THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case No. 2016-CP-18-2182

Tevin S. Hart ..... Appellant,

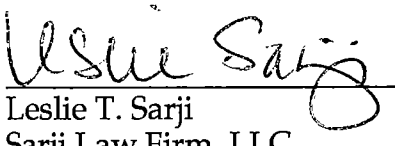
v.

State of South Carolina .....Respondent.

NOTICE OF APPEAL

Tevin S. Hart appeals the Order of the Honorable Michael G. Nettles, filed October 2, 2020 dismissing his Application for Post Conviction Relief. Appellant's counsel received notice of entry of this Judgment on October 6, 2020.

October 12, 2020



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FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP1802182

Tevin S Hart		South Carolina State of	
PLAINTIFF(S)		DEFENDANT(S)	
Submitted by:		Attorney for: ☐ Plaintiff ☐ Defendant ☐ 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. ☐ See Page 2 for additional information.

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

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

☐ **STAYED DUE TO BANKRUPTCY**

☐ **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:

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT 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 (List amount(s) below)

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.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Michael G. Nettle4s	2140	10/2/2020
Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

This judgment was entered on **10/2/2020**, and a copy mailed first class or placed in the appropriate attorney's box on **10/2/2020**, to attorneys of record or to parties (when appearing pro se) as follows:

Tevin S Hart B. R. C. I Marion 175 #358579 4460 Broad River Road Columbia, SC 29210
Leslie Therese Sarji 230 Congress Street Charleston, SC 29403

Benjamin Hunter Limbaugh 1000 Assembly Street Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Cheryl Graham - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	)	IN THE COURT OF COMMON PLEAS FOR THE FIRST JUDICIAL CIRCUIT
Tevin Hart, #358579, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2016-CP-18-2182 **ORDER OF DISMISSAL**

This matter comes before this Court by way of an application for post-conviction relief filed on November 21, 2016, by Tevin Hart ("Applicant"). The State ("Respondent") filed its return on August 1, 2017, in which it moved for the summary dismissal of one of Applicant's claims and requested an evidentiary hearing in order to resolve the remaining claims raised in the application. On August 12, 2020, Applicant, through counsel, filed an amended application incorporating the claims raised in the application and pleading new claims. On Tuesday, September 1, 2020, an evidentiary hearing in this matter was convened before the undersigned. Leslie Therese Sarji, Esquire, represented Applicant,[1] and Assistant Attorney General Taylor Zane Smith of the South Carolina Attorney General's Office represented Respondent. Because the COVID-19 pandemic has made in-person hearings difficult and the transportation of those imprisoned within the South Carolina Department of Corrections inadvisable, the hearing was

[1] At the start of the hearing, Applicant moved to have Sarji relieved and another attorney appointed. The record shows Applicant's last appointed attorney in this matter was also relieved at Applicant's request. Sarji joined in Applicant's motion because Applicant filed a grievance against her with the South Carolina Supreme Court's Office of Disciplinary Counsel. After hearing from Applicant and Sarji on the matter, this Court gave Applicant the choice to proceed in this PCR action as a pro se litigant or else with Sarji as his counsel. Applicant agreed to proceed with Sarji as counsel, and Sarji agreed that she would set aside any personal feelings and represent Applicant to the best of her ability. This Court denied the motions and the parties proceeded with the evidentiary hearing.

conducted remotely. Both parties agreed that they were willing to proceed with the hearing over Webex. At the hearing, Applicant testified on his own behalf. Respondent called as witnesses Melisa White Gay, Esquire, and Assistant Solicitor Donald Neils Sorenson of the First Circuit Solicitor's Office. Following a thorough review of the record in its entirety and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to meet his requisite burden of proof and denies this application for post-conviction relief.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. During its July of 2012 term, the Dorchester County Grand Jury indicted Applicant for first-degree burglary (2012-GS-18-0714), armed robbery (2012-GS-18-0719), and four counts of kidnapping (2012-GS-18-0715). Gay ("plea counsel") represented Applicant, and Sorenson prosecuted the case. On October 7, 2013, Applicant appeared before the Honorable Maite Murphy and pleaded guilty as indicted. At that hearing, Applicant affirmed as true the following facts: Applicant, armed with an assault rifle, and two codefendants broke into the victim's home at approximately 4:00 a.m., possibly after mistaking the victim's home for that of a drug dealer who lived nearby and whom the intruders meant to rob instead; the victim was pregnant at the time, and was home alone with her three kids—all under ten years old—while her husband was working the night shift; and the intruders kicked in the victim's bedroom door and held her at gunpoint while they took jewelry, firearms, and other items of personal property. Plea Transcript 6-12. Though Judge Murphy accepted the entry of Applicant's guilty pleas at that hearing, sentencing was deferred so that Applicant could testify as a witness for the State at the trial of one of his codefendants. On January 23, 2014, which came after the conclusion of the codefendant's trial, Applicant again appeared before Judge

Murphy for sentencing. Judge Murphy sentenced Applicant to imprisonment for forty years for burglary, thirty years for each count of kidnapping, and thirty years for armed robbery, with all sentences running concurrently.

On January 30, 2014, plea counsel filed a motion for reconsideration, arguing the forty- and thirty-year sentences were excessive because Applicant did not have a prior criminal record, had participated in the State's prosecution of his codefendant, and was deprived of the due process of law when Judge Murphy denied plea counsel's motion to continue the sentencing hearing until Applicant's mother could attend. On April 3, 2014, Judge Murphy issued an order denying plea counsel's motion for reconsideration, finding her denial of plea counsel's for a motion for a continuance was justified because Applicant was an adult at the time of sentencing and enjoyed the opportunity to present mitigation statements at his sentencing through his other family members who were present. Judge Murphy also found that Applicant's sentences were justified in light of the facts and circumstances and that the sentences were within the range of sentences authorized by law.

Plea counsel filed a notice of appeal. In accordance with Rule 203(d)(1)(B)(iv), SCACR, plea counsel argued that the appellate courts should review allow Applicant's appeal to proceed, despite the fact that he pleaded guilty, because the sentences issued by Judge Murphy were excessive under the circumstances, Judge Murphy's denial of plea counsel's motion to reconsider Applicant's sentences was an abuse of discretion, and Applicant's decision to plead guilty was tainted by Sorenson's misrepresentations to Applicant; Applicant filed a pro se explanation, too, arguing that Sorenson tricked him into pleading guilty and cooperating with the State in its prosecution of Applicant's codefendant by telling him that his cooperation would help him get out of prison before he became an old man. The South Carolina Court of Appeals allowed Applicant's

direct appeal to proceed.

Appellate Defender Benjamin John Tripp ("appellate counsel") of the South Carolina Commission on Indigent Defense then began representing Applicant. Interim Senior Assistant Deputy Attorney General John Benjamin Aplin of the South Carolina Attorney General's Office represented Respondent on appeal. Appellate counsel filed a motion to be relieved as counsel and a brief pursuant to Anders v. California, 386 U.S. 738 (1967), arguing therein that Judge Murphy abused her discretion in denying plea counsel's motion to reconsider Applicant's sentences because Applicant was younger than his codefendant, did not have a prior criminal record, and was pressured by his codefendant into committing the crime. Applicant did not file a pro se response to appellate counsel's Anders brief. The South Carolina Court of Appeals granted appellate counsel's motion to be relieved and dismissed the appeal. State v. Hart, Op. No. 2016-UP-085 (S.C. Ct. App. filed February 24, 2016) (per curiam). The remittitur was issued on March 21, 2016.

CURRENT PROCEEDING

On November 21, 2016, Applicant filed an application for post-conviction relief, in which he alleged that he was being held in custody unlawfully based on the following grounds:

1. Applicant received the ineffective assistance of plea counsel:
    a. Because of her performance with regard to Applicant's plea agreement; and
    b. By informing Applicant, in conjunction with Sorenson, that Applicant would receive a lesser sentence if he testified against his codefendant; and
2. Judge Murphy abused her discretion by:
    a. Denying plea counsel's motion to reconsider Applicant's sentences;
    b. Not taking into consideration the fact that Applicant testified at his codefendant's trial on the State's behalf; and
    c. Not taking into consideration that Applicant did not have a prior criminal record.

On August 12, 2020, Applicant, through counsel, filed an amended application, incorporating the claims raised in the application and asserting additionally that Applicant was entitled to post-conviction relief because:

1. Applicant received the ineffective assistance of counsel because trial counsel:
    a. Failed to seek the specific performance of an oral plea agreement;
    b. Failed to conduct an adequate investigation into possible defenses available to Applicant;
    c. Failed to share with Applicant the results of any investigation that may have been performed;
    d. Along with Sorenson, lead Applicant to believe that he would receive a specific sentence rather than being subjected to the potential maximum sentences; and
    e. Failed to have an expert perform a mental health evaluation of Applicant in order to assess whether he was mentally ill at the time of the commission of the crimes.

At the start of the evidentiary hearing before the undersigned on September 1, 2020, this Court requested that Applicant specify for the record the grounds upon which he would move forward. Applicant specified that he would be moving forward only upon the grounds specifically articulated in the application for post-conviction relief and in the amended application. This Court finds that all allegations other than these have been waived by Applicant and they will not be addressed in this order.

Testimony at PCR Hearing

Applicant testified on his own behalf at the PCR hearing. He entered an "open plea" for the underlying criminal offenses. He did not understand at the time of the entry of his guilty pleas what an open plea was, but he has since learned what the term means. At his plea hearing, plea counsel had him sign the sentencing sheets without explaining the meaning of an open plea.

Before his plea hearing, plea counsel told him that she wanted to try to get Judge Murphy to sentence him to imprisonment for fifteen years because he was a young man, younger than his codefendants, and did not have a prior criminal history. He did not understand what was happening

during plea negotiations because his lack of a criminal record meant that he did not have any experience with the criminal justice system. He thought that Judge Murphy, who accepted the entry of his guilty pleas and sentenced him, would have had the discretion to "give [him] a plea." He was pleading "straight up" to the indicted offenses, although he did not understand that at the time.

When he, Sorenson, and plea counsel met together, he understood their conversations to mean that, if he testified on the State's behalf against his codefendant, he would come out better than his codefendants and the State and plea counsel would ask Judge Murphy for the minimum sentence. He testified on the State's behalf in his codefendant's trial, but pleaded guilty before Judge Murphy before testifying in that other trial. He had multiple meetings—perhaps two or three—with plea counsel and Sorenson. He cooperated with Sorenson and law enforcement officers by telling them what had happened during the robbery. His understanding was that he would be given a more favorable than his codefendants due to his cooperation with the State. He thought that everyone agreed that he should receive a fifteen-year sentence. When asked if plea counsel had informed him that he could potentially receive a sentence greater than fifteen years, he answered that Judge Murphy clarified those details during his sentencing hearing. When asked if, at the time of his plea hearing, anyone had informed him of the maximum possible penalties, he answered that Judge Murphy told him that he could receive the sentence of life in prison. He pleaded guilty based upon the advice given to him by plea counsel. Plea counsel did not discuss with him the meaning of a "negotiated plea," or whether one such plea was available to him. Plea counsel told him that he would not get any greater of a sentence than his codefendants because he did not have a criminal record. The codefendant against whom he testified was acquitted by the

jury. He would not have pleaded guilty if he had known that the fifteen-year sentence was not a certainty.

Sorenson told him that he would receive a shorter sentence than his codefendants and that he would get out before he aged into an old man. Sorenson did not say "fifteen years" exactly, though; plea counsel said "fifteen." He did not have a written plea agreement. Neither plea counsel nor Sorenson gave him any reason that he could not be sentenced to prison for fifteen years at the time of his plea hearing in advance of his codefendant's trial. He pleaded guilty based off of plea counsel's assurances. Applicant thought that he had something like an oral plea agreement that he would receive a lighter sentence if he pleaded guilty. He thinks plea counsel should have tried to enforce a fifteen-year sentence as an oral plea agreement. Pleading guilty before Judge Murphy was his first time ever appearing before a judge and he did not know how the legal process worked. Plea counsel knew that he had little to no experience with the system. When asked if plea counsel had discussed with him possible defenses that could be raised at trial, he answered that he wanted plea counsel to investigate whether he was young and being threatened—perhaps by his codefendants—and had psychiatric problems. He thought he had a legal defense because he was forced to do the crime. Plea counsel did not discuss the defense of duress with him. He did not fully understand everything that he and plea counsel discussed.

He was not concerned with his safety, but was concerned about the safety of his family. Others told him that he should recant his statements to police, but plea counsel said she would quite representing him if he did so. He did not want to lose his attorney, so he decided not to recant his statements to police. He told plea counsel that he wanted to back out of what he told police, but she threatened to quit if he did.

Applicant admitted that, during his codefendant's trial, he had testified in response to questioning from Sorenson that he State had not offered him any plea deal in exchange for his testimony.

Respondent called plea counsel as its first witness. She was retained to represent Applicant by Applicant's mother. Applicant was seventeen-years-old at the time of the underlying crime. It was traumatic for him to receive the sentences that he did after such a long criminal defense case. She and Sorenson communicated extensively about the case and she has a good memory about everything that happened. She cared deeply about Applicant's defense and believed his sentence to be terrible.

She entered plea negotiations on Applicant's behalf. There was a problem with Applicant's defense because he had given three separate statements to police that were all different. She thought that Manigault, one of Applicant's codefendants to be "a bad guy." That codefendant was the only of the three codefendants to have been acquitted. That codefendant had a history of violence and other criminal activity. Her goal in the representation was to shift the blame from Applicant onto the codefendant. She and Sorenson were working to have Applicant testify against that other codefendant, whom they believed should have been imprisoned for life because he was older than Applicant. Manigault planned the crime and did bad things during the course of the home invasion. On the other hand, Applicant was a young kid who went along with the plans. She was advocating to Sorenson the idea that Applicant was not the planner or the bad guy in the situation. She and Applicant met with detectives in Dorchester County many times during the representation.

Applicant was concerned about the safety of his family and was not forthright with the State about facts of the crime initially. He pleaded guilty with the understanding that he would be working together with the State to convict his codefendant. Applicant did the best that he could in

testifying on the State's behalf, but his multiple statements to law enforcement called into question his credibility during the codefendant's trial. Applicant's testimony did not carry the day during Maniugalt's trial. Manigault's acquittal made her feel sick.

Sorenson made it clear that he would not make a sentencing recommendation. He told them that it would be up to plea counsel to make the case to Judge Murphy that Applicant should get any specific sentence. Sorenson was disgusted with Applicant's lengthy sentence. She did not tell Applicant that his sentence would be for fifteen years, but she did tell him that they would work to get a fifteen-year sentence. She does not think the State had any problem with or objection to her asking for a fifteen-year sentence. She believes that Applicant was very young and confused.

She does not know anything about Applicant's mental health history that would have required her to seek an evaluation. She has had hundreds of clients and does not recall anything happening during the course of her representation of Applicant that caused her to question Applicant's mental competency. She did think that he was a bad listener, though.

She worse loose clothing when in court because of her body type, and was insulted by Applicant's testimony that she looked sloppy. She did not recall ever slurring her words in court. It was possible that she was reading something during Manigault's trial, but would not have done so either when they were in court for Applicant's case or when Applicant was on the stand.

She did not instruct Applicant to answer affirmatively to all of the questions asked during Applicant's plea hearing. She explained to Applicant that his plea and sentencing hearings would be bifurcated, with the codefendant's trial coming in between the two. She discussed with Applicant potential defenses. Applicant did not deny being involved in the crime, but said that he felt that he had no choice but to participate or was under duress from his codefendants. Applicant maintained that he had no idea that they were going to rob the victim, but felt that he could not run

away once the crime began. She did not think that any of those defenses would have been successful had they pursued them at trial. She asked Applicant to stick to the true version of events.

Applicant cross-examined plea counsel at the PCR hearing. Plea counsel testified that perhaps Applicant did not understand that it would not have helped him to talk to the police about the crime. When asked if plea counsel knew that Applicant did not understand the consequences of his actions during her representation of him, plea counsel answered that she believes that Applicant chose not to understand rather than being unable to due to some mental issue, and testified that she was not aware of any cognitive problems on Applicant's part. She agreed that it was her job to explain to Applicant the workings of the criminal justice system. She told Applicant that he would be the State's witness and hope for a good sentence from Judge Murphy.

Applicant questioned plea counsel about testimony she had given during direct examination in which she testified that Applicant did not understand certain things, and asked if this indicated that Applicant was in need of a competency evaluation. Plea counsel answered that she thought that there was no reason to worry about Applicant's mental competency once it became clear that he would testify against Manigault. In light of everything she knows now, though, she questions whether she should have had Applicant's mental health evaluated. She does not think that Applicant lacked the mental competency to stand trial, but she thinks he suffered from hard-headedness.

When asked if plea counsel discussed with Applicant his trial rights, she answered that she could not remember and did not have her criminal defense file to refer to, but thinks that she did because that is her general practice. She offered Applicant the opportunity to back out of his cooperation plea deal before he testified at his codefendant's trial, but Applicant decided that he wanted to stay the course. She told him that defendants who cooperate with the State usually get

lower sentences that they would if they did not cooperate, but she was aware that the State would not negotiate about recommending a specific sentence. She told Applicant that he might receive a tougher sentence if he were to go to trial instead of cooperating with the State and pleading guilty.

On re-direct, plea counsel testified that she did not tell Applicant that he would be punished by Judge Murphy if he were to assert his right to a trial, but did tell him that he was more likely to receive mercy during sentencing if he admitted his guilt and cooperated with the State in convicting the more culpable codefendant. Since representing Applicant, she has had another client with attention deficit disorder or attention deficit hyperactivity disorder, and has had that client's mental competency evaluated.

Respondent called Sorenson as its final witness. He is an assistant solicitor at the First Circuit Solicitor's Office, and he prosecuted Applicant. He did not enter into plea negotiations with plea counsel. He and plea counsel had many conversations and he made it clear that he could not request or recommend any particular sentence for Applicant if Applicant pleaded guilty. Plea counsel wanted him to agree to a negotiated sentence. He probably told Applicant and plea counsel that Applicant's cooperating would maybe result in Applicant's getting out of prison before he aged into an old man.

He tried Manigault, Applicant's codefendant. During that trial, he questioned Applicant. Although he does not have a transcript of that trial, he feels confident that he questioned Applicant about the fact that Applicant was not being offered any special plea deal in exchange for his testimony against Manigault. It is his normal practice to ask those sorts of questions when questioning a codefendant who is testifying as a State's witness during a defendant's trial.

He did not personally witness anything that made him question Applicant's mental competency to stand trial.

Applicant cross-examined Sorenson. He testified he does not remember witnessing plea counsel explain to Applicant that anything Applicant said during their plea negotiation meetings would be inadmissible at trial. Applicant was waffling back-and-forth about whether to plead guilty or go to trial. Either Applicant or Applicant's codefendant may have sent a letter to him at some point with information about the crime, but he is not sure.

He may have said to Applicant that he would get some benefit for pleading guilty and testifying during the codefendant's trial. He does not remember whether he said that Applicant would get some benefit or that he may get some benefit, and referred to Applicant's testimony that Sorenson had never promised any particular sentence as an indication that he did not use the definite phrasing. He was shocked at the sentence Judge Murphy gave to Applicant, but his reaction did not reach the level of disgust because he was aware of the nature of the crime. He reiterated that there was evidence of Applicant's guilt independent of Applicant's statements to law enforcement officers.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to scrutinize their credibility. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008); Strickland v. Washington, 466 U.S. 668 (1984). Applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that counsel was constitutionally ineffective, he 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, at 686. In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, at 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, at 117, 386 S.E.2d at 625 (quoting Strickland, at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, at 690). Applicant must overcome this presumption to receive relief. Cherry, 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, at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing: (1) counsel was deficient and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). The "prejudice prong ordinarily requires more than simply a defendant's assertion that but for counsel's deficient performance he would not have pled but would have gone to trial." Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, at 670. Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 697. Therefore, the function of the post-conviction relief court is to determine if "in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance" required of a criminal defense attorney. Id. at 690.

"A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (S.C. Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977)). "Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea." Garren v. State, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); see Jamison v. State, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014) (observing that "guilty plea[s] must be treated as final in the vast majority of cases" and instructing that caution must be exercised so as not to "undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea"). The South Carolina Supreme Court has instructed that:

> The longstanding test 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. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him.

State v. Inman, 395 S.C. 539, 556, 720 S.E.2d 31, 40 (2011) (internal quotations and citations omitted). "[A] guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." Jamison, at 468, 765 S.E.2d at 129 (citations omitted).

Based on this standard set forth above, and the reasoning below, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel. The claims raised by Applicant are addressed more fully below:

Trial counsel was constitutionally ineffective because of her performance with regard to Applicant's plea agreement; for informing Applicant that he would receive a lesser sentence if he testified against his codefendant; for failing to seek the specific performance of an oral plea agreement; and for, along with Sorenson, leading Applicant to believe that he would receive a specific sentence rather than being subjected to the potential maximum sentences.

Applicant claims that plea counsel was constitutionally ineffective for misadvising him that, if he pleaded guilty and cooperated with the State in its prosecution of his codefendant, he would receive a fifteen-year sentence, and for failing to move during the sentencing hearing for the enforcement of an oral plea agreement to a fifteen-year sentence. Applicant testified that he would not have pleaded guilty if plea counsel and Sorenson had not mislead him into believing that he would receive a fifteen-year prison sentence in exchange for his pleading guilty and testifying for the State.

This Court finds that Applicant has failed to show that there was any fifteen-year plea agreement to be enforced. At Applicant's plea hearing, Sorenson put on the record that "there [had] been no negotiations regarding any sentence. That would be up to [Judge Murphy's] discretion at the appropriate time." Plea Transcript 14. Applicant confirmed at the PCR hearing that he heard Sorenson make that statement on the record. When Judge Murphy asked at Applicant's plea hearing if plea counsel had the same understanding of the agreement as Sorenson, plea counsel

answered, "Yes." Plea Transcript 14. Plea counsel informed Judge Murphy that she had explained to Applicant, among other things, the possible punishments "[a]d nauseam," and that she believed that Applicant understood them. Plea Transcript 3-4. Both Sorenson and Applicant confirmed at the PCR hearing that Sorenson questioned Applicant during the State's case at his codefendant's trial about the circumstances of his pleading guilty, and that Applicant confirmed during the questioning that the State did not extend any specific offers to him or promise him anything in exchange for his testimony. At the PCR hearing, plea counsel testified that she did not tell Applicant that he would receive a specific sentence if he pleaded guilty and testified on the State's behalf, and that she did not tell him that he would receive a fifteen-year sentence. Sorenson testified at the PCR hearing that he did not tell Applicant that he would receive a fifteen-year sentence if he pleaded guilty and testified on the State's behalf. All of this leads to the conclusion that neither plea counsel nor Sorenson told Applicant in private or before Judge Murphy that Applicant would receive a specific sentence in exchange for his pleas and testimony. There was no oral plea agreement for plea counsel to enforce.

At the plea hearing, Applicant affirmed to Judge Murphy that he understood that the potential penalty for first-degree burglary could be as much as life in prison, that he could be sentenced to as much as thirty years in prison for armed robbery, and that he could be sentenced to as much as thirty years in prison for each count of kidnapping. Plea Transcript 5-6. When Judge Murphy asked if Applicant understood that he "could be looking at a life sentence if [he were] convicted," Applicant answered, "Yes, ma'am." Plea Transcript 6. Applicant affirmed that he had discussed that possibility with plea counsel. Plea Transcript 6. Applicant affirmed that no one had promised him anything or held out the possibility of a reward in order to get Applicant to plead guilty. Plea Transcript 15-16. Applicant affirmed that he had not been threatened or coerced to

plead guilty by anyone. Plea Transcript 16. Applicant affirmed that no one had suggested that he give certain answers in response to Judge Murphy's questions and that his answers were "absolutely truthful . . . ." Plea Transcript 16. Even if plea counsel had misadvised Applicant as to the possible sentences he would face if he pleaded guilty, Judge Murphy's colloquy would have cured that error. Holden v. State, 393 S.C. 565, 575, 713 S.E.2d 611, 616 (2011) (citations omitted) (concluding that any alleged deficiency in plea counsel's advice to Holden was cured by the plea court's colloquy), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

This Court finds that Applicant has failed to show that plea counsel was constitutionally ineffective for misadvising Applicant as to the potential sentences he would face if he pleaded guilty and for allowing Applicant to be misinformed about the potential sentences to which he would be exposed after pleading guilty because Applicant has not shown any deficiency in plea counsel's performance and has not shown any resulting prejudice. This claim for post-conviction relief is denied and dismissed with prejudice.

Judge Murphy abused her discretion by denying plea counsel's motion to reconsider Applicant's sentences, not taking into consideration the fact that Applicant testified at his codefendant's trial on the State's behalf, and not taking into consideration that Applicant did not have a prior criminal record.

Applicant argues that Judge Murphy abused her discretion in sentencing Applicant and by denying plea counsel's motion to reconsider. Applicant's arguments fail because Judge Murphy had the discretion to issue the sentences. First-degree burglary is punishable by imprisonment for at least fifteen years and for as much as life. S.C. Code Ann. § 16-11-311(B). Armed robbery is punishable for a term of imprisonment of ten to thirty years. S.C. Code Ann. § 16-11-330(A). Kidnapping is punishable for a term of imprisonment of up to thirty years. S.C. Code Ann. § 16-3-910. A trial court has broad discretion to sentence a defendant within the limits authorized by

statute. In re M.B.H., 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010) (citing Brooks v. State, 325 S.C. 269, 481 S.E.2d 712 (1997)). In sentencing, the trial court must be permitted to consider "any and all information that reasonably might bear on the proper sentence" the defendant before it. Id. (citing State v. Hicks, 377 S.C. 322, 659 S.E.2d 499 (S.C. Ct. App. 2008)). An appellate court will not overturn a sentence absent an abuse of discretion when the sentence is based upon an error of law of a factual conclusion that lacks evidentiary support. Id. (citing State v. Rice, 375 S.C. 302, 652 S.E.2d 409 (S.C. Ct. App. 2007), overruled on other grounds by State v. Byers, 392 S.C. 438, 392 S.E.2d 55 (2011)).

The sentence issued by Judge Murphy for each of Applicant's offenses was within the range authorized by its respective statute. There was nothing in the length of the sentences that supports an argument that the sentences fell outside the bounds allowed by statute. Applicant has failed to show that Judge Murphy took into consideration any fact that she should not have when she issued the sentences, failed to take into account anything that she was required to, or improperly weighed the circumstances of Applicant's case. Though Applicant certainly hoped to receive a more favorable sentence, Judge Murphy did not abuse her discretion in sentencing him. Applicant has failed to show that he is entitled to post-conviction relief upon these claims, and the claims are denied and dismissed with prejudice.

Plea counsel was constitutionally ineffective for failing to conduct an adequate investigation into possible defenses available to Applicant and for failing to share with Applicant the results of any investigation that may have been performed.

Applicant argues that the defense of duress may have been available to him and that plea counsel was constitutionally ineffective for failing to properly discuss with him the possibility of raising the defense at trial. Applicant's testimony at the PCR hearing was that he did not set out with the intention to break into the victim's home and rob her with his codefendants; instead, he

testified, he went along with his codefendants because he was afraid to refuse them. Applicant also alleges that plea counsel did not share with him the results of any investigation that she conducted.

A defense attorney has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. Strickland, at 691. Thus, "[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). A defense attorney's "[f]ailure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (citing Kibler v. State, 267 S.C. 250, 227 S.E.2d 199 (1976)). An applicant alleging that his attorney failed to prepare for the case must show how additional preparation would have resulted in a different outcome. Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997). Moreover, counsel's decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel's judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). "[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Id. at 690; Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633-34 (S.C. Ct. App. 2014). An "applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (citing Pauling v. State, 331 S.C. 606, 503 S.E.2d 468 (1998)); see also Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (holding that the PCR court's

finding that Dempsey was prejudiced by trial counsel's failure to call an expert at trial to rebut the State's expert was merely speculative when Dempsey failed to have an expert testify at his PCR hearing), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

This Court finds that Applicant has failed to show that plea counsel's investigation was inadequate. With the exception of his quite brief testimony about the possibility that his statements to law enforcement officers would be suppressed if he had proceeded to trial, the possibility that he could have raised a defense of duress had he proceeded to trial, and his belief that the outcome of his case may have been different had his mental competency been evaluated before he pleaded guilty, which will be addressed later in this order, Applicant did not present any argument before this Court as to additional investigation that plea counsel should have done that she did not.

Applicant testified at the PCR hearing that he participated in the crime because he was too afraid of his codefendants to refuse to go along with them. Plea counsel agreed it was possible that Applicant did not feel free to refuse to go along with his codefendants in their plans to break into the home of a drug dealer and rob him, and did not feel free to persist in their crimes despite breaking into the victim's home instead of the dealer's. Plea counsel did not believe that Applicant would be successful in raising the defense of duress at trial, though. She affirmed to Judge Murphy at Applicant's plea hearing that, based upon her investigation, she believed the State would be able to satisfy a jury of Applicant's guilt beyond a reasonable doubt. Plea Transcript 4. Applicant has failed to show that her estimation of the likelihood of being successful in raising that defense at trial was unreasonable.

The South Carolina Supreme Court has suggested that trial courts instructing a jury on the defense of duress charge the jury as follows:

> To establish duress which will excuse a criminal act, the degree of coercion must be present, imminent, and of such a nature as to induce a well-grounded

apprehension of death or serious bodily harm if the act is not done.

. . .

The fear of injury must be reasonable.

State v. Benjamin, 345 S.C. 470, 475, 549 S.E.2d 258, 260 (2001), fn.3. At his PCR hearing, Applicant testified as to being scared of his codefendants, concerned for his safety and for his family's, but did not present evidence that would require a trial court to instruct the jury on the defense of duress. The most specific, and likely only, justification that Applicant gave for being afraid of his codefendants was their being older than he. Applicant's general apprehension of his codefendants' reactions if he had declined to join with them in the crimes did not establish the presence of any degree of coercion, much less one that was imminent and of such a nature that it would have induced in Applicant a "well-grounded" apprehension of death or serious bodily harm if he did not help the codefendants commit the crimes. Our appellate courts have required defendants requesting that their juries instructed on the defense of duress to make a stronger and more particular showing than Applicant has done so here. Benjamin, at 474, 549 S.E.2d at 260 (finding that a trial court's instruction that duress "could be" a defense was proper because the jury could reasonably have concluded the defense was applicable only to its deliberations as to the offense of armed robbery and not to the offense of murder when Benjamin testified that he participated in the robbery of a gas station only because his codefendant threatened to shoot him if he did not); State v. Holliday, 333 S.C. 585, 586-88, 510 S.E.2d 436, 437-38 (S.C. Ct. App. 1998) (finding that the trial court properly refused to instruct the jury on the defense of coercion over Holliday's argument that the victim coerced him into driving away with him in the victim's car at gunpoint, leading him to fear that the victim would shoot him if he attempted to exit the car, because the facts did not support the instruction and because Holliday did not offer evidence that "anyone . . . actually compelled [Holliday] to take the car."); State v. Robinson, 294 S.C. 120, 122-

23, 363 S.E.2d 104, 104-05 (1987) (finding the trial court did not err in refusing to instruct the jury on the defense of duress when Robinson helped his codefendant load a victim's body into a car, helped his codefendant jump-start the car, and gave to the codefendant the rifle the codefendant used to kill the second victim because the codefendant "had [his] gun towards" him and looked at him "for a few seconds," and because Robinson "didn't know" what the codefendant would do but was scared that the codefendant would have followed him had he run away).

Furthermore, even if there had been a threat of harm to Applicant, he has failed to show that there was not reasonable way, other than committing the crime, in which he could have escaped it. The lack of an alternative way of avoiding the threat of harm is required if a defendant is to successfully raise the defense of duress. E.g., Benjamin, at 475, 549 S.E.2d at 260, fn.3 ("Coercion is no defense if there is any reasonable way, other than committing the crime, to escape the threat of harm."). Rather than painting Applicant as an unwilling bystander or a hostage-accomplice hybrid, the facts show that Applicant was a participant in the crimes. Applicant was in the victim's home armed with an assault rifle, even though his codefendants had handguns only. Plea Transcript 9, 12. Applicant masked himself with a bandana before entering the victim's home. Plea Transcript 7, 10. When a law enforcement officer patrolling the area came upon the intruders' getaway vehicle after the robbery, all of the intruders scattered. Plea Transcript 9. Applicant has failed to show that plea counsel's conclusion that raising the defense of duress at trial would likely have not helped Applicant was unreasonable or that plea counsel's investigation of the supporting facts and consideration of the issue was inadequate in any way.

Applicant also claims plea counsel was constitutionally ineffective because she did not share with him the results of any investigation that she conducted. Applicant bears the burden of demonstrating that there is some additional investigation that plea counsel should have done and

that he would not have pleaded guilty had that additional investigation been done. A defense attorney's "[f]ailure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead, at 334, 496 S.E.2d at 417. An applicant alleging that his attorney failed to prepare for the case must show how additional preparation would have resulted in a different outcome. Skeen, at 214, 481 S.E.2d at 132. Applicant has failed to meet that burden because he has not presented evidence in support of the claim, but has merely speculated that the outcome of his case may have been different had plea counsel done some more investigation and shared the results thereof with him. In this case, Applicant admitted to police that he participated in the underlying crimes. Plea Transcript 11-12. At his plea hearing, Applicant agreed with the State's recitation of facts and affirmed that plea counsel had done everything for him that he felt she could have or should have done and that he was "completely satisfied" with plea counsel's services. Plea Transcript 12, 15. Applicant affirmed that he understood that, by pleading guilty, he was waiving his trial rights, including the right to a trial by jury, the right to require the State to convince a jury of his guilt beyond a reasonable doubt, the right to the presumption of innocence, the right to remain silent, the right to challenge the State's evidence and present his own evidence, and the right to seek the suppression of any incriminating statements he had already made to law enforcement. Plea Transcript 13-14. Applicant's own testimony at his plea hearing indicates he was aware that he was waiving his rights to make his own case by pleading guilty, and explicitly indicates he was aware that his waiver would have precluded him from challenging the admissibility of his statements to law enforcement.

This Court finds Applicant has failed to demonstrate that plea counsel was constitutionally ineffective for failing to conduct an adequate investigation or to properly inform Applicant of the

results of any investigation and of potential defenses because Applicant has failed to show any deficiency in his attorney's performance and resulting prejudice. These claims are denied and dismissed with prejudice.

Plea counsel was constitutionally ineffective for failing to have an expert perform a mental health evaluation of Applicant in order to assess whether he was mentally ill at the time of the commission of the crimes. Plea counsel was constitutionally ineffective for failing to have an expert perform a competency evaluation in order to assess whether he was competent to stand trial.

Applicant's claim as pleaded concerns plea counsel's alleged ineffectiveness for failing to have Applicant's mental health evaluated for the purpose of determining whether he was mentally ill at the time of the crimes. Presumably, this claim concerned whether Applicant would have been entitled to raise the defense of insanity. See State v. Simpson, 425 S.C. 522, 536, 823 S.E.2d 229, 267 (S.C. Ct. App. 2019) (instructing that, in the case of the affirmative defense of insanity, the jury decides whether a defendant knew right from wrong based upon expert testimony, lay testimony, or both) (citing State v. Lewis, 328 S.C. 273, 494 S.E.2d 115 (1997)). Applicant did not present any evidence or argument as to this claim at the PCR hearing. The burden was on Applicant to prove this claim. Therefore, the claim is denied and dismissed with prejudice. Although he did not plead the claim in his application for post-conviction relief or his amended application, Applicant did argue at the PCR hearing that plea counsel should have had his mental competency evaluated in order to determine whether he was competent to stand trial. This is a claim distinct from the one pleaded and abandoned; since Applicant argued in support of the mental competency claim at the PCR hearing, this Court will address it here.

In order for a defendant to be competent to stand trial, he must have "sufficient present ability to consult with his lawyer with a reasonable degree of relational understanding" and must have a "rational as well as factual understanding of the proceedings against him." Ramirez v. State, 413 S.C. 351, 366, 776 S.E.2d 101, 110 (S.C. Ct. App. 2015) (citing Jeter v. State, 308 S.C. 230,

417 S.E.2d 594 (1992)), rev'd on other grounds, Ramirez, at 22, 795 S.E.2d at 845; Dusky v. United States, 362 U.S. 402 (1960) (per curiam) (internal quotations omitted). A defense attorney may reasonably rely upon his own perceptions in determining whether a mental competency evaluation is required. Jeter, at 233, 417 S.E.2d at 596. If an applicant for post-conviction relief establishes that his counsel's performance was deficient due to counsel's failure to request a mental competency evaluation when one was warranted, the applicant must then demonstrate that there is a reasonable probability he was incompetent at the time of trial in order to be entitled to relief. See Ramirez, at 22, 795 S.E.2d at 845 (applying this prejudice standard in a case in which applicant pleaded guilty but mentally ill after one mental evaluator concluded he was competent to stand trial but another concluded applicant was severally mentally retarded) (citation omitted).

This Court finds Applicant has failed to show any deficiency in plea counsel's not requesting that Applicant's mental competence to stand trial be evaluated because Applicant has not introduced evidence that plea counsel's decision not to request an evaluation fell below an objective standard of reasonableness. At Applicant's plea hearing, plea counsel affirmed to Judge Murphy that she believed that Applicant understood the charges against him, the punishments to which he could be exposed if he were convicted, and his rights. Plea Transcript 4. Plea counsel affirmed to Judge Murphy that she had discussed with Applicant the fact that the offenses to which he was pleading guilty were considered violent and most serious and that, in her opinion, Applicant understood the content of that discussion. Plea Transcript 12-13. Plea counsel's testimony before this Court indicates that she believed that Applicant was hard headed and did not always heed her legal advice, not that she believed that he lacked the ability to understand their conversations or to understand the proceedings. Applicant affirmed to Judge Murphy at the plea hearing, in plea counsel's presence, that he had never been treated for "any mental illness," and was not aware of

"any physical, emotional or nervous problem that might [have kept him] from understanding what [he] was doing" in court that day. Plea Transcript 5. Applicant agreed that he understood Judge Murphy's questions and did not have any questions at the plea hearing. Plea Transcript 16. Plea counsel testified before this Court that she had no reason to believe that Applicant suffered from any mental deficiency. Plea counsel reasonably relied upon her own perception that Applicant's mental competency was not questionable when she did not request an evaluation. See Garren v. State, 423 S.C. 1, 13, 813 S.E.2d 704, 710 (2018) (finding that plea counsel reasonably relied upon his own perceptions of his client's competency because, based on plea counsel's interactions with his client, he believed that a competency evaluation was not ended, believed that his client was competent at the time of his plea hearing, and continued to believe that his client was competent). Applicant asserted at the PCR hearing that plea counsel instructed him to agree with Judge Murphy's questions even if he did not agree, Applicant explicitly and unequivocally affirmed to Judge Murphy at the plea hearing that no one had suggested answers that he should give in response to her questions and that he had "been absolutely truthful in each and every answer" he gave. Plea Transcript 16.[2] Applicant asserted at his PCR hearing that his confusion about the nature of his cooperation with the State's prosecution of his codefendant and whether he would realize any benefit therefrom led him to plead guilty; however, the manifest focus of Applicant's testimony was that plea counsel and Sorenson mislead him into believing that he would receive a fifteen-year sentence if he pleaded guilty and cooperated with the State, not that he lacked the ability to understand their explanations to him or to understand the proceedings. Applicant simply

2 For this Court to accept as true Applicant's testimony at the PCR hearing that he merely recited answers to Judge Murphy that were given to him by plea counsel, it would have to accept the testimony as a sworn admission that Applicant provided false testimony while under oath before Judge Murphy.

has not shown that plea counsel should have questioned his mental competency at the time of his plea hearing.

This Court finds Applicant has failed to show any resulting prejudice from plea counsel's not having Applicant's mental competency evaluated. Applicant has not demonstrated that there was a reasonable probability that he would have been found incompetent if his competency had been evaluated before he pleaded guilty. Applicant's testimony did not establish that he lacked the sufficient ability at the time to consult with plea counsel with a reasonable degree of relational understanding about his criminal case or the consequences of pleading guilty. He did testify at the PCR hearing that he had attended counseling when he was younger after suffering sexual abuse, but his testimony made the counseling sound more like family therapy than psychiatric treatment. When asked directly by this Court if he had ever undergone psychiatric treatment, Applicant was unable to answer in the affirmative. Although he testified that he suffers from some sort of attention deficit disorder, he produced no evidence that that would have affected his competency at the time of his plea hearing. Applicant's argument that he suffered prejudice from the lack of a competency examination is purely speculative. See Garren, at 13, 813 S.E.2d at 711 (finding that there was no evidence to support the PCR court's finding that Garren suffered prejudice from his defense attorney's failure to have Garren's mental competency evaluated because Garren did not introduce evidence at his PCR hearing that there was a reasonable likelihood that he would have been found incompetent to plead guilty if the evaluation had been conducted).

This Court finds that Applicant has failed to show that plea counsel was constitutionally ineffective for not having Applicant's mental competency evaluated because he has failed to show any deficiency in plea counsel's performance and resulting prejudice. This claim for post-conviction relief is denied and dismissed with prejudice.

CONCLUSION

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

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 18 day of Sept., 2020.

Michael G. Nettles
Presiding Judge

Florence, South Carolina