STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

On Petition for Writ of Certiorari to York County
Lee S. Alford, Plea Judge
Roger L. Couch, Post-Conviction Relief Judge

Appellate Case No. 2019-001317

JACQUESE UNDERWOOD,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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ISSUE ON CERTIORARI

PETITIONER'S ISSUES ON CERTIORARI

Did the post-conviction relief court err[] in not granting relief on the basis plea counsel was ineffective in failing to prepare for or proceed with trial after her motion to suppress evidence was denied and, as a result, cause Petitioner to enter an involuntary guilty plea?

RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON CERTIORARI

Did the post-conviction relief court properly determine Petitioner failed to meet his requisite burden of establishing constitutionally ineffective assistance of counsel for failing to prepare for or proceed to trial, where the record firmly establishes Petitioner entered a knowing, intelligent, and voluntary no contest plea with the advice of competent counsel in exchange for a favorable plea offer to a lesser-included offense with a significantly reduced sentence following a lengthy, two-day-long hearing on a variety of pre-trial motions to challenge the State's evidence?

STATEMENT OF THE CASE

Petitioner Jacquese Underwood is presently confined within the South Carolina Department of Corrections following his no contest plea to conspiracy to traffic cocaine. Petitioner was indicted during the May 2014 term of the York County Grand Jury for trafficking in cocaine, 400 grams or more (third or subsequent offense) (2013-GS-46-2073) under a conspiracy theory.[1] Petitioner was represented by Leah Moody, Esquire. Assistant Solicitors Matthew Shelton and Chris Epting of the Sixteenth Circuit Solicitor's Office prosecuted the case.

On August 25, 2014, the State called Petitioner's case to trial alongside co-defendant Duane Harrison. At the start of trial and during pre-trial proceedings, Petitioner's counsel made numerous pre-trial motions, including: 1) moving to limit the testimony from potential witness Dalmicos Hemphill; 2) moving to limit text messages prior to October 30, 2012; 3) moving to limit potential witness Shureka (Sharika)[2] White (who is Petitioner's former girlfriend) from testifying about Petitioner's criminal history; 4) moving to suppress the parcel intercepted by law enforcement; 5) moving to limit witnesses from referring Petition as "Jacq"; and 6) moving to quash the indictment. The State agreed with Petitioner's motion to limit Ms. White's testimony regarding Petitioner's criminal history, but challenged the remaining motions. In response, the

[1] Petitioner was indicted for trafficking in cocaine (400 grams or more), pursuant to S.C. Code Ann. § 44-53-370(e)(2)(e), which provides, "[a]ny person who knowingly sells, manufactures, cultivates, delivers, purchases, or brings into this State, or who provides financial assistance or otherwise aids, abets, attempts, or **conspires** to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of . . . ten grams or more of cocaine or any mixtures containing cocaine, as provided in Section 44-53-210(b)(4), is guilty of a felony which is known as "trafficking in cocaine" and, upon conviction, must be punished as follows if the quantity involved is . . . (e) four hundred grams or more, a term of imprisonment of not less than twenty-five years nor more than thirty years with a mandatory minimum term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars." S.C. Code Ann. § 44-53-370(e)(2)(e) (emphasis added).

[2] Ms. White's name is spelled different ways throughout the Appendix.

State proffered testimony from numerous witnesses regarding the parcel interdiction, drug trafficking, and potential rebuttal that would implicate Petitioner and his co-defendant in the incident. Judge Alford denied the motion to suppress the interdicted package and motion to quash the indictment, but took the motion regarding the text messages under advisement and stated he anticipated ruling the following Tuesday after time to consider the evidence presented (App. 258).

However, on September 2, 2014, before Judge Alford's ruling on Petitioner's motion to exclude the text messages, Petitioner elected to accept a plea offer from the State, allowing him to plead no contest to the lesser-included offense of trafficking in cocaine (28 to 100 grams) (second offense) for a negotiated term of imprisonment of twelve-and-a-half-years, reducing his sentencing exposure to half of the twenty-five-year mandatory minimum sentence for the indicted offense. (App. 264). Judge Alford accepted Petitioner's no contest plea, finding it was entered freely, intelligently, and voluntarily entered. (App. 277). Thereafter, Judge Alford also placed on the record that he intended to allow the text messages and other challenged items into evidence had Petitioner proceeded forward with his trial. (App. 278-285). In accordance with the plea agreement, Judge Alford sentenced Petitioner to the negotiated term of imprisonment of twelve-and-a-half-years. The State dismissed a related burglary charge pursuant to the plea. Petitioner did not pursue a direct appeal.

Thereafter, on March 16, 2015, Applicant, through retained counsel Tommy A. Thomas, filed an application for post-conviction relief, asserting he was being held in custody unlawfully based on general claims of "ineffective assistance of counsel" and "involuntary guilty plea" but failing to set forth facts to support his general claims. On August 12, 2015, Respondent served its return and requested an evidentiary hearing to resolve Petitioner's claims. An evidentiary hearing

was convened November 8, 2016, before the Honorable Roger L. Couch, circuit court judge. Petitioner was present alongside Counsel Thomas. Respondent was represented by Assistant Attorney General Justin James Hunter of the South Carolina Attorney General's Office. At the hearing, Petitioner testified on his own behalf, as well as presented testimony from his mother and plea counsel Moody. Respondent presented testimony from Assistant Solicitor Shelton. Following the hearing, Judge Couch denied and dismissed the application with prejudice, finding Petitioner failed to establish counsel was ineffective for failing to prepare for trial or for advising him to plead no contest. An order summarizing Judge Couch's findings was filed on August 27, 2018. Thereafter, Applicant filed a motion to alter or amend the final order pursuant to Rule 59, SCRCP. Respondent filed a return to this motion, and a hearing on his motion was held on May 6, 2019. Judge Couch subsequently denied the motion to alter or amend by written order filed on July 9, 2019.

STATEMENT OF FACTS

On October 30, 2012, Officer Frank Finch of the Drug Enforcement Agency Task Force and his canine partner Ben, who are trained in drug detection, were called to a UPS facility in Rock Hill, South Carolina, in reference to a suspicious package. (App. 272-73.) Following a routine package lineup, Ben alerted to the suspicious package, which also had other common indicators of contraband. (App. 272-73). Law enforcement subsequently obtained a search warrant and recovered approximately one kilogram of cocaine from the package. (App. 273). The cocaine was removed from the package, placed into evidence, and replaced with imitation cocaine for use in a controlled delivery. (App. 273-74).

The package was addressed to Sharika White at a specific address on Shenandoah Circle, Rock Hill, South Carolina. (App. 273). Law enforcement confirmed that Ms. White, Petitioner's

former girlfriend, was a resident of this address. (App. 273). Ms. White would later tell law enforcement that she had no knowledge of the package, that Petitioner nor his co-defendant had permission to be at her home or have anything delivered to her house on the morning of the controlled delivery, and that Petitioner had been checking with her the day before and morning of the delivery to ensure she and her children were not home. (App. 273-75).

Officers conducted a controlled delivery of the package, with an officer dressed as a UPS employee delivering the package in a UPS van while other officers surveilled the area. (App. 273-74). Officers observed Duane Harrison, Petitioner's co-defendant, conducting counter-surveillance around the residence, including following the delivery van used for the controlled delivery around and eventually out of the neighborhood, before returning to Ms. White's residence. (App. 274). Once Harrison returned and drove by Ms. White's residence, Petitioner, who had been inside the residence, came outside, retrieved the package, immediately placed it inside the trunk of a car parked in the garage, backed the car out, then went back inside the house (App. 274-75).

Law enforcement officers then moved-in to arrest Petitioner and co-defendant Harrison. (App. 275). Harrison, still in his vehicle, fled by reversing the car at a high rate of speed before turning the car around and fleeing through the neighborhood with officers chasing behind him. (App. 275). Harrison then exited his vehicle and fled on foot, dropping several cellular phones as he ran through a wooded area. (App. 275). Petitioner had returned outside at this time and blew his vehicle horn several times to alert Harrison. (App. 275). Harrison ran inside the residence, locked the door, and attempted to flee from the rear of the house before encountering officers. (App. 275). Harrison eventually let officers inside the residence. (App. 275).

Officers had already secured an anticipatory search warrant for the residence. (App. 275).

While executing the search warrant, officers located the package in the trunk of the car. (App. 275). Petitioner's cell phone was located in the front seat of the vehicle, and Petitioner's cell phone number matched the phone number saved as "Jacq" in one of the recovered cell phones that was tossed by Harrison. (App. 275). A series of text messages between Harrison's phone and Petitioner's phone appeared to discuss the delivery of the package to Ms. White's residence in the weeks leading up to the controlled delivery. (App. 276). The substance that had been removed from the package prior to the controlled delivery was tested and confirmed to be cocaine, weighing a total of nine hundred and sixty-five grams. (App. 276).

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 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)). However, pure questions of law will be reviewed *de novo* without deference to the lower court. Smalls, 422 S.C. 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).

ARGUMENT

The post-conviction relief court properly determined Petitioner failed to meet his requisite burden of establishing constitutionally ineffective assistance of counsel for failing to prepare for or proceed to trial, where the record firmly establishes Petitioner entered a knowing, intelligent, and voluntary no contest plea with the advice of competent counsel in exchange for a favorable plea offer to a lesser-included offense with a significantly reduced sentence following a lengthy, two-day-long hearing on a variety of pre-trial motions to challenge the State's evidence.

On appeal, Petitioner asserts the post-conviction relief court erred in finding plea counsel was not constitutionally ineffective in her representation of him based on his assertions that she was unprepared to proceed to trial after her motions to suppress evidence was denied, which forced Petitioner to enter a no contest plea. Specifically, Petitioner claims that after his motions to suppress were denied, he was left with no other option then to plead no contest because counsel was not prepared for trial. He further asserts plea counsel was ineffective for failing to challenge the State's evidence, which he repeatedly mischaracterizes in an attempt to minimize the State's case,[3] and was unprepared to present a defense on his behalf such as an alibi witness.[4]

[3] For example, Petitioner asserts "he was in this home with the permission of the owner and was retrieving a package addressed to her that he believed contained books." (PWC p. 14). However, the record establishes Ms. White, the resident of the home, informed law enforcement that Petitioner did not have permission to be at her home and had been calling her to ensure that she would not be home the day the package was scheduled for delivery. (App. 273-75, 318).

[4] Petitioner asserts on appeal that Gregory Parker was a willing alibi witness for him and counsel should have investigated and presented him at trial. (PWC p. 16). However, this is not preserved for appellate review as this claim was not timely raised or presented to the PCR court. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004) (noting in order for an issue to properly be preserved for appellate review, the issue must be: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity). Here, although Petitioner did move for the PCR court to allow him to submit an affidavit from Parker well after the conclusion of the evidentiary phase of the case, which the post-conviction relief court swiftly rejected, Petitioner never raised an allegation that counsel was ineffective for failing to call Parker as a witness. Moreover, it is hard to imagine a scenario where Petitioner could prevail on an alibi defense when he was arrested at the scene of the controlled delivery and was clearly present. See State v. Robbins, 275

However, the record clearly establishes Petitioner elected to accept a favorable plea offer from the State, allowing him to reduce his sentencing exposure dramatically by pleading no contest to a lesser-included offense for a negotiated twelve-and-a-half years of imprisonment, and the no contest plea was knowingly, voluntarily, and intelligently with the advice of competent counsel who thoroughly challenged the State's evidence and the indictment through a variety of pre-trial motions. The post-conviction relief court properly determined Petitioner's no contest plea was knowing, voluntary, and intelligent and counsel was properly prepared to handle Petitioner's case should Petitioner have elected to continue forward with his trial. These findings are not controlled by an error of law and are supported by the record. 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.

In order to prove deficient performance, the applicant must show counsel's representation

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S.C. 373, 271 S.E.2d 319 (1980) (since an alibi derives its potency as a defense from the fact that it involves the physical impossibility of the accused's guilt, a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all).

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.

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).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel." Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel's performance was deficient; and second, evidence that counsel's deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. Hill, 474 U.S. 52.

For all practical purposes, a no contest plea is treated as a guilty plea when reviewed on

post-conviction relief. See Deal v. State, 338 S.C. 455, 456, 527 S.E.2d 112, 112–13 (2000) ("A plea of nolo contendere is for all practical purposes treated as a guilty plea."); Kibler v. State, 267 S.C. 250, 254, 227 S.E.2d 199, 201 (1976) (internal citations ommitted) ("A plea of Nolo contendere literally interpreted means 'I do not with to contend.' For all practical purposes it is a plea of guilty in so far as the consequences in the particular case in which it is pled. 'Like a plea of guilty (it) leaves open for review only the sufficiency of the indictment and waives all defenses other than that the indictment charges no offense. Of course, like a guilty plea, it is subject to attack on the issue of the plea being made knowingly and voluntarily.").

When reviewing a guilty plea, the analysis of counsel's performance under the first prong of Strickland remains unchanged—the applicant must show counsel's representation fell below the objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56.

The second, or "prejudice" prong, however, "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Id. at 58–59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59. This inquiry "focuses on a defendant's decisionmaking" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. ___, 137 S. Ct. 1958, 1966 (2017). However, an

applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

Surmounting Strickland's high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." Lee, 582 U.S. ___, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 58 ("[R]equiring a 'prejudice' showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.'"). Reviewing "[c]ourts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney's deficiencies. Lee, 582 U.S. ___, 137 S. Ct. at 1967. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences. Id. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the plea and the evidence presented at the PCR hearing. Harres, 282 S.C. at 134, 318 S.E.2d at 361.

The performance and prejudice standards, however, "do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." Id. at 696. Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Id. at 697. The court "need not determine whether counsel's performance was deficient before examining

the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

"[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced." Reed v. Becka, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). Accordingly, because a criminal defendant waives several constitutional rights by pleading guilty or no contest, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. Boykin v. Alabama, 395 U.S. 238 (1969); Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999).

To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him or her and the consequences of his or her plea. Brady v. United States, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant's choice. Id. at 755; see also United States v. Smith, 440 F.2d 521, 528–529 (7th Cir. 1971) (Stevens, J., dissenting) (explaining voluntariness relates to the trustworthiness of the admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

Before a court can accept a guilty or no contest plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. Boykin, 395 U.S. at 243. Additionally, in order to knowingly and voluntarily plead guilty or no contest, the defendant must have a full understanding of the consequences of the plea, including the nature and crucial elements of the offense(s); the maximum and any mandatory minimum penalty; and the nature of the

constitutional rights being waived. Pittman, 337 S.C. at 599, 524 S.E.2d at 624.

However, it is "well established that a guilty plea is not rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment." United States v. Cox, 464 F.2d 937, 942 (6th Cir. 1972) (citing Brady, 397 U.S. 742). The State may properly encourage guilty or contest pleas either by being more lenient to those who enter such pleas, Brady, 397 U.S. at 750-753, or by increasing the risks of punishment on those who do not. North Carolina v. Alford, 400 U.S. 25, 37 (1970). The standard for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." Id. at 31.

A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993); see also Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997) (guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge). To ensure the defendant understands the consequences of his or her guilty or no contest plea, the trial judge "usually questions the defendant about the facts surrounding the crime and punishment that could be imposed." Dover v. State, 304 S.C. 433, 434–35, 405 S.E.2d 391, 392 (1991). However, the trial judge "does not have to direct the defendant's attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea." Carter v. State, 329 S.C. 355, 362, 495 S.E.2d 773, 776 (1998).

The voluntariness of a guilty plea, however, "is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." Harres, 282 S.C. at 133, 318 S.E.2d at 361. In evaluating an allegation on PCR that a guilty or no contest plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. Wolfe, 326 S.C. at 165, 485 S.E.2d at 370; cf. Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that, where the transcript of the guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant's claim his lawyer misadvised him).

An applicant who enters a plea on the advice of counsel may "only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the [Applicant] would not have pled guilty, but would have insisted on going to trial." Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

In the present case, Petitioner failed to meet his burden of proof of establishing that his counsel was ineffective or that his no contest plea was not knowingly, voluntarily, or intelligently entered. The record from the general sessions proceeding and the post-conviction relief proceeding all establish Petitioner entered a knowing, voluntary, and intelligent plea with the advice of competent counsel, who was thoroughly prepared for trial, challenged the State's evidence through a variety of pre-trial motions, and ultimately advised Petitioner to accept a favorable plea offer from the State based on the strength of the State's case clearly establishing a conspiracy to traffic cocaine.

The record clearly establishes counsel was properly prepared for trial. Counsel testified she had sufficient time to prepare Petitioner's case for trial and the strength of her defense was arguing for suppression of the text messages between Petitioner and his co-defendant because these messages established Petitioner was involved in a conspiracy to traffic cocaine. (App. 316). Counsel testified she also intended to argue that Petitioner's former girlfriend, Ms. White, had set Petitioner up and that Petitioner believed he was merely retrieving children's books for her and had no knowledge of the cocaine. (App. 318-19, 332-33). She testified she thoroughly reviewed all discovery with Petitioner. (App. 333-34, 354). Counsel testified she was prepared to go forward with Petitioner's trial on the day he elected to accept the State's plea offer. (App. 346). In its order of dismissal, the post-conviction relief court specifically found counsel's testimony as to her preparation for trial credible and found that counsel's testimony "shows she thoroughly reviewed all evidence and discovery material with Applicant and was in a trial posture up until the motion to suppress the text messages was unsuccessful." (App. 432). The court further found the record clearly established Petitioner's no contest plea was knowing, voluntary, and intelligent. (App. 433). Ample evidence supports these findings. The post-conviction relief court properly denied relief and this Court should deny certiorari.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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