

STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM FLORENCE COUNTY  
William H. Seals, Jr., Circuit Court Judge

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2018-CP-21-03024

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**RECEIVED**

APR 20 2021

S.C. SUPREME COURT

Jason Barnhill, # 292731,

Appellant,

v.

STATE OF SOUTH CAROLINA,

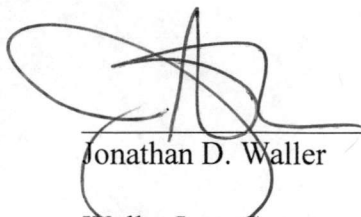
Respondent.

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NOTICE OF APPEAL

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Jason Barnhill, # 292731, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed March 30, 2021, issued by the Honorable William H. Seals, Jr., Presiding Judge, Twelfth Judicial Circuit.



Jonathan D. Waller

Waller Law Group  
SC Bar No.: 76290  
1116 Blanding Street  
Suite 2B  
Columbia, SC 29201  
803-520-7278 (phone)  
jonathan@wallergroupsc.com  
ATTORNEY FOR PETITIONER

April 16, 2021

Other Counsel of Record:  
Michael D. Davidson, Assistant Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3319

FILED

FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF FLORENCE

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2018CP2103024

IN THE COURT OF COMMON PLEAS AM 11: 43

Jason Kyle Barnhill

South Carolina State Of

DORIS POULOS O'HARA.  
CCCP & GS

PLAINTIFF(S)

FLORENCE COUNTY, SC

DEFENDANT(S)

Submitted by:

Attorney for:  Plaintiff  Defendant  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order; (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk: \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

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

Circuit Court Judge

Judge Code

3/30/2021

Date

For Clerk of Court Office Use Only

This judgment was entered on March 30, 2021, and a copy mailed first class or placed in the appropriate attorney's box on March 30, 2021, to attorneys of record or to parties (when appearing pro se) as follows:

RECEIVED: A TRUE COPY  
DORIS POULOS O'HARA  
CLERK OF COURT, C.P. & G.S.  
FLORENCE COUNTY, S.C.

Jonathan D Waller 1116 Blanding Street Suite 2B  
Columbia, SC 29201

Michael D. Davidson Rembert C. Dennis Building 1000  
Assembly Street Columbia, SC 29201

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ATTORNEY(S) FOR THE PLAINTIFF(S)

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ATTORNEY(S) FOR THE DEFENDANT(S)

*Doris P. O'Hara*

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Court Reporter

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Doris Poulos O'Hara - Clerk of Court

**Court Reporter:**

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

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

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

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STATE OF SOUTH CAROLINA )  
 COUNTY OF FLORENCE )  
 Jason Barnhill, #292731, )  
 Applicant, )  
 v. )  
 State of South Carolina, )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE TWELFTH JUDICIAL CIRCUIT

Case No.: 2018-CP-21-3024

**ORDER OF DISMISSAL**

2021 MAR 30 AM 11:40  
 DORIS POLK OS O'HARA  
 CCCP & GS  
 FLORENCE COUNTY, SC

**FILED**

This matter comes before the Court by way of Jason Barnhill's (Applicant) application for post-conviction relief (PCR) filed November 16, 2018. Respondent submitted its return on March 6, 2019. An evidentiary hearing convened at the Florence County Courthouse on September 4, 2019, at which time Applicant was present and represented by Jonathan D. Waller, Esquire. Assistant Attorney General Samuel L. Key of the South Carolina Attorney General's Office represented the Respondent. At the hearing, Applicant testified on his own behalf. Respondent presented testimony from Scott P. Floyd, Esquire ("Plea Counsel").

Following a thorough review of the record in its entirety, and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional violations and denies this application.

**PROCEDURAL HISTORY**

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections. On April 11, 2018, Applicant appeared before the Honorable Thomas A. Russo and waived presentment of indictment 2018-GS-21-00668, one count of strong-arm robbery, to the grand jury, instead entering a guilty plea without negotiation or recommendation from the State (Tr. 7). Chief Public Defender Scott P. Floyd of the Florence

CERTIFIED A TRUE COPY  
*Doris Polk Os O'Hara*  
 CLERK OF COURT, C.P. & G.S.  
 FLORENCE COUNTY, S.C.

County Public Defender's office represented Applicant, and Assistant Solicitor Ryan White prosecuted the case.

The charges stem from an incident that occurred December 28, 2017, when Applicant asked Violet Poston for a ride from Pat's Grocery store to the fire department. Poston agreed and gave Applicant a ride (Tr. 10). When they arrived at the fire department, Applicant exited the vehicle and walked around to the driver's side before ordering Poston to exit, which she refused to do (Tr. 11). Applicant reached into the driver side window and attempted to remove the keys from the ignition, and Applicant and Poston struggled, causing the key to break off into the ignition (Tr. 11). Applicant then fled with Poston's wallet (Tr. 11). The event was captured on the fire department's video surveillance (Tr. 11). Applicant pled guilty to strong-arm robbery, and Judge Russo sentenced Applicant to twelve years' imprisonment. Applicant did not appeal his guilty plea or sentence.

### **ALLEGATIONS**

In his current application, Applicant alleges he is unlawfully held in custody for the following reasons:

1. Ineffective Assistance of Counsel
  - a. "Failed to explain right to appeal"
2. False information presented to court.

### **SUMMARY OF RELEVANT TESTIMONY**

#### *Applicant's testimony*

At the evidentiary hearing, Applicant testified Plea Counsel was his first and only attorney. Plea Counsel was an appointed public defender whom Applicant stated he first met approximately a month after his arrest. He stated Plea Counsel asked him to explain his version of the incident and testified that Plea Counsel mentioned he would speak to the solicitor to see

about getting the charges reduced to purse snatching or petit larceny, but Applicant did not know if that conversation occurred. Applicant testified he had two other meetings with Plea Counsel before the plea - once at the jail and once at the courthouse ten minutes before the proceeding. He testified he had previous criminal convictions, and he had been on probation before, but he stated he was not on probation at the time the subject incident occurred. According to Applicant, this was an error stated by the probation agent during the plea hearing.

Applicant claimed Plea Counsel told him at their second meeting that the State was offering ten years, which he told Plea Counsel was too much. Applicant testified the State then offered to allow him to plead without a recommendation, and he agreed because he believed that after explaining the incident, his sentence would be shorter than ten years. Applicant claimed he never spoke to Plea Counsel about the procedures of a trial or the potential outcome. Applicant testified he believed the error in discussing his probation during the plea hearing made him look disobedient and strongly affected the sentence given. He admitted he never watched the video of the incident.

Applicant admitted to having the knowledge of the right to appeal and answering in the affirmative when Judge Russo asked him if he understood his appellate rights during the hearing. He stated he did not ask Plea Counsel to file an appeal. He testified he understood what an open plea was, that he could be sentenced to any term between one and fifteen years, and he declined a previous deal for ten years. Applicant testified he also declined going to trial, and he never told Plea Counsel he would rather have a trial. Applicant recalled clarifying the status of his probation when he spoke to Judge Russo directly during the plea hearing, explaining the payment agreement entered into with the Williamsburg County Solicitor. He acknowledged that

clarification on the probation was brought to the court's attention, but the Applicant stated he did not have proof of payment at the time of the plea hearing.

*Plea Counsel's testimony*

At the evidentiary hearing, Plea Counsel testified he first met with Applicant within ten days of Applicant's arrest, and Applicant told Plea Counsel he was on Ambien and Xanax at the time of the incident and could not remember many details. Plea Counsel testified Applicant said he asked someone for a ride, got into an altercation, snatched a wallet and ran. Applicant also told Plea Counsel law enforcement had the incident on camera. Plea Counsel received evidence in two batches that included the incident reports, victim photographs, and report from the 911 tape. Plea Counsel indicated the video was received later. Plea Counsel testified during their first meeting he and Applicant reviewed the evidence received thus far, and Applicant stated he wanted to enter a plea as he had a pending grand larceny charge in Winnsboro. Plea Counsel met with Applicant again to review evidence, and he and Applicant read the incident report together and discussed the video evidence. Plea Counsel testified he offered the video to Applicant, who declined to watch it. Plea Counsel indicated he and Applicant discussed how a clerk at the grocery store identified Applicant. Plea Counsel testified he discussed trial procedure with Applicant, but Applicant was adamant he did not want to go to trial.

Plea Counsel informed Applicant of his right to a trial, possible arguments and defenses, and explained how the jury would decide the verdict. Plea Counsel testified Applicant declined and again expressed how he did not want to pursue a trial. Plea Counsel indicated Applicant expressed a wish to plead guilty and do so as soon as possible. Plea Counsel testified he advised Applicant that the victim would be present on the day of the plea and was still very upset. He

suggested delaying the plea to allow "emotions to die down." Plea Counsel stated Applicant wanted to go ahead with the plea, and it was his decision.

Plea Counsel testified the day of Applicant's plea, they discussed how Applicant could take time and decide whether he wanted to plea or prepare for trial. Plea Counsel additionally told Applicant he was not on the trial roster and so the State could not force Applicant's case to go forward, but Applicant insisted on moving forward with a plea that day. Plea Counsel confirmed Applicant informed the Court that the statement by the probation agent was incorrect and clarified that he had paid the restitution owed while in jail. Plea Counsel testified he asked Applicant if he was on probation, and Applicant indicated he was not. Plea Counsel further testified the only thing Applicant told him was pending were the charges against him in Winnsboro. Plea Counsel stated the day of the plea hearing was the first time he heard about the probation issue and payments. Plea Counsel also testified he did not know when Applicant would plead guilty until Applicant insisted on pleading the day of his hearing. Plea Counsel further testified he explained the right to an appeal to Applicant and stated he would have filed an appeal if Applicant had requested it, but Applicant never did.

#### APPLICABLE LAW

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984). To prove prejudice, the applicant must show that there is a reasonable

probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52 (1985).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Petitioner, like all other defendants, the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984); *Taylor v. State*, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Petitioner has the burden of proving the allegations in his post-conviction relief action, and when alleging counsel was constitutionally ineffective, he must prove "counsel's conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result." *Id.* at 686. In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. *Id.* at 690. First, the applicant must prove counsel's performance was deficient. *Id.*; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 815. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). Petitioner must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced Petitioner such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, *Hill v. Lockhart* extended the two-part Strickland

test to challenge guilty pleas based on ineffective assistance of counsel. 474 U.S. 52 (1985); *cf. Padilla*, 559 U.S. at 373 (recognizing the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel).

When reviewing a guilty plea, the analysis of counsel’s performance under the first prong of *Strickland* remains unchanged—the applicant must show counsel’s representation fell below the objective standard of reasonableness demanded of attorneys in criminal cases. *Hill*, 474 U.S. at 58–59. 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 decision-making” 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.

Surmounting *Strickland*’s high bar is never an easy task, and the strong societal interest in finality has “special force with respect to convictions based on guilty pleas.” *Lee*, 582 U.S. \_\_\_, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); *cf. Hill*, 474 U.S. at 58 (“[R]equiring a ‘prejudice’ showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel ‘will serve the fundamental interest in the finality of guilty pleas.’”). Reviewing “[c]ourts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his

attorney's deficiencies." *Lee*, 582 U.S. \_\_\_, 137 S. Ct. at 1967. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences." *Id.* In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the plea and the evidence presented at the PCR hearing. *Harres*, 282 S.C. at 134, 318 S.E.2d at 361.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Strickland*, 466 U.S. 668.

Moreover, *Strickland* does not require a finding of ineffectiveness merely for deviation from a rigid rule of representation. Rather, *Strickland* requires the applicant to prove "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* at 697. Therefore, the function of the post-conviction relief court is to determine if "in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance" required of a criminal defense attorney. *Id.* At 690.

"A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74(1977)). "Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea." *Garren v. State*, 423 S.C. 1, 12, 813

S.E.2d 704, 710 (2018); see *Jamison v. State*, 410 S.C. 456, 469-71, 765 S.E.2d 456 (2014) (observing that “guilty plea[s] must be treated as final in the vast majority of cases” and instruction 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”). To prove prejudice, the applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52 (1985).

### **DISCUSSION**

This Court viewed the evidence presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony and evidence accordingly in its discussion below. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, Applicant’s appellate records, and the legal arguments made by the attorneys. This Court finds the combined record of the trial transcript and the testimony from the evidentiary hearing establishes Applicant received effective assistance of counsel, and this application should be denied. Set forth below are the relevant findings of fact and conclusion of law as required by section 17-27-80 of the South Carolina Code of Laws.

#### ***Right to Appeal***

First, Applicant alleges Plea Counsel was ineffective in his representation surrounding his guilty plea. Specifically, Applicant claims Plea Counsel failed to explain the appeals process such that Applicant did not knowingly and voluntarily waive his right to an appeal. For the reasons stated below, this Court finds that trial counsel was not ineffective for failing to file an appeal.

The United States Supreme Court has rejected a “bright-line rule that counsel must always consult with the defendant regarding an appeal.” *Roe v. Flores-Ortega*, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036, 145 L. Ed. 2d 985 (2000). They instead held that “counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing.” *Id.* “[A]lthough not determinative, a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings.” *Id.*

This Court finds this allegation is without merit, and Applicant has failed to carry his burden of proving that he did not knowingly and voluntarily waive his right to an appeal. This Court finds credible Plea Counsel’s testimony that Applicant repeatedly and clearly expressed a desire to plea and did not wish to pursue a trial. This Court also finds trial counsel gave credible testimony that he conferred with Applicant about his right to appeal, and had Applicant requested it, Plea Counsel would have filed one, but Applicant never indicated he wanted to pursue an appeal. The record also reflects Applicant was advised of his right to appeal by Judge Russo during the plea colloquy (Tr. 6), and when asked by Judge Russo whether he understood those rights, Applicant answered that he did (Tr. 8). Moreover, Applicant and Plea Counsel agree Applicant never asked Plea Counsel to file an appeal.

In determining guilty plea issues, “it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing.” *Harres v. Leeke*, 282 S.C. 131 (1984). 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 (1997). Thus, even if plea counsel's testimony was not credible, Applicant's testimony in his plea hearing refutes his claim that he received ineffective assistance of counsel. As discussed above, Applicant testified Judge Russo discussed his constitutional rights during the plea hearing, and Applicant stated he understood those rights. Specifically, Applicant acknowledged he was advised of his right to an appeal. As such, any possible deficiency on the part of Plea Counsel was cured by the plea colloquy.

Based on the record and the testimony of both Plea Counsel and Applicant, this Court finds Applicant understood he had a right to appeal from his guilty plea and sentence, but Applicant chose not to do so. Applicant admitted he never asked Plea Counsel to file an appeal, and given his insistence on pursuing an expedited guilty plea, this Court finds there was no evidence from which Plea Counsel could conclude that Applicant would want to appeal. Applicant admits he never told Plea Counsel he wanted to appeal. This Court therefore denies relief as to this allegation.

***Incorrect information presented at sentencing***

Second, Applicant alleges counsel was constitutionally ineffective for failing to correct false information presented to the court regarding his probation at the time of the incident, which Applicant felt prejudiced him and resulted in a longer sentence. However, this Court's review of the record and testimony demonstrates Applicant was offered, and seized, the opportunity to testify and clarify the incorrect statements regarding his probation during his plea hearing (Tr. 17-18). This Court finds credible Plea Counsel's testimony he asked Applicant about outstanding charges and probation, and Applicant disclosed only pending charges from Winnsboro. Further, this Court also finds credible Plea Counsel's testimony that the first time Plea Counsel became

aware of the probation and restitution discrepancy was the day of the plea hearing, which Applicant insisted take place that day. Moreover, this Court finds credible Applicant's testimony that he understood he was submitting an open plea and could be sentenced anywhere within the one-to-fifteen year range. This is acknowledgement is further corroborated by Applicant's agreement to the sentencing range of up to fifteen years during his plea colloquy (Tr. 7). Ultimately, Applicant was sentenced to a term of twelve years. Applicant has provided no evidence other than his own assumptions and beliefs that the incorrect facts were impermissibly considered and affected Judge Russo's sentencing decision. As such, Applicant cannot establish that any prejudice resulted from these events, particularly when he clarified the allegedly incorrect information with the plea court, and he was lawfully sentenced within the possible range for his charge.

The Court finds Applicant failed to establish deficiency of Counsel or any resulting prejudice. Specifically, the Court finds Applicant failed to overcome the presumption that his attorney provided adequate assistance and exercised reasonable professional judgment in making all significant decisions in his case pursuant to *Strickland*. 466 U.S. at 690. This Court further finds Applicant failed to show that, absent his attorney's alleged deficiency, he would not have plead guilty and would have insisted on going to trial pursuant to *Hill*. 474 U.S. at 59. Testimony confirms that Applicant consistently and repeatedly insisted on pursuing an expedited plea and rejected the option of going to trial. Ultimately, the plea transcript reflects Applicant understood the proceedings, interacted intelligently with the plea court, and entered his guilty plea knowingly and voluntarily. Moreover, Applicant's twelve-year sentence is within the sentencing range Applicant acknowledges he understood would be possible. This Court therefore denies relief as to this allegation.

**CONCLUSION**

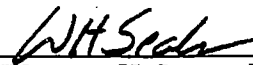
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 306 S.C. 453, 40 S.E.2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. The application for post-conviction relief be dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

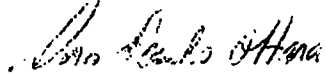
AND IT IS SO ORDERED this 24 day of March, 2021.

  
WILLIAM H. SEALS, JR.  
Presiding Judge  
Twelfth Judicial Circuit

DORIS POLK O'HARA  
Clerk of Court  
FLORENCE COUNTY, SC

2021 MAR 30 AM 11:40

FILED

CERTIFIED A TRUE COPY  
  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.  
2018-CP-21-3024

STATE OF SOUTH CAROLINA )  
COUNTY OF FLORENCE )

IN THE COURT OF COMMON PLEAS  
FOR THE TWELFTH JUDICIAL CIRCUIT

Jason Barnhill, #292731 )

Case No.: 2018-CP-21-3024

Applicant, )

Certificate of Service by Mail

v. )

State of South Carolina )

Respondent, )

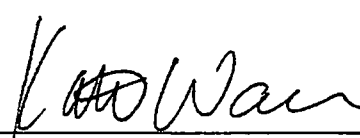
2021 MAR 30 AM 11:40  
DORIS FOLLOWS O'HARA  
CCCP & GS  
FLORENCE COUNTY, SC

FILED

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Order of Continuance in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jonathan D. Waller, Esquire  
Waller Law Group, LLC  
1116 Blanding Street  
Suite 2B  
Columbia, SC 29201

DATED this 29<sup>th</sup> day of March, 2021.



Katie Wade, Legal Assistant  
For Respondent

CERTIFIED A TRUE COPY  
*Doris Follows O'Hara*  
CLERK OF COURT, C.P. & G.S.  
FLORENCE COUNTY, S.C.