

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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**Mar 22 2021**

S.C. SUPREME COURT

Appeal from Greenville County Court of Common Pleas  
The Honorable R. Lawton McIntosh, Circuit Court Judge

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Case No. 2016-CP-23-4850

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State of South Carolina,.....Respondent,

v.

Jaquese Kavon Hyatt, # 363113,.....Petitioner.

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**NOTICE OF APPEAL**

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The Petitioner, Jaquese Kavon Hyatt, hereby appeals the Order of Dismissal issued by the Honorable R. Lawton McIntosh. The Order of Dismissal was filed with the Greenville County Clerk of Court on March 16, 2021. Undersigned Counsel received notice of its filing today, March 22, 2021 by email. A copy of the Order is attached to this Notice.

Respectfully submitted,

William G. Yarborough, III  
Lauren Carole Hobbis

By: /s/ Lauren C. Hobbis, #103190

William G. Yarborough III, Attorney at Law, LLC  
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ATTORNEYS FOR PETITIONER



ALAN WILSON  
ATTORNEY GENERAL

March 22, 2021

William G. Yarborough, III, Esquire  
309 W. Stone Ave.  
Greenville, South Carolina 29609

**Re: Jaquese Hyatt, #363113 v. State of South Carolina**  
**2016-CP-23-4850**

Dear Mr. Yarborough:

Enclosed please find a copy of the signed and filed **Order of Dismissal** issued by the Honorable R. Lawton McIntosh in the above-captioned post-conviction relief case.

Sincerely,

s/LillianMeadows

LILLIAN L. MEADOWS  
Assistant Attorney General

LLM/hb  
Enclosures

STATE OF SOUTH CAROLINA )  
 COUNTY OF GREENVILLE )  
 )  
 )  
 Jaquese K. Hyatt, SCDC #363113, )  
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 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FOR THE THIRTEENTH JUDICIAL CIRCUIT

Case No. 2016-CP-23-4850

**ORDER OF DISMISSAL**

ENTERED COMPUTER

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 PAUL B. WICKENBACH  
 GREENVILLE, SC

2021 MAR 16 PM 2:19

**I. INTRODUCTION**

The matter before this Court is an action for post-conviction relief (PCR) commenced by Jaquese K. Hyatt (Applicant) on August 16, 2016. The State requested an evidentiary hearing through its return on November 4, 2016. A hearing into the matter convened before the undersigned on December 4, 2020, via Cisco WebEx Meetings in accordance with the Chief Justice’s administrative memorandum, *Court Operations*, dated September 14, 2020.<sup>1</sup> Applicant was present and represented by William G. Yarborough, III, Esquire. Assistant Attorney General Lillian L. Meadows represented the State. Applicant testified on his own behalf at the hearing, as did his defense counsel, Ivan J. Toney, Esquire.

In addition to the pleadings in this action, this Court had before it a copy of the Greenville County Clerk of Court records regarding the subject convictions, Applicant’s records from the

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<sup>1</sup> See S.C. Sup. Ct. Memorandum dated September 14, 2020 (“Judges . . . have discretion to determine whether it is appropriate to conduct a hearing using remote communication technology. Consent of the parties or counsel is not required. Please use WebEx, the conferencing platform supported by the Judicial Branch.”).

South Carolina Department of Corrections, the trial transcript and the records of the current PCR action.<sup>2</sup>

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

## **II. PROCEDURAL HISTORY**

Applicant is confined in the South Carolina Department of Corrections. During its April 2015 term, the Greenville County Grand Jury indicted Applicant for two counts of armed robbery (2014-GS-23-11556, -11579) and two counts of possession of a weapon during the commission of a violent crime (2014-GS-23-11556, -11579).

On October 15, 2015, Applicant proceeded to a jury trial before the Honorable Robin B. Stilwell. Ivan J. Toney, Esquire (Counsel), represented Applicant. Assistant Solicitors William Timmons and Sloan Ellis prosecuted the case. Upon hearing testimony from several State's witnesses, however, Applicant elected to plead guilty as indicted to all charges without formal negotiations or recommendations from the State as to sentencing. Twenty-three additional warrants were dismissed in exchange for Applicant's plea. Judge Stilwell sentenced Applicant to concurrent terms of fourteen years for each armed robbery charge and five years for each weapons charge. Applicant did not appeal his guilty pleas or sentences.

Applicant filed a timely post-conviction relief application on August 16, 2016. An evidentiary hearing was initially scheduled for February 22, 2019, at the Greenville County

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<sup>2</sup> In addition to the pleadings, the PCR records include the transcript from Applicant's initial PCR proceeding before Judge Kinlaw and the transcript from Applicant's evidentiary hearing before the undersigned.

Courthouse before the Honorable Alex Kinlaw Jr. Applicant was not present but Counsel Yarborough appeared on his behalf. Assistant Attorney General Kelly Oppenheimer appeared for the State.

At the start of the hearing, the State moved to dismiss for failure to prosecute based on Applicant's refusal to appear for the hearing. The State presented the Court with an email from SCDC stating Applicant refused to be transported for the hearing. Judge Kinlaw then issued an order dismissing the action with prejudice for failure to prosecute.

Counsel Yarborough subsequently filed a motion to alter or amend the order of dismissal pursuant to Rules 52(b), 59, and 60, of the South Carolina Rules of Civil Procedure. The State filed a return. On August 22, 2019, Judge Kinlaw issued an order granting Applicant's motion to alter or amend, allowing him to proceed with his PCR action on the merits.

### **III. STATEMENT OF FACTS**

On September 17, 2014, Applicant committed two armed robberies after contacting Luis Perez and Lee Rhodes on Craigslist about videogame consoles they each listed for sale. (Trial Tr. 31). Mr. Perez and Applicant made arrangements to meet in Welcome Park in Greenville County that morning to exchange the game system. (Trial Tr. 32). Applicant showed up, pulled a gun on Mr. Perez, robbed him, and fled. (Trial Tr. 32). Ninety minutes later, Applicant met Mr. Rhodes at a car wash purportedly to sell him an Xbox. (Trial Tr. 32). Applicant proceeded to pull a gun on Mr. Rhodes and rob him. (Trial Tr. 32). Applicant took the Xbox, Mr. Rhodes' wallet and phone, and fled. (Trial Tr. 32). The second robbery was captured on the car wash's video surveillance system. (Trial Tr. 32).

#### 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. Ineffective assistance of counsel
  - a. Failure to properly and adequately investigate, develop and prepare case for trial;
  - b. Failure to properly and adequately discern, develop and discuss the facts, witnesses, law and defenses with the client;
  - c. By taking case when it was set for trial only several days later;
  - d. Failure to properly, correctly and prudently advise the client of potential outcomes of the case;
  - e. Failure to adequately, properly and correctly advise client of state's witnesses and evidence;
  - f. Failure to file or argue critical pretrial or post-trial motions;
  - g. Failure to investigate, contact or develop alibi witnesses.
  - h. Due to the []various and numerous acts and/or omissions on the part of defense counsel in his representation of client. The client's guilty plea was coerced and as such was not knowingly, intelligently, and voluntarily entered due to defense attorney's deficient performance.
  - i. Defense counsel's deficient performance prejudiced client to the extent there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceedings would have been different.

Pursuant to Rule 71.1, SCRCP, Applicant, through PCR counsel, amended his application to include the following allegations:

- I. Trial counsel was ineffective pursuant to *Strickland v. Washington* for failing to contemporaneously and properly object to the trial judge's improper comments on the Applicant's decision to plead guilty and the weight of the

- evidence as it related to Applicant's decision whether to plead guilty.
- II. Trial Counsel was ineffective for failing to adequately investigate the suppression issue and inconsistent witness statements.
  - III. Alternatively, Trial Counsel was ineffective for failing to advise Applicant on his rights, the most probable outcome of a jury trial as opposed to pleading guilty, and on the probable outcome of various pre-trial motions. Applicant learned of from[sic] other inmates, "jailhouse lawyers" should he proceed to trial. The advice from these inmates, rather than advisement from his attorney, swayed Applicant to proceed to trial believing that the motions would be successful and would result in dismissal of the charges. The net result was the expiration of the plea offer with an eight (8) sentence recommendation. Had Trial Counsel adequately advised Applicant, Applicant would not have proceeded to trial and instead would have pleaded guilty pursuant to plea offer with an eight (8) year sentencing recommendation.
  - IV. Under the facts and reasons alleged in Ground III, Trial Counsel was ineffective for failing to advise Applicant before trial that the eight (8) year plea offer would be revoked should he go proceed to trial, and that he would consequently face a minimum sentence often (10) years imprisonment for each armed robbery charge.
  - V. Trial Counsel was ineffective for failing to review significant discovery with Applicant and advise him accordingly in the context of potential success at trial or in deciding whether to accept any plea offer.
  - VI. Trial Counsel was ineffective for failing to communicate to Applicant an additional, previously extended plea offer and advise him accordingly.
  - VII. Trial Counsel was ineffective for failing to adequately explain any parole implications of any sentence he may receive, leading Applicant to believe he would serve only 30-40% of any sentence he may receive.
  - VIII. The Fourth Amendment Constitution prohibits unreasonable search and seizure. Trial Counsel was ineffective for not

adequately filing suppression motions and arguing the Fourth Amendment for the benefit of the applicant.<sup>3</sup>

## V. 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. 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).

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<sup>3</sup> This sole allegation was raised in the second amended application filed November 23, 2020. For purposes of this order, this Court incorporates it with the allegations raised in the initial amended application.

The reviewing court applies the two-part test outlined in *Strickland v. Washington* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). 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; *accord. 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)).

The applicant has the burden of establishing both deficiency and prejudice in order to be entitled to relief. *Hughes v. State*, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); Rule 71.1(e), SCRPC. To prove deficient performance, the applicant must establish that, in light of all the circumstances, the acts or omissions complained of "were outside the wide range of competence" demanded of attorneys in criminal cases. *Strickland*, 466 U.S. at 688. To prove prejudice, the applicant must establish "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Id.* Significantly, "the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." *Id.* at 696.

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.* 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. The applicant must further convince the court that a decision to reject the plea bargain would have been rational under the circumstances. *Padilla*, 559 U.S. at 372.

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).

## **VI. FINDINGS OF FACT & 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 application and 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.

### **A. Failure to Investigate, Prepare for Trial, and File Pretrial Motions<sup>4</sup>**

Applicant first contends Counsel was ineffective for failing to investigate and prepare for trial. Applicant argues Counsel was ineffective for agreeing to represent Applicant only a few weeks to before his set trial date. Applicant further contends Counsel was ineffective for failing to investigate alibi witnesses and make certain pre-trial suppression arguments. This Court disagrees, and finds Applicant failed to present any evidence or testimony indicating how a more thorough investigation, further preparation, or delay of the trial would have affected the outcome of the case. This Court finds credible and persuasive the testimony of Counsel, who presented well-recalled testimony of the events leading up to Applicant's trial.

#### **1. PCR Testimony**

At the outset of the PCR hearing, Applicant testified Counsel "lied in open court by stating that he was prepared" the morning of his trial. (PCR Tr. 10). The trial transcript indicates Applicant

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<sup>4</sup> Claims 1(a), 1(b), 1(c), 1(e), 1(f) and 1(g); amended claims II and VIII.

asked Judge Stilwell to postpone the trial because he believed Counsel was not prepared. (PCR Tr. 15; Trial Tr. 38–39). Judge Stilwell asked Counsel at that time if he was prepared for trial. (Trial Tr. 38). Counsel responded that he was. (Trial Tr. 38). Judge Stilwell therefore refused Applicant’s request. (PCR Tr. 15–16; Trial Tr. 39). Applicant denied taking advice from jailhouse lawyers, but stated he asked the judge to postpone his trial because he knew Counsel was not prepared. (PCR Tr. 31).

Applicant testified his mother hired Counsel to represent him a few weeks before his trial date. (PCR Tr. 12, 20). He stated that Counsel only met with him twice; once when he was first hired and once with the solicitor. (PCR Tr. 18–19, 21). Applicant testified he was surprised when he was brought to court for his trial and that Counsel failed to communicate with him. (PCR Tr. 21, 27). Applicant stated Counsel did not review the discovery with him and stated that he did not believe Counsel prepared him for trial. (PCR Tr. 18, 20, 27). Applicant further testified that, had he known counsel was not going to investigate his case or be adequately prepared for trial, he would have sought other counsel or taken the eight-year plea offer (PCR Tr. 21, 25–26). Applicant felt like he was ultimately “backed into a corner” and felt forced to plead guilty because Counsel was unprepared. (PCR Tr. 25).

Applicant stated he did not believe Counsel spent enough time investigating his case or speaking with potential witnesses. (PCR Tr. 12). Specifically, he wanted Counsel to contact his alibi witnesses, challenge Mr. Perez’s statement to law enforcement, and challenge the search of his home. (PCR Tr. 13–14, 18). Applicant did not identify the names of any alibi witnesses, but stated he was at a girl’s house prior to the incident. (PCR Tr. 19) Applicant testified he believed his statement to law enforcement was coerced and should have been suppressed because his

*Miranda*<sup>5</sup> rights were violated. (PCR Tr. 16–17, 24). He allegedly asked to speak with an attorney and law enforcement continued to interrogate him. (PCR Tr. 23–24). Applicant further testified he wanted Counsel to file a motion to suppress the evidence seized pursuant to the search warrant because law enforcement did not have a valid warrant to search his property. (PCR Tr. 19). He also stated there was no warrant for certain phone records law enforcement obtained. (PCR Tr. 23).

On cross-examination, Applicant was questioned about the portion of the plea proceeding where Applicant told Judge Stilwell he had time to discuss the matter with Counsel, and that Counsel had answered all his questions. (PCR Tr. 33; Trial Tr. 142). Applicant was specifically asked why he did not tell Judge Stilwell at the time that he felt forced to plead guilty or that he believed Counsel was unprepared. (PCR Tr. 34–35). Applicant testified he answered “yes” and agreed with all of Judge Stilwell’s questions because Counsel told him that if he did not do so, Judge Stilwell would not accept the plea. (PCR Tr. 33–35).

Applicant’s mother, Queenie Hyatt, also testified. Ms. Hyatt recalled hiring Counsel to represent her son approximately three to four weeks before the trial date. (PCR Tr. 40). She stated she was under the impression Counsel would take more time working on the case, and that she did not believe he was prepared for trial. (PCR Tr. 40–41). She testified Counsel did not tell her the evidence against her son was overwhelming, but that Counsel explained “it was barely a little bit better than a misdemeanor.” (PCR Tr. 42). Mrs. Hyatt further testified she tried to contact Counsel several times before the trial, but that she could not get ahold of him. (PCR Tr. 42–43).

Counsel testified he has been practicing criminal law for over two decades. (PCR Tr. 44). Counsel recalled that Applicant’s charges were the result of an eighteen-month crime spree, and

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<sup>5</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

that Applicant was facing an additional twenty-three charges. (PCR Tr. 45). Counsel thoroughly summarized the facts of the case, and stated Applicant was facing sixty to seventy years on these charges alone. (PCR Tr. 44–45). He explained that Applicant was caught on tape robbing the second victim, who was confident Applicant was the man who robbed him. (PCR Tr. 45). Counsel further recalled Applicant having an extensive criminal record, including a CSC with a minor charge that was pled down to ABHAN. (PCR Tr. 45).

Counsel agreed that he was hired by Ms. Hyatt around three or four weeks prior to Applicant's trial. (PCR Tr. 48). Counsel testified Applicant knew of the risks associated with hiring a new attorney so close to trial, but that he was adamant about wanting a new lawyer. (PCR Tr. 49). When asked if he believed it was a good idea to take a case with only four or five weeks to prepare, Counsel stated he wished he had more time but that he had dealt with this type of situation before. (PCR Tr. 52). Counsel testified he met with Applicant alone at least four or five times. (PCR Tr. 57).

Counsel testified he received Applicant's discovery from his previous attorney. (PCR Tr. 57). Counsel also filed his own discovery motion, but did not receive anything he did not already have. (PCR Tr. 57). He stated that Applicant received copies of all the discovery at least a year before Counsel took over his representation. (PCR Tr. 47, 58). Counsel could not recall exactly how many times he reviewed discovery with Applicant, but recalled sitting down with him several times and reviewing each piece of evidence in discovery. (PCR Tr. 45, 50). Counsel testified he was confident that Applicant was aware of all the evidence against him. (PCR Tr. 47).

Counsel was asked about some of the concerns Applicant brought up to Judge Stilwell during pre-trial motions. (PCR Tr. 53). Specifically, Applicant mentioned a *Brady*<sup>6</sup> issue and an

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<sup>6</sup> *Brady v. Maryland*, 373 U.S. 83 (1963).

issue with the indictment. (PCR Tr. 53; Trial Tr. 37, 42). Counsel stated Applicant never brought those issues to his attention. (PCR Tr. 53). Counsel further testified he was not aware of any alibi witnesses, and that Applicant never gave him any names of people to contact. (PCR Tr. 58–59, 61). He stated Applicant was mainly focused on how much time he would receive. (PCR Tr. 53). Counsel further testified Applicant never told him on the day of trial that he did not believe Counsel was prepared or that he did not want Counsel to represent him. (PCR Tr. 55).

## 2. Discussion

This Court finds Applicant failed to overcome the “strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case.” *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland*). Counsel’s credible testimony indicates he met with Applicant prior to trial, reviewed the discovery with him, and discussed his case with him at length. Although Applicant testified Counsel met with him only twice, he failed to present “any evidence of how additional preparation or communication would have resulted in a different outcome.” *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012); see *Jackson v. State*, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998) (explaining that, where an applicant failed to present any evidence of what counsel could have discovered or what other defenses he would have requested counsel pursue had counsel more fully prepared for the trial, applicant failed to show his counsel’s lack of preparation prejudiced him); *Harris v. State*, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (finding that, when there is evidence counsel met with a defendant in preparation for trial and there is no evidence additional preparation on the part of counsel would have affected the outcome at trial, counsel cannot be said to have been ineffective), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018).

Applicant's allegations regarding Counsel's failure to file certain suppression motions are further refuted by the record. Counsel clearly challenged the police's identification procedure and the victim's identification of Applicant in a pre-trial *Biggers* hearing.<sup>7</sup> (Trial Tr. 43–56). The Court found the identification evidence and procedure admissible. (Trial Tr. 55–56). The trial record also demonstrates Counsel attempted to challenge the admissibility of Applicant's confession to law enforcement in a pre-trial *Denno* hearing.<sup>8</sup> (Trial Tr. 56–71). The Court found Applicant's statements were not coerced but were in fact voluntary and admissible. (Trial Tr. 70–71). Counsel further testified that, in his professional opinion, he saw no basis to challenge the items seized from Applicant's property pursuant to the valid search warrant. (PCR Tr. 58–59).

This Court finds Applicant failed to establish Counsel was ineffective for failing to investigate and contact purported alibi witnesses. Applicant could not even name the alibi witness or witnesses he believes Counsel should have contacted. Our Supreme Court has held that a PCR applicant must “produce the witnesses at the PCR hearing or otherwise introduce the witnesses’ testimony in a manner consistent with the rules of evidence” to prevail on this type of claim. *Glover v. State*, 318 S.C. 496, 498–99, 458 S.E.2d 538, 540 (1995) (citing *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); see also *Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993) (pure conjecture as to what a witness’s testimony would have been is not sufficient to show a reasonable probability the result at trial would have been different). Applicant did not present any such testimony or evidence at the PCR hearing.

The Court finds Applicant failed to present evidence of any viable defense, investigative tactic, or alternate strategy Counsel should have explored which would have helped Applicant's

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<sup>7</sup> *Neil v. Biggers*, 409 U.S. 188 (1972).

<sup>8</sup> *Jackson v. Denno*, 378 U.S. 368 (1964)

case or affected his decision to plead guilty. Accordingly, Applicant's claims pertaining to Counsel's failure to investigate and prepare Applicant for trial are **DENIED**.

**B. Failure to Advise Applicant of Potential Outcomes and Ineffective Advice Regarding Plea Offers<sup>9</sup>**

Applicant next contends Counsel was ineffective for failing to adequately advise him in the context of potential success at trial and deciding whether to accept any plea offer. Specifically, Applicant alleges Counsel failed to adequately appraise him of the strength of the State's evidence and the probable outcome of pre-trial motions that would effect the likelihood of success at trial. Applicant further alleges Counsel failed to communicate all plea offers to Applicant and failed to provide sufficient information regarding the terms of said plea offers. This Court disagrees, and finds Counsel's correspondence with Applicant, which was made part of the record, coupled with Counsel's credible testimony refute these allegations.

1. PCR Testimony

At the PCR hearing Applicant testified that, when he was initially hired, Counsel told Applicant they would be going to court only for receiving stolen goods. (PCR Tr. 10, 31). He recalled Counsel sending him several letters. (PCR Tr. 10–11). First, he claimed Counsel sent him a letter about serving two or three years. (PCR Tr. 11). He then testified he received a letter from counsel that he was going to work something out with the solicitor where he would receive a maximum of five years. (PCR Tr. 11). Applicant further testified Counsel sent him letters about a nine-year offer but claimed Counsel redacted some of these statements. (PCR Tr. 29). Finally, he stated he received a letter from Counsel about an eight year plea offer for attempted armed robbery. (PCR Tr. 11, 31). Applicant testified that Counsel had been representing him for a little over three weeks at the time he received the eight-year offer. (PCR Tr. 11).

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<sup>9</sup> Claim 1(d); amended claims III, IV, V, VI, and VII.

Applicant admitted he initially turned down the eight-year offer, but stated he only turned it down because he believed Counsel would be prepared for trial. (PCR Tr. 29). Applicant recalled Counsel mentioning the eight-year plea offer a second time he went to visit him in jail. (PCR Tr. 29). Applicant nonetheless stated that, as a result of counsel's deficiencies, he received a fourteen-year sentence rather than an eight-year sentence. (PCR Tr. 22, 25–27). However, Applicant later testified Counsel did not tell him about the eight-year plea offer (PCR Tr. 27).

Applicant recalled Counsel telling him on the morning of trial that the solicitor was still willing to make a ten-year offer. (PCR Tr. 14, 29). Applicant denied listening to jailhouse lawyers regarding the potential outcome of his suppression motions and potential likelihood of success at trial. (PCR Tr. 31). Rather, he stated he asked the judge to postpone his trial because he knew Counsel was not prepared. (PCR Tr. 31).

Counsel recalled extensive plea negotiations and stated he met with Assistant Solicitor Timmons numerous times. (PCR Tr. 45–46). Assistant Solicitor Timmons even mentioned during pre-trial motions that he met with Counsel approximately twenty-five times during the month prior to the trial trying to work out a plea deal. (Trial Tr. 41). Counsel recalled Assistant Solicitor Timmons meeting with him and Applicant at least four times at the jail. (PCR Tr. 57). All of the negotiations and plea offers were documented in letters which were entered as Court's Exhibit #1. (PCR Tr. 46). Most of these letters were hand-delivered to Applicant at the jail. (PCR Tr. 50–51).

Counsel specifically referred to a letter dated October 2, 2015, where he told Applicant that Assistant Solicitor Timmons would not back off his recommendation of nine years to a plea of attempted armed robbery and possession of a weapon. (PCR Tr. 46). Counsel alternatively advised Applicant that he could ask Assistant Solicitor Timmons if he would agree to a straight up plea to attempted armed robbery without recommendation. (PCR Tr. 46). The letter indicates Applicant

told Counsel “no,” and asked him to go back to the solicitor and ask that he change the charge to strong-arm robbery. (PCR Tr. 46). Applicant believed the solicitor was focusing on the color of his skin. (PCR Tr. 46–47). Counsel testified he had many similar letters. (PCR Tr. 47). He stated Applicant was directing plea negotiations against Counsel’s explicit advice. (PCR Tr. 47).

Counsel stated Applicant rejected all plea offers before trial, but then kept trying to negotiate during the trial. (PCR Tr. 61–62). He recalled the trial stopping and starting several times as a result. (PCR Tr. 62). However, Counsel testified Applicant never really contemplated going to trial. (PCR Tr. 62). He recalled Applicant discussing trial a couple times, but that his main focus was getting the best plea offer. (PCR Tr. 62).

Counsel testified he always believed it was always in Applicant’s best interest to plead guilty, even in the middle of trial. (PCR Tr. 64). During one of their meetings, Counsel recalled Applicant mentioning that the pictures from the car wash’s surveillance footage were not clear. (PCR Tr. 45, 50). Applicant did not think they could identify him from the surveillance footage. (PCR Tr. 59). Counsel disagreed, and told Applicant he believed they were clear enough to identify him. (PCR Tr. 45–46). However, Applicant believed he was only identified as the perpetrator based on his race. (PCR Tr. 59).

## 2. Discussion

This Court again finds applicable the strong presumption that trial counsel rendered adequate assistance and exercised reasonable professional judgment in his representation of Applicant at all stages of the proceedings. *Ard*, 372 S.C. at 331, 642 S.E.2d at 596; *Strickland*, 466 U.S. at 689. Counsel’s credible testimony and his correspondence with Applicant demonstrate he advised Applicant of all of the options available to him and of the State’s strong evidence against him. *See* Court’s Exhibit #1. Applicant, on the other hand, presented inconsistent testimony

regarding his understanding of the plea offers and what Counsel told him. Accordingly, Applicant's claims pertaining to Counsel's allegedly inadequate advice regarding likely outcomes and plea offers are **DENIED**.

### **C. Involuntary Guilty Plea<sup>10</sup>**

Applicant further alleges his plea was involuntary as a result of Counsel's ineffective assistance. This Court disagrees, and finds the combined record from the plea hearing and the PCR hearing establishes Applicant freely, knowingly, and voluntarily pleaded guilty.

#### **1. Plea Testimony**

At the outset of the plea hearing, Judge Stilwell explained to Applicant the constitutional rights he waived by pleading guilty; including his right to remain silent, challenge the State's evidence, and present a defense. (Trial Tr. 138). Applicant was further advised that, if he elected to continue with his trial, the burden of proof would be upon the State to prove every element of every charge against him. (Trial Tr. 138). Applicant informed the court he was knowingly, voluntarily, and freely waiving his constitutional rights by pleading guilty. (Trial Tr. 139).

Judge Stilwell then thoroughly questioned Applicant regarding his understanding of the minimum and maximum possible sentence he could receive for each offense. (Trial Tr. 139). Applicant indicated he understood the charges against him and the exposure he faced on each indictment (Trial Tr. 139). Judge Stilwell next informed Applicant that armed robbery is classified as a violent offense which could affect the calculation of his max-out date and where he is housed within SCDC. (Trial Tr. 139–40). Applicant was further informed that armed robbery is classified as a most serious offense, which could be used for enhancement purposes were Applicant to

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<sup>10</sup> Claims 1(h) and 1(i).

commit subsequent crimes. (Trial Tr. 140). Applicant affirmed he understood and wished to proceed forward. (Trial Tr. 140).

Applicant then admitted he was guilty and committed the conduct giving rise to the indictments. (Trial Tr. 140–41). Applicant advised the court he had not been threatened, coerced, or promised anything in exchange for his guilty plea. (Trial Tr. 141). Applicant further indicated he was satisfied with the services provided to him by Counsel, that he had sufficient time to speak with Counsel about the charges against him, and that Counsel answered all of Applicant's questions. (Trial Tr. 141–142).

## 2. PCR Testimony

At the PCR hearing, Applicant was asked about the portion of the plea proceeding where Applicant told Judge Stillwell he had time to discuss the matter with Counsel, and that Counsel had answered all his questions. (PCR Tr. 33, Trial Tr. 142). As aforementioned, Applicant was asked specifically why he did not tell Judge Stilwell at the time that he believed Counsel was unprepared. (PCR Tr. 34–35). Applicant testified Counsel told him to answer “yes” and agree with all of Judge Stilwell's questions or he would not accept the plea. (PCR Tr. 33–35).

Applicant further agreed that he told the plea court he was not coerced and was pleading guilty of his own free will. (PCR Tr. 35; Trial Tr. 141). He also recalled Judge Stilwell informing him of the minimum and maximum sentence he could receive. (PCR Tr. 35; Trial Tr. 139). Applicant was then directed to the portion of the transcript where he asked Judge Stilwell to give him an eight-year sentence in accordance with the original plea offer. (PCR Tr. 36; Trial Tr. 132). He recalled Judge Stilwell telling him he understood, but that the mandatory minimum was ten years. (PCR Tr. 36–37; Trial Tr. 142–43). In response, Applicant testified that he was told initially

he was going to be charged with strong-arm robbery, which would allow for the eight-year sentence. (PCR Tr. 37).

Prior to entering into the guilty plea, Counsel testified he discussed with Applicant all the consequences of pleading guilty to these offenses. (PCR Tr. 62–63). He recalled telling Applicant that he could receive between ten and thirty years on each armed robbery charge and that it was classified as a violent and most serious offense. (PCR Tr. 63). Counsel further recalled going over all of Applicant’s constitutional rights with him. (PCR Tr. 63–64). Counsel testified he never told Applicant he would only serve 30-40% of his sentence. (PCR Tr. 63). Counsel confirmed that it was ultimately Applicant’s decision to plead guilty. (PCR Tr. 64–65).

### 3. Discussion

“[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).

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). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, *Brady*, 397 U.S. at 750–53, or by increasing the risks of punishment on those who do not. *Alford*, 400 U.S. at 37 (1970); cf. *United States v. Cox*, 464 F.2d 937, 942 (6th Cir. 1972) (“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.” (citing *Brady*, 397 U.S. 742)). 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) (citing *Hill*, 474 U.S. 52).

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). 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 v. State*, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997); 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).

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).

This Court 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 understood the proceedings, interacted intelligently with the plea court, and entered his guilty plea knowingly and voluntarily. Moreover, any possible deficiency or error by counsel was cured by the information conveyed at the plea hearing.

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"). This Court finds Applicant failed to "present[] [any] valid reasons why he should be allowed to depart from the truth of [the] statements" made during the plea proceeding. *Dalton*, 376 S.C. at 137–38, 654

S.E.at 874; *see Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975) (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), *overruled on other grounds by United States v. Whitley*, 759 F.2d 327 (4th Cir. 1985).

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; *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.’”). 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**.

#### **D. Failure to Object<sup>11</sup>**

Finally, Applicant alleges Counsel was ineffective for failing to object to Judge Stilwell’s purported improper comments on Applicant’s decision to plead guilty and the weight of the evidence.

At the hearing, PCR counsel directed the Court to pages 131–141 of the trial transcript. (PCR Tr. 65–66). This portion of the transcript consists of an exchange between Applicant and Judge Stilwell regarding Applicant’s decision whether to plead guilty or continue with the trial. The exchange was made outside the presence of the jury. Judge Stilwell merely stated that Applicant had the opportunity to observe the evidence that had been presented up to that point. (Trial Tr. 132). The only comment Judge Stilwell made regarding the weight of the evidence was

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<sup>11</sup> Amended claim I

that, “it does seem that there is significant amount of evidence which the jury could rely upon to find that the State has met its burden of proof.” (Trial Tr. 132). Judge Stilwell asked Applicant to make a final decision during the lunch break before they resumed with the trial. (Trial Tr. 133).

PCR counsel pointed out Applicant’s statement, “I don’t understand what’s going on here.” (PCR Tr. 65; Trial Tr. 133). This statement was made in the context of Applicant’s opinion that his actions giving rise to these charges constituted mere petit larceny rather than armed robbery. (Trial Tr. 133). Applicant further told Judge Stilwell during this exchange that he was afraid to plead guilty because he did not know how much time he would receive. (Trial Tr. 133–34). Judge Stilwell responded that he understood, but that he could not make any deals with Applicant regarding sentencing. (Trial Tr. 134).

This Court does not find anything objectionable in this exchange nor does it suggest Applicant’s plea was involuntary. This Court finds Applicant failed to show demonstrate a “reasonable probability that result of proceeding would have been different” had counsel objected to any of Judge Stilwell’s statement. *Strickland*, 466 U.S. at 694. Accordingly, Applicant’s allegation pertaining to Counsel’s failure to object is **DENIED**.

## VII. CONCLUSION

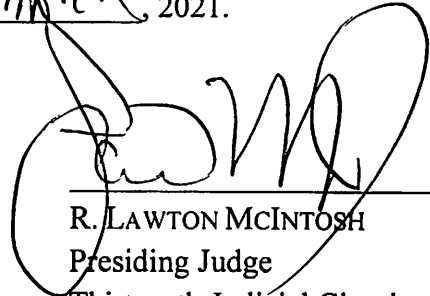
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced 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, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

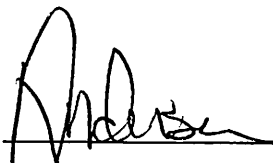
Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *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. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 10<sup>th</sup> day of March, 2021.

  
\_\_\_\_\_  
R. LAWTON MCINTOSH  
Presiding Judge  
Thirteenth Judicial Circuit

 South Carolina

Copy mailed to  
Attorney General / B. Yarborough  
on 3 / 16 / 2021.

STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE )  
)  
)  
Jaquese K. Hyatt, SCDC #363113, )  
)  
Applicant, )  
)  
v. )  
)  
)  
State of South Carolina, )  
)  
Respondent. )  
)  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOR THE THIRTEENTH JUDICIAL CIRCUIT

Case No. 2016-CP-23-4850

**Certificate of Service**

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:

**William G. Yarborough, III, Esquire**  
**wgyarborough@gmail.com**

DATED this 22<sup>nd</sup> day of March, 2021.

s/LillianMeadows  
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Assistant Attorney General

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