable probability exists that petitioner would have pled not guilty and exercised his right to a trial by jury in the case or received a favorable result upon a hearing on a motion to withdraw his guilty plea. However, Petitioner failed to present any evidence in support of this claim.

At the evidentiary hearing, the solicitor testified that she would have tried Petitioner for attempted murder if Petitioner had not pled guilty. (App. 30.) The solicitor also testified she believed the State had a strong case against Petitioner, which was clearly an assessment shared by the plea judge. (App. 30.) At the conclusion of the plea hearing, the plea judge stated, "Candidly, from what I've heard, if the State of South Carolina was able to prove fifteen or twenty percent of what they were alleging, there's a good chance that . . . jury would have found you guilty of attempted murder and you'd be looking at the 30-year sentence and probably no light at the end of the tunnel." (App. 30). Petitioner received an eighteen year sentence, which is still less than the maximum sentence the plea judge could have imposed: twenty years. It is clear from the record and the testimony at the evidentiary hearing that the solicitor and the plea judge believed the State had a strong case and could have sought a much higher sentence if Petitioner had proceeded to trial for attempted murder. (App.30#.) It is evidence Petitioner received a favorable outcome in

his case despite any alleged deficiency on Counsel's behalf. Based on the forgoing, Petitioner failed to meet his burden set forth in *Strickland*. Accordingly, the post-conviction relief court properly denied relief, and this Court should deny certiorari.

Ultimately, Petitioner has failed to show that counsel was ineffective for failing to file a motion to withdraw his guilty plea because Counsel had no duty or grounds to do so. Additionally, Petitioner has failed to show that Counsel was ineffective in handling his plea and failed to show any resulting prejudice. Therefore, the factual findings of the PCR court should be upheld as there is ample evidence of probative value in the record to support these findings, and this Court should deny certiorari.

CONCLUSION

Because the PCR court properly determined Petitioner failed to establish any constitutional deprivations, this Court should deny certiorari. Should this Court grant certiorari, the State requests the opportunity to fully brief the issues raised.

Respectfully submitted,

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July 13, 2020