

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Post Conviction Relief

Debra R. McCaslin, Circuit Court Judge

Lower Court Case No.: 2019-CP-32-1889

Lamar R. Ray #376786,..... Petitioner

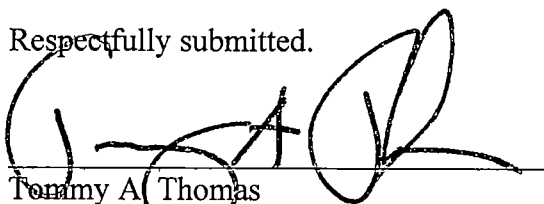
vs.

State of South Carolina,Respondent.

NOTICE OF APPEAL

The Appellant, Lamar R. Ray #376786, appeals the Order of Dismissal signed by the Honorable Debra R. McCaslin, dated and filed on October 8, 2020. Appellant received written notice of entry of this order on November 10, 2020.

Respectfully submitted.



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December 8, 2020

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

FILED

2020 OCT -8 PM 12:00

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Lamar R. Ray, SCDC #376786,

LISA M. OSMER
CLERK OF COURT
LEXINGTON SC

Case No. 2019-CP-32-1889

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court as an action for post-conviction relief (PCR) commenced by Lamar R. Ray ("Applicant") on May 13, 2019. The State ("Respondent") made its return and motion for a more definite statement on August 30, 2019. Applicant, through PCR counsel, thereafter filed an amended application on September 16, 2019. Respondent requested an evidentiary hearing through its amended return on May 1, 2020.

On September 24, 2020, this Court held a hearing in this matter via WebEx in accordance with the Chief Justice's administrative memorandum *Court Operations during the Seven-Week Period August 3–September 18, 2020*.¹ Applicant was present and represented by Tommy A.

¹ See S.C. Sup. Ct. Memorandum dated July 30, 2020 ("All . . . scheduled hearings may be conducted using remote communication technology to avoid the need for a physical appearance of all or some of the parties, counsel or witnesses. *Consent of the parties or counsel is not required.* Video conferencing should be the primary means of holding hearings. In-person hearings should occur only when remote hearings are not feasible. I encourage you to use WebEx, the conferencing platform supported by the Judicial Branch.") (emphasis added). Nonetheless, this Court engaged in a thorough colloquy with Applicant at the outset of the hearing, who consented to his evidentiary hearing being held via WebEx.

Thomas, Esquire. Respondent was represented by Assistant Attorney General Lillian L. Meadows. Applicant testified on his own behalf at the hearing, as did his plea counsel, Stanley Myers, Esquire ("Counsel"). In addition to the pleadings in this action, this Court had before it a copy of the Lexington County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the records of the current PCR action.

After hearing the testimony at the PCR hearing and a full review of the record, this Court finds Applicant's allegations regarding ineffective assistance of counsel and involuntary guilty plea are without merit. Therefore, for the reasons discussed below, this Court denies relief and hereby dismisses this action with prejudice.

PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections. During its March 2016 term, the Lexington County Grand Jury indicted applicant for first-degree burglary (2016-GS-32-933). On June 5, 2018, Applicant appeared before the Honorable Eugene C. Griffith, Jr., and pleaded guilty to the lesser-included offense of second-degree burglary (non-violent) without formal negotiations or recommendations as to sentencing. Stanley Myers, Esquire represented Applicant, and Assistant Solicitor Angela Martin standing in for Assistant Solicitor Kate Usry prosecuted the case. Judge Griffith sentenced Applicant under the Youthful Offender Act to a term of imprisonment not to exceed six years. Applicant did not appeal his guilty plea or sentence.

STATEMENT OF FACTS

On January 27, 2014, Applicant and Mozelle Johnson forcibly broke into the home of Tyler Mathis and Brittany Shirley at approximately 3:00 AM. (Plea Tr. 5). One of the men dragged Shirley out of the bed, put a gun to her head, and cursed at her while asking her to open the safe.

(Plea Tr. 5-6). During the struggle, Shirley realized she recognized the man's voice was the voice of a childhood friend; Mozelle Johnson. (Plea Tr. 6), Johnson knew Shirley had recently gotten a car accident settlement of over \$20,000.00. (Plea Tr. 6). He apparently also knew there was a safe in the home. (Plea Tr. 6).

Mathis was also attacked and beaten by one of the men. (Plea Tr. 6). However, he was eventually able to pull Johnson off Shirley. (Plea Tr. 6). A struggle then ensued between Mathis and Johnson, which started in the bedroom and continued into the living room. (Plea Tr. 6). At that time, Shirley was able to retrieve her pistol from her nightstand, and proceeded to discharge all six shots in the handgun. (Plea Tr. 6). Evidence from the Lexington County Sheriff's Office later revealed that several bullets struck Johnson. (Plea Tr. 7).

When law enforcement arrived on the scene, they found Johnson dead in the front yard of the residence. (Plea Tr. 7). Applicant was discovered a few hours later at the hospital with a gunshot wound to his upper body. (Plea Tr. 7). He was taken into custody after giving two or three different statements to law enforcement about that night. (Plea Tr. 7-8). However, Applicant did consistently admit going to the home with Johnson. (Plea Tr. 7).

IV. ISSUES BEFORE THIS COURT

In his original application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on:

1. "Involuntary guilty plea"
2. "Ineffective Assistance of Counsel"

Respondent made its return and motion for a more definite statement on August 30, 2019. Pursuant to Rule 71.1, SCRPC, Applicant, through PCR counsel, amended his application to include the following allegations:

1. "That the Applicant entered into a plea upon the advice of Defense Counsel. That he was advised that he was entering a Youthful Offender plea. He was advised by counsel that he would receive a nine (9) month youthful offender sentence. That he would do nine (9) months and then later have his record expunged."
2. "That once Applicant was received at the South Carolina Department of Corrections, he was informed that he would have to do a mandatory three (3) year sentence."
3. "That the Applicant is informed and believes that Defense Counsel was ineffective because he was not aware of the mandatory requirements of his plea under the Youthful Offender Act. That Defense Counsel inappropriately advised the Applicant. The Applicant acted upon the representations and recommendations of Defense Counsel. That as a result, his plea was not freely, voluntarily, knowingly or intelligently given."
4. "That the Applicant reserves the right to amend the Application as may become necessary."

At the outset of the evidentiary hearing, PCR counsel stated Applicant was proceeding only on the claims pled in the amended PCR application. To the extent the allegations set forth in Applicant's original application can be construed as separate grounds for relief from the grounds stated at the PCR hearing, this Court finds those claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice. S.C. Code Ann. § 17-27-90.

STANDARD OF REVIEW

An applicant may seek PCR upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;

4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

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), SCRPC; *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. 466 U.S. at 687. To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient

prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; see also *Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that “[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable” (citation and internal quotation marks omitted)).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, *Hill v. Lockhart*, 474 U.S. 52 (1985), extended the two-part *Strickland* test to challenge guilty pleas based on ineffective assistance of counsel. See *Padilla v. Kentucky*, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). The analysis of counsel’s performance under the first prong of *Strickland* remains unchanged—the applicant must show that counsel’s representation fell below an 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 guilty 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).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in this action incorporated by way of the State’s return, this Court proceeds to the claims raised in the amended application and finds each to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

The issue before this Court is whether Applicant received ineffective assistance of counsel, rendering his guilty plea unknowing and involuntary. Specifically, Applicant contends Counsel’s ineffectiveness in advising him he would receive a nine to eighteen month sentence under the Youthful Offender Act if he pleaded guilty to second-degree burglary (non-violent) caused Applicant to enter into an involuntary and unknowing guilty plea. This Court disagrees, and finds the combined record from the plea hearing and the evidentiary hearing establishes Applicant freely, knowingly, and voluntarily pleaded guilty.

Ineffective Assistance of Plea Counsel

At the PCR hearing, Applicant testified Counsel never told him anything about a three-year sentence, and that he was always under the impression he would serve only nine to eighteen months. Applicant testified he never entered into the home during the course of the burglary, and he therefore should not have been charged. Applicant further testified Counsel never mentioned a three-year sentence to him, and that, had he known he would serve a three-year sentence, he would not have pleaded guilty and would have instead gone to trial on the first-degree burglary indictment.

This Court finds credible and persuasive the testimony of Counsel, who presented well-recalled testimony of relevant events leading up to Applicant's guilty plea. Counsel testified Solicitor Kate Usry made an offer for Applicant to plead guilty to the lesser-included offense of second-degree burglary (non-violent) in May of 2018. On May 23, 2018, Counsel sent the following email to Solicitor Usry:²

I am confirming your offer of burglary second (non-violent). Is it your understanding that if he receives a sentence under the YOA, then he will have to serve an active 3 years. I will be speaking with Mr. Ray. Who are the upcoming judges in the event he accepts the offer?

Solicitor Usry responded:

I am confirming my offer. I am not sure about how a YOA would be applied exactly should a judge choose to order that. Griffith is the next term of court (this case may be one that is on the old roster list going out this week). I'd like to move this case on June 5th.

Based on this response, Counsel testified he consulted with other members of the defense bar regarding sentencing because the YOA statute had changed after Applicant committed the

² At the PCR hearing, this email exchange was admitted into evidence as State's Exhibit 1.

offense alleged. In 2016, section 24-19-10(d)(iv) of the South Carolina Code was amended to add that the mandatory three-year minimum applied only to second-degree burglary (violent). However, like most criminal statutes, Counsel confirmed the statute would not apply retroactively, and that Applicant would be sentenced under the version in effect at the time of the commission of the crime. Counsel reiterated that he did not convey the State's offer to Applicant until he confirmed that he would be subject to the mandatory three-year minimum. The only time Counsel mentioned a nine-month sentence was in the context of a third-degree burglary; however, Counsel explained to Applicant the solicitor would not agree to reduce the charge to third-degree burglary.

Counsel testified he believed it would be in Applicant's best interest to plead guilty, particularly given the seriousness of the facts of this case. *See Tollett v. Henderson*, 411 U.S. 258, 268 (1973) (explaining that the prospect of plea bargaining, the expectation or hope of a lesser sentence, or the convincing nature of the evidence against the accused are considerations that might well suggest the advisability of a guilty plea). However, Counsel testified he was ready to go to trial. In fact, Counsel testified Applicant did not plan on pleading guilty that day; rather, their intention was to formally reject the State's plea offer. Counsel testified Applicant made the decision to plead guilty after conferring with his child's mother, and because there was no prior intention to plead guilty that day Counsel did not have any of the customary plea acknowledgement forms which he typically has clients complete.

Following Applicant's plea, Counsel received multiple phone calls from Applicant's family members, who were apparently confused as to the sentence Applicant received. Counsel stated he attempted to explain the sentence to Applicant's father and grandmother multiple times; however, neither were present for his plea nor were they particularly involved in the case from the outset. Counsel further testified he went to Turbeville Correctional Institution to visit Applicant at

least twice because the information he was receiving from Applicant's family conflicted with what Applicant was telling him directly. Much of the confusion regarding Applicant sentence apparently stemmed from the fact that other inmates who were convicted of the same crime were being released while Applicant remained incarcerated.

As a part of the record, Applicant submitted four letters from his Counsel (Applicant's Exhibits 1-4) which Applicant argues are evidence that Counsel was unaware of the three year minimum sentence Applicant would be required to serve. Applicant was questioned about the four letters that he received from Counsel after his incarceration (Applicant Exhibits 1-4). Applicant's Exhibit 1 is a letter from Counsel dated September 5, 2018, acknowledging that there were issues with the Department of Corrections and containing a copy of the Inmate Search details that confirmed that Judge Griffith had sentenced him under the Youthful Offender Act not to exceed five years.³ Counsel further requested that Applicant inform Counsel what he was being told the Department of Corrections.

The second letter from Counsel (Applicant's Exhibit 2), dated September 26, 2018, in which Counsel stated that he would contact Judge Griffith to seek a better understanding of Applicant's sentence. Counsel stated he was confused about this matter because the Judge's sentence did not appear to be in line with what Applicant was being told by the Department of Corrections and that Counsel certainly did not intentionally do anything to mislead Applicant.

The third letter (Applicant's Exhibit 3), dated November 8, 2018 was addressed to Turbeville Correctional Institute and copied to Applicant. The letter states that, at the time of the offense, the YOA statute required a mandatory minimum prison sentence of three years. However,

³ This differs from the transcript, in which the plea judge sentences him to a term not to exceed six years, as well as his inmate detail report, which shows a sentence of four years.

at the time of the guilty plea, the law had been changed and it no longer required a three-year mandatory minimum on a Burglary 2nd (non-violent), and that if the incident had occurred today, the same plea agreement would not result in the 3-year minimum.

The fourth and final letter (Applicant's Exhibit 4) dated October 3, 2018 to Applicant, Counsel stated that he had looked into the situation regarding the sentence and it appeared that the Department of Corrections is correct. Based on the date of Applicant's offense, the law stated that a youthful offender act sentence for Burglary 2nd required a mandatory three years' incarceration. Counsel further stated in the letter that he realized Applicant relied on the advice he had provided and, based on that, he would file a motion asking the judge to reconsider the sentence because Applicant relied on Mr. Myers' advice regarding this sentencing.

Counsel further testified at the PCR hearing that purpose of the letters was to convey his efforts to assist Applicant in seeking a reduced sentence based on the subsequent change in the law, but despite his efforts Applicant would be required to serve the mandatory three year minimum. Counsel maintained that there was never any confusion prior to Applicant's guilty plea that he would be required to serve a three year active sentence.

Applicant testified at the PCR hearing that he entered into the plea based upon the representation of Counsel that he would receive a minimum nine month, maximum eighteen month sentence and his YOA would eventually be expunged. He further stated that he did not enter this plea freely and voluntarily, knowingly, or intelligently.

Regarding Counsel's September 26, 2018 letter to Applicant, Counsel testified the confusion he was referring to was related to questions about whether Applicant's sentence would be day-for-day and other non-collateral issues, including where he would be housed. Counsel addresses these concerns in his October 3, 2018 letter, where he also addressed the effect of the

amended statute. Counsel testified he knew the amended statute did not apply retroactively, but that he would ask Judge Griffith to consider re-sentencing Applicant to a non-conforming sentence based on the updated statute anyway. However, Counsel explained that he did not ultimately contact Judge Griffith because the solicitor would not consent to re-sentencing.

As an initial matter, the record indicates Applicant had incentive to plead guilty and substantially benefitted from Counsels' plea negotiations. *See Bright v. State*, 365 S.C. 355, 618 S.E.2d 296 (2005) (reversing PCR court's grant of relief when defense counsel negotiated favorable plea on respondent's behalf), *abrogated on other grounds by Smalls v. State*. This Court finds credible Counsel's testimony he never told Applicant he would receive a nine-month sentence. This finding is supported by Counsel's May 2018 email to the solicitor, where he inquires specifically about the three-year mandatory minimum sentence under the Youthful Offender Act. Applicant even confirmed with the plea court that he had not been promised "anything other than a step down from burglary first to burglary second" in exchange for his plea. (Plea Tr. 9).

Even assuming Counsel was deficient in this regard, this Court finds Applicant failed to meet his burden. *Hill* makes clear the prejudice prong ordinarily requires "something more" than simply a defendant's assertion that but for counsel's deficient performance he would not have pleaded guilty but would have gone to trial. *Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009) (*citing Hill*, 474 U.S. at 58-59). Applicant failed to present evidence showing that he reasonably would have risked facing fifteen years to life by going to trial rather than pleading guilty to a lesser-included, non-violent crime under the Youthful Offender Act. *See Padilla*, 559 U.S. at 372 ("[T]o obtain relief on this type of claim, a petitioner must convince the court that a decision to reject the plea bargain would have been rational under the circumstances"). Accordingly, because Applicant failed to meet his burden under *Hill*, Applicant's request for relief

by way of this allegation is **DENIED**.

Involuntary Guilty Plea

Applicant nonetheless contends his plea was involuntary because Counsel allegedly advised him he would only receive nine to eighteen month YOA sentence. This Court disagrees, and finds Applicant knew the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty pursuant to the requirements of *Boykin* and *Pittman*. The plea transcript reflects Applicant entered his plea knowingly and voluntarily, engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the court's questions.

"[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, 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 and the consequences of his 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.) (Stevens, J., dissenting) (explaining that 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 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, the defendant "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). The 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 guilty plea, the plea 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 plea 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 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." *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). 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 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).

Nonetheless, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual . . . , 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 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977)); see also *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"). Indeed, admissions made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements." *Dalton*, 376 S.C. at 137–38, 654 S.E.2d at 874 (internal citations and quotation marks omitted); cf. *Blackledge*, 431 U.S. at 73–74 (pointing out that representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a "formidable barrier in any subsequent collateral proceedings").

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 v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). 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 evaluating an allegation on PCR that a guilty 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).

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.* Thus, 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 guilty plea and the evidence presented at the PCR hearing. *Harres*, 282 S.C. at 134, 318 S.E.2d at 361.

At the outset of the plea hearing, Counsel advised the plea court that he had thoroughly explained to Applicant the elements of the offense and the potential punishment he was facing. (Plea Tr. 3). Judge Griffith then explained to Applicant the constitutional rights he waived by

pleading guilty, including the rights to: remain silent, challenge the State's evidence, and present a defense. (Plea Tr. 4). Applicant informed the court he was knowingly, voluntarily, and freely waiving his constitutional rights by pleading guilty. (Plea Tr. 4-5). Judge Griffith informed Applicant that the offense is classified as serious, which could be used for enhancement purposes were Applicant to commit subsequent burglaries. (Plea Tr. 9-10). Applicant affirmed he understood and wished to proceed forward. (Plea Tr. 10).

After a factual recitation from Ms. Martin, Applicant admitted he was guilty and committed the conduct giving rise to the offense as outlined by the State, although he disagreed with some of the facts presented. (Plea Tr. 8-9). Applicant then advised the court he had not been threatened, coerced, or promised anything in exchange for his guilty plea. (Plea Tr. 9). Applicant further indicated he was satisfied with the services provided to him by Counsel. (Plea Tr. 9).

The plea transcript reflects Applicant understood the proceedings, interacted intelligently with the plea court, and entered his guilty plea knowingly and voluntarily. Applicant has failed to present any valid reason why he should be able to depart from the above statements made during his guilty plea. *See Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975), *overruled on other grounds by United States v. Whitley*, 759 F.2d 327 (4th Cir. 1985) (finding that the accuracy and truth of an accused's statements at a guilty plea proceeding are "conclusively" established unless he makes some reasonable allegation why this should not be so). Specifically, Applicant did not allege any facts tending to prove he was prevented from informing the plea court that it was his understanding he would only receive a nine-month sentence. Moreover, the plea court was not required to sentence Applicant under the Youthful Offender Act, but graciously agreed to Counsel's request. While the State agreed to drop his charge to second-degree burglary (non-

violent), no recommendations or negotiations were made as to sentencing. Counsel testified and the transcript reflects that the victims asked the plea court sentence Applicant to the maximum possible sentence—ten years.

Based on the foregoing, the record contradicts Applicant's assertion he was under a misapprehension as to an alleged deal when he decided to proceed with his plea. *See Rayford*, 314 S.C. at 48, 443 S.E.2d at 806 (holding that the record of the plea proceeding, including applicant's answers to the trial judge's questions, clearly established that applicant understood the possible sentences and the terms of the plea agreement and therefore could not have had misconceptions regarding sentencing). Although given multiple opportunities to do so, Applicant never informed the plea court he was under the impression or belief he would receive a certain sentence.

"Courts naturally look with a jaundiced eye upon any defendant who seeks to withdraw a guilty plea after sentencing on the ground that he expected a lighter sentence." *United States v. Crusco*, 536 F.2d 21, 24 (3rd Cir. 1976); *see Daniel v. Cockrell*, 283 F.3d 697, 703 (5th Cir. 2002) (absent a showing of force of threat by some other actor, the "guilty plea is not rendered involuntary by the defendant's mere subjective understanding that [he] would receive a lesser sentence . . ."). Contrary to Applicant's PCR testimony, "[t]he colloquy establishes that [Applicant] did not have any misconceptions regarding sentencing." *Roddy v. State*, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (reversing PCR court's finding of an involuntary guilty plea); *see also Harres*, 282 S.C. 131, 318 S.E.2d 360 (finding that the fact that defendant "thought" judge would give lighter sentence not ground for relief).

Thus, based on the evidence presented at the PCR hearing and the record of the plea proceeding, this Court finds Applicant's plea was freely, knowingly, and voluntarily entered into. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

ALL OTHER ALLEGATIONS

As to any and all allegations raised in the application or at the hearing in this matter and not specifically addressed in this order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds those claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice. S.C. Code Ann. § 17-27-90.

CONCLUSION

Based on the evidence presented at the PCR hearing and the record of the plea proceeding, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. This Court finds Applicant freely, knowingly, and voluntarily pleaded guilty and further failed to present any justification as to why the statements he made during the guilty plea hearing should not be considered conclusive. Therefore, based on the foregoing, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

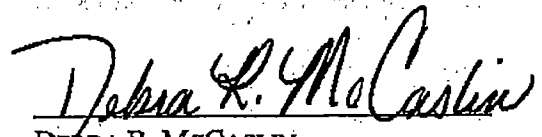
Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a

notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This Court denies relief and dismisses the action with prejudice; and
2. Applicant shall be remanded to the custody of the State.

IT IS SO ORDERED this 8th day of October, 2020.


DEBRA R. MCCASLIN
Presiding Circuit Court Judge
Eleventh Judicial Circuit

Lexington, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE ELEVENTH JUDICIAL
COUNTY OF LEXINGTON)	CIRCUIT
)	
LAMAR R. RAY, #376786)	
)	Case No.: 2019-CP-32-01889
Applicant,)	
)	
v.)	Certificate of Service
)	
State of South Carolina)	
)	
Respondent,)	
_____)	

1. Undersigned is counsel of record for the Respondent in the above-captioned action.
2. Pursuant to the South Carolina Supreme Court’s Order “RE: Operation of the Trial Courts During the Coronavirus Emergency” (Appellate Case No. 2020-000447), dated April 3, 2020), “a lawyer admitted to practice law in this state may serve a document on another lawyer admitted to practice law in this state using the lawyer’s primary email address listed in the Attorney Information System (AIS).”
3. Undersigned has served a copy of the **Order of Dismissal** in the above-captioned matter on opposing counsel by emailing a copy to the email address as listed in the AIS:

Tommy A. Thomas, Esquire
thomaslaw@me.com

DATED this 10th Day of November, 2020.

s/LillianMeadows
LILLIAN L. MEADOWS
Assistant Attorney General

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