STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
Walton J. McLeod, IV, Circuit Court Judge

2018-CP-21-02034

Shamaine Martell Roberson, # 331079,

Appellant,

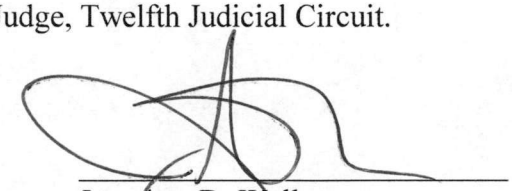
v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Shamaine Martell Roberson, # 331079, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed April 6, 2021, issued by the Honorable Walton J. McLeod, IV, 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 21, 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
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2018CP2102034

2021 APR -6 AM 9:21

DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

RECEIVED
APR 26 2021
S.C. SUPREME COURT

Shamaine Martell Roberson	South Carolina State Of
PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

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

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ 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** 4/6/2021 **Date**

For Clerk of Court Office Use Only

This judgment was entered on **April 6, 2021**, and a copy mailed first class or placed in the appropriate attorney's box on **April 6, 2021**, to attorneys of record or to parties (when appearing pro se) as follows:

CERTIFIED A TRUE COPY
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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Doris P. O'Hara

Court Reporter

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), SCRCP.

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

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

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE	)	IN THE COURT OF COMMON PLEAS FOR THE TWELFTH JUDICIAL CIRCUIT
Shemaine M. Roberson, #331079, Applicant,	)	
v.	)	Case No.: 2018-CP-21-2034
State of South Carolina, Respondent.	)	**ORDER OF DISMISSAL**

FILED
2021 APR -6 AM 9:21
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

In response to Shemaine M. Roberson's ("Applicant") action for post-conviction relief ("PCR") commenced July 27, 2018, the State made its return on February 28, 2019. The Court convened an evidentiary hearing into the matter on December 17, 2020, at the Florence County Judicial Center in Florence, South Carolina. Applicant was present at the hearing and was represented by Jonathan D. Waller, Esq. Michael D. Davidson, Esq., of the South Carolina Attorney General's Office, represented the State.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Emily Crayton, Esq. ("Counsel") also testified. This Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the Clerk of Court regarding the subject convictions, the pleadings, the exhibits introduced at the evidentiary hearing, and a copy of the original PCR evidentiary hearing transcript. This Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted during the June 2016 term of the Florence County Grand Jury for assault and battery in the first degree (2016-GS-21-0784). Applicant was also indicted during the April 2017 term of the Florence County Grand

Jury for grand larceny, kidnapping, possession of a weapon during the commission of a violent crime, and carjacking. (2017-GS-21-0529). Applicant was represented by Emily M. Crayton, Esquire. Applicant's case on the April 2017 charges was called for trial January 22, 2018, before the Honorable D. Craig Brown. However, the following day, Applicant pled guilty to kidnapping on the April 2017 charges and first-degree assault and battery on the June 2016 charges. Applicant pleaded without sentencing recommendations or negotiations. Judge Brown accepted Applicant's plea and sentenced him to concurrent terms of imprisonment of twenty-five years for kidnapping, and ten years for assault and battery in the first degree. Applicant did not appeal his convictions or sentence.

Current Application

In his first application (2018-CP-21-2034), Applicant alleges he is being held in custody unlawfully for the following reasons:

1. 4th, 5th, 6th, 13th, 14th, and 15th Amendment violations;
2. Subject Matter Jurisdiction;
3. Due Process Violations;
4. Ineffective Assistance of Counsel; and
5. Fraud upon the Court.

In his second application (2018-CP-21-2179), which was merged with his first (2018-CP-21-2034) and treated as an amendment by an Order of Merger filed August 5, 2019, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. 4th, 5th, 6th, 13th, 14th, and 15th Amendment violations;
2. S.C. Criminal Rules Violations;
3. Subject Matter Jurisdiction;
4. Due Process Violations; and
5. Ineffective Assistance of Counsel.

In his third application (2018-CP-21-2181), which was merged with his first (2018-CP-21-2034) and treated as an amendment by an Order of Merger filed August 5, 2019, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. 6th, 13th, 14th, and 15th Amendment Violations;
2. S.C. Criminal Rules Violations;
3. Subject Matter Jurisdiction;
4. Due Process Violations; and
5. Ineffective Assistance of Counsel.

As requested relief, Applicant requests: his conviction be vacated; his record expunged; an order issued removing his name and DNA from any derogatory file; and for all money paid to the State be returned.

At the evidentiary hearing, Applicant proceeded forward on the "ineffective assistance of counsel claim, specifically that counsel was ineffective for failing to fully investigate the facts and circumstances surrounding the allegations in a manner that led to [Applicant's] plea, both of them being involuntarily and unknowingly entered into." (PCR Tr. 6). Further, PCR Counsel clarified that Applicant understood the relief available if he prevailed on his claims were "potentially the vacation of his sentence" and that "he would have to face the charges all over again." (PCR Tr. 7). Also, PCR Counsel confirmed Applicant understood "the statute of limitations regarding his prior convictions and that they are not encompassed in [the] proceeding." (PCR Tr. 7).

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, weighed their credibility and the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to Section 17-27-80 of the South Carolina Code, this Court makes the following findings based upon all of the probative evidence presented.

A. Summation of Record and Credibility Findings

The Court notes the below portions of the record and the testimony presented as particularly relevant to the allegations presented and weighs its credibility and probative value as follows:

1. Plea Proceeding

Near the outset of the plea colloquy, the plea court confirmed that Applicant understood the potential sentence for both offenses, kidnapping and assault and battery in the first degree, and that the potential sentence for the former was thirty years and the latter was ten years. (Plea Tr. 4, ll. 3–12). Upon further inquiry, Applicant confirmed he understood he was entering a plea without recommendation or negotiation and he was facing up to forty years, depending on what the Judge saw as the appropriate sentence. (Plea Tr. 4). Applicant testified that he had discussed the matter with Counsel, that he told Counsel everything he knew about it, that Counsel had answered all of Applicant's questions and done everything she was asked to do, and that Applicant was satisfied with Counsel's services. (Plea Tr. 9).

After advising Applicant of his various rights, the plea court inquired:

> Q. All right. Has anyone promised you anything or held out any hope of reward to get you to plead guilty?
>
> A. No, sir.
>
> Q. Has anybody used any threats, force, pressure, or intimidation to get you to plead?
>
> A. No, sir.
>
> Q. Has anyone mistreated you, whether it be law enforcement or the solicitor's office?
>
> A. No, sir.

Q. Have you had enough time to make up your mind as to whether or not you want to plead guilty to each of these charges or go to trial? Have you had enough time?

A. Yes, sir.

Q. And what do you wish to do?

A. I want to plead.

Q. Are you pleading guilty as to each of these charges of your own freewill?

A. Yes, sir.

Q. Have you understood my questions?

A. Yes, sir.

(Plea Tr. 9–10).

After the plea court read the indictment and elicited Applicant's "guilty" plea, the Judge further clarified that he could require Applicant to register as a sex offender under the assault and battery in the first degree charge. (Plea Tr. 18). The plea court again confirmed Applicant understood and confirmed Applicant still wished to plead guilty. (Plea Tr. 18, ll. 8–19).

Counsel offered mitigation near the close of the plea proceeding and asked the plea court to consider taking mercy on Applicant. (Plea Tr. 21). Applicant directly addressed the plea court and expressed his apologies for making the victim feel the way he did and apologized to society and the Court system. (Plea Tr. 22). Applicant's mother addressed the plea court and asked the plea court have mercy on him. (Plea Tr. 22).

2. Evidentiary Hearing

Applicant's Testimony

At the evidentiary hearing, Applicant testified that Ms. Emily Crayton ("Counsel") was his attorney since 2016, but he could not recall what charges she represented him on. (PCR Tr. 10).

Applicant later recalled that Counsel represented him on the kidnapping charge. (PCR Tr. 10). Applicant testified that Counsel told Applicant he had to plead to the kidnapping charge. (PCR Tr. 11). Applicant explained the State alleged that he kidnapped someone, but that Applicant, to his knowledge, had not kidnapped anyone. (PCR Tr. 11). Applicant testified that he told Counsel to go to the bar where the incident supposedly took place and talk to the bartender because the bartender could be a witness proving he and the victim walked out of the bar together; however, Applicant testified that Counsel never tried to do that. (PCR Tr. 11–12). Applicant admitted that he did not tell Counsel he was not at the bar, but rather the situation was different than it appeared in the police report. (PCR Tr. 11).

Applicant testified that he told Counsel that once they walked out of the bar, the victim said he had a weapon, but Applicant stated he did not have a weapon at the time and that he did not draw a weapon. (PCR Tr. 12). Applicant testified that he explained to Counsel that he told the victim he had a weapon, but he did not draw a weapon because he had a prior life in the past. (PCR Tr. 12–13). Applicant then admitted he did have a weapon at the time, but he did not draw his weapon. (PCR Tr. 13). Specifically, Applicant testified as to what he told Counsel happened the night of the incident, as follows:

> [W]hen we exited the club, we walked to her car. We got in the car. [The victim] gave me the keys. She walked around to the driver's side. She walked to the driver's side and then she walked around to the passenger side. I got in the driver's side. She came -- she told a lie that I put her in the car at gunpoint, which I did not. She's five eight, 190 pounds, and said that I forced her over the seat. How? You got a console in the car. You got the steering gear in the middle of the floorboard. You was a big person. How can I force you over all that?
>
> . . . .
>
> She walked. She walked around. I've known [the victim] way back high school days. We met at a high school football game. Eventually, she got a call from her boyfriend that night and a video

> pulled up. When she answered, it been on video chat and I been in the background and she screamed that and she screamed this, but me and her had a fight in the car because I got a call from my girlfriend -- from a friend and I told her I wanted to pick her up as well later. But at that time [the victim] got mad at me, calling me names and stuff. We got into arguments in the car. She hit me, I hit her back, and she jumped from the car.
>
> . . . .
>
> At the time when -- when she hit me, my reflex kicked in. I hit her back. She jumped from the car. I wasn't going no more than probably 40 -- 45 miles per hour at the time she jumped from the car. I went up. I turned around and I came back. I say -- I asked her -- I said -- I was yelling. I said you is crazy. You jumped from a moving car. I didn't see no one. She never showed back up. So I -- I continued driving.
>
> . . . .
>
> I ended up in -- I ended up in Olanta, South Carolina, at my aunt's house for a time being. Then I left from there. I went and picked -- I went and picked up my friend who I say I was going to pick up. We chilled together for a while. I dropped her back off at home. I ended up back in Olanta, South Carolina, at my aunt's house.

(PCR Tr. 14–16). Applicant testified that he told Counsel every detail of the incident. (PCR Tr. 16).

Applicant testified that he and Counsel never discussed defenses as to how the victim's personal belongings got into the car and he never asked her how they would challenge it. Applicant testified that he never asked Counsel about how to challenge the search of his aunt's house because he didn't know how to proceed with questions about the law. Applicant testified that when he asked Counsel what to do, Applicant ended up pleading to something he did not do. (PCR Tr. 16–17).

Applicant testified that leading up to trial, he and Counsel did not discuss what was going to happen at trial because Counsel told him he did not have a defense—however, he believed he did have a defense, and that if Counsel had talked to the witnesses Applicant asked her to talk to, the case would have been a "whole lot different." (PCR Tr. 17). Applicant testified that, in

addition to the bartender, Applicant gave Counsel the names of two other people. Applicant explained that Counsel had her investigator attempt to locate the witnesses, but four days before trial, the investigator told them he could not find the witnesses. Applicant testified that he wanted these witnesses at trial to establish that he and the victim knew each other, and to question the victim's credibility, because the victim claimed she did not know Applicant. (PCR Tr. 17–18).

Applicant testified that there were other ways to prove he and the victim knew each other before the incident. (PCR Tr. 19). Applicant explained he had an old MySpace page that the two were on together, but when Counsel asked him for the password, he did not give Counsel the address to locate the pictures because he did not want anyone looking through his "personal stuff" on the MySpace page because there were things on it that he did not want anyone to see. (PCR Tr. 19). Applicant admitted that although he and the victim had texted each other prior to 2013, as of 2016, he had no text messages to provide because he had deleted the information on his old phones when he got a new phone. (PCR Tr. 20).

Applicant testified that he did his own research about problems with the search of his aunt's house and he tried to explain to Counsel that "during the search the officer proceeded he had seen beyond his limitations. He had seen -- he only asked for -- he only asked for the gun and he had seen beyond that." (PCR Tr. 21). Explaining further, the following exchange occurred regarding Applicant's issue with the search of his aunt's house:

Q: Okay. You're talking about all on the search warrant?

A: On the search, on the search altogether. He -- he only asked for the gun. He only asked permission. When he -- when he approached me, he asked me and he asked my aunt and I told him that the way -- the location where the phone was.

Q: Okay.

A: Because that's all he asked for was the phone and I told him where the phone was. He went and he located the phone after he asked my aunt for permission to search the house.

Q: Okay.

A: He located the phone, but he came back out. He at where I was sitting to. He did not ask to search that location.

Q: Okay. Did you and Ms. Crayton discuss -- well, let me back up. Did you live there?

A: No, I didn't live there.

Q: Okay. Did you and Ms. Crayton discuss how you may be able to challenge that search?

A: No, sir, we didn't.

Q: Okay. Did you discuss with Ms. Crayton that it was your aunt's house?

A: No, sir, because prior to trial I don't think me and her -- we didn't sit down and talk.

Q: Okay.

A: The first time she came to talk to me, she -- she asked me what was I willing to plead to. That's all we talked about.

(PCR Tr. 21–22).

Applicant testified that he was adamant he wanted a trial, but on the second day of trial, his mother, Counsel, co-counsel Elizabeth Neyle, Investigator Thomas McKenzie and another older white male convinced him to plead guilty. (PCR Tr. 22–23). Applicant testified as follows:

Q: Okay. So y'all were in a room and all talking at the same time?

A: I was in the holding cell. It started out with Ms. Crayton and Ms. Neyle, and she told me to -- she told me that she wasn't

going through with another day of trial and to just go out there and plead guilty, and I told her no.

Q: Okay.

A: And then she stormed -- she left out. She stormed out of the holding cell area and left me and Ms. Neyle back there. Ms. Neyle told me that they doesn't -- that – how she say it? She say that I don't work for them, they work for me, and it was what I wanted to do and that's when she left out.
After she left out -- after Ms. Neyle left out, that when Investigator Thomas McKenzie walked in with the older white male, who I did not know. He introduced hisself [sic], but I didn't catch his name at the time because there was so much going on, which I had wanted a trial.

And Investigator Thomas McKenzie told me I should listen at Ms. Crayton and plead. He say I got a good judge. This is a great opportunity. This is a good opportunity to get less time if I would have go out there and pled guilty. He said because if I go to trial, I could be looking at everything, and I told him no as well. He said okay. He said it's your call.

So after that, Ms. Emily Crayton -- she returned back with my mother, and that's when she told me that she does – that's when she -- that's when Ms. Emily Crayton told me that she does know that I have a -- what did she say? I can only -- I'm thinking back years of what happened. So give me a moment.

Q: Okay.

A: She told me that she does know that I didn't have a weapon at the time that I got arrested, but I did told her that I had a gun. All this took place in front of my mother and at the time I froze up because of the things that my mother been hearing and becoming aware of and the things that was being mentioned in front of my mother, who knows who been out there in the hallway, if they were going to return back. The State could have called my mother to be a witness against me, and that would have self-incriminated me.

(PCR Tr. 24–26).

Applicant testified that after the meeting in the holding cell, he did not think his lawyers were prepared to continue with trial; however, had his lawyers interviewed the witnesses he asked them to interview, he stated that he would have proceeded to trial. (PCR Tr. 26). Applicant testified that he did not understand he could have a separate trial on the assault and battery charge, but that he pleaded guilty to that charge too after Counsel said she would get the assault and battery charge to run concurrent with the carjacking charge. (PCR Tr. 26–27). Applicant explained at the time, he was not thinking and he did not know what he was doing, he just pleaded guilty. (PCR Tr. 27). Applicant testified that had Counsel sought out and talked to reliable witnesses, fully investigated and observed the actual crime scene surrounding the kidnapping, and talked to the victim of the assault charges as well, he would have proceeded to trial for both charges. (PCR Tr. 28).

On cross-examination, Applicant testified that he pleaded guilty after talking to his mother. Applicant testified that Counsel told him she would recommend the judge sentence him for fifteen years, which she did, but he still received twenty-five years. Applicant conceded Counsel did not promise him the fifteen-year sentence; she only said that she would recommend it. Applicant testified that he was told to say "yes" to all of the Judge's questions. Applicant testified that he did not recall telling the judge at the plea hearing that he wished to plead guilty. (PCR Tr. 34–37). Applicant testified that when he addressed the judge at the plea hearing, he "may have apologized for how [he] made the victim feel and the Court and everything." (PCR Tr. 38). Applicant explained, "[He] felt like [he] did left her out there alone, but on kidnapping, no. But driving away and leaving her there and not staying there and looking for her, yeah, [he] felt bad for that." (PCR Tr. 38). Applicant admitted that while his testimony earlier was that everything could have

changed had Counsel gotten in contact with the bartender, the bartender was not present in the courtroom for the evidentiary hearing. (PCR Tr. 39).

On redirect examination, Applicant testified that his plea was based on the number of years he expected to be sentenced to, not on Counsel being unprepared for trial. However, Applicant then testified that if Counsel had made the preparations that Applicant asked her to make, Applicant thought everything would have been different. Applicant testified that he should not have been convicted at all and if she had done the things he asked her to do, he would have proceeded to trial. (PCR Tr. 40–41).

Counsel's Testimony

Counsel testified that she was first appointed to represent Applicant on his assault and battery charge, and was later appointed to represent Applicant on the kidnapping charge. Counsel testified that she met with Applicant several times about the assault case, which Counsel did not view as a strong case. (PCR Tr. 52). Counsel testified that she did not know exactly how many times she met with applicant once she was appointed to represent Applicant on the kidnapping charge, but she had six or seven notes from speaking with him at the jail. Counsel testified that she received discovery and sent it to Applicant to review. Counsel testified that after she and Applicant reviewed it, they discussed it together. (PCR Tr. 43).

Counsel testified that Applicant gave her the name of two individuals, Erica Montgomery and Ashley Gradner, both of whom Applicant said knew him and the victim. Counsel spoke with both witnesses prior to trial and both witnesses said that while they knew Applicant very well, they had never met the victim or seen the two together. Counsel further testified that Montgomery did say that when this incident occurred, she had heard conversations in which people said that Applicant and the victim knew each other prior to the incident. Counsel testified that she asked

Montgomery to give Counsel the name of any person who could verify that the victim and Applicant knew each other; however, Montgomery could not give Counsel any more information. Counsel explained she asked Montgomery to ask people she knew to see if she could get any more information and to call Counsel back. Further, Counsel testified that she spoke with Gradner again closer to trial and Gradner told Counsel that she could not provide Counsel any additional information other than she did not know that Applicant and victim knew each other, nor had she ever met the victim. (PCR Tr. 44).

Counsel testified that Applicant gave her the name of the person he claimed would corroborate his alibi, Dejaia Felder. Counsel testified that when they spoke with her, Felder was very upset that Applicant tried to use her as an alibi witness. Counsel testified that Felder said she was not with Applicant at the time. Counsel discussed all of this with Applicant. (PCR Tr. 44–45). Counsel testified that she spoke with all the law enforcement that was involved in the case prior to trial. Counsel also testified that she met with Contessa James, who rode in the vehicle with the victim the night of the incident on the way to the bar. Counsel testified that she tried to speak with the victim, but the victim would not return her calls and Counsel was never able to make contact with her. (PCR Tr. 45–46)

Counsel testified that it was difficult to come up with a defense that would demonstrate that the victim was in the car willingly because she jumped out of a car going forty-five miles per hour after Applicant threatened her with a gun. Counsel testified that the only defense was Applicant's story: that the victim went with him willingly. Counsel testified that this defense required them to connect the victim to Applicant. Counsel testified that she went through all of the victim's social media trying to connect the victim and Applicant, but was unsuccessful. Further, Counsel testified that Applicant told her he would not provide her with any of his

MySpace or social media accounts, which prevented Counsel from being able to demonstrate the two knew each other. Counsel testified that Applicant never told her about a bartender and emphasized the fact that Applicant could not provide the bartender's name during his direct examination. Additionally, Counsel testified that the club Applicant was at the night of the incident was shut down prior to Applicant's trial. (PCR Tr. 47–48).

Counsel testified that after hearing the victim testify in pre-trial hearings, Counsel told Applicant she did not believe he was going to be successful at trial because the victim's testimony was very compelling and believable. Counsel explained that, while it was Applicant's choice to continue with trial, Counsel told Applicant she thought he would be found guilty if he continued with trial. Counsel explained that on the second day of trial, she and co-counsel, Elizabeth Neyle, spoke with Applicant in his holding cell. Counsel and co-counsel explained to Applicant how badly they felt things were going and told Applicant they believed it was in Applicant's best interest to plead guilty. Counsel testified that Applicant then spoke with his mother in private and decided to plead guilty. (PCR Tr. 49–51).

Counsel explained to Applicant that he was pleading to kidnapping and the first-degree assault and battery, and that the carjacking and possession of a weapon charges were being dismissed. Counsel testified that this conversation happened in the presence of co-counsel. Counsel also informed Applicant of the potential exposure and the collateral consequences of pleading to the charges. Counsel testified that Applicant expressed to her he understood all of his rights and agreed to plead guilty. Counsel testified that it was Applicant's decision to plead guilty and that she did not force him to plead guilty. Counsel testified that she believed it was in Applicant's best interest to plead guilty and Applicant's mother agreed. (PCR Tr. 51). Counsel testified that prior to the plea hearing, she did not instruct Applicant to simply answer "yes" to all

of the Judge's questions. Counsel testified that Applicant did not ask to speak with Counsel privately at any time during the plea hearing. (PCR Tr. 53).

On cross-examination, Counsel explained the reason the kidnapping charge was tried before the assault and battery charge, despite being a newer case, was because the Solicitor controls the docket and solicitors can pick their strongest case. Counsel testified that the Solicitor likely felt the kidnapping charge was a stronger case. Counsel testified that she did not recall any plea negotiations on the assault and battery charge and did not recall Applicant expressing a desire to plead to the assault and battery charge, prior to her appointment on the kidnapping charge. Counsel testified that she could not recall any specific issues Applicant may have had with her. Counsel testified that she would have tried her best to keep whatever evidence she could from being admitted, but Counsel could not recall if she discussed with Applicant specifically challenging how the police located Applicant. Counsel testified that she believed she discussed the search of Applicant's aunt's home with Applicant, but could not recall specifics about that conversation. (PCR Tr. 54–56)

Counsel testified that after the victim testified on the first day of trial, things changed because Counsel originally believed she would be able to connect Applicant to the victim, and that Counsel would somehow get the victim to admit that she knew Applicant or that there was some relationship between the victim and Applicant. However, without any witnesses, Counsel was unable to do so. Counsel testified that she did not recall Applicant asking her to contact the bartender. Counsel testified that she did not recall if there was any specific finding by Judge Brown as to whether the kidnapping charge was or was not of a sexual nature. Counsel further testified that she could not recall if there was any specific finding by Judge Brown regarding Applicant being placed on the sex offender registry for the kidnapping charge. Counsel testified

that Applicant never tried to claim he was not involved; he just claimed he did not kidnap anyone because they knew each other and had voluntarily left together. (PCR Tr. 56–59).

3. Credibility and Weight

This Court finds that the present matter represents an appropriate circumstance to issue broad credibility findings as to the testimony of each of the witnesses at the evidentiary hearing, rather than attempt to parse out in detail which portions of each witness' testimony are credible and which portions are not.

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the evidentiary hearing, weigh their testimony and credibility accordingly. The Court has also reviewed substantive and detailed proposed orders from both parties. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80.

B. Ineffective Assistance of Counsel & Involuntary Guilty Plea

Applicant alleges that "[C]ounsel was ineffective for failing to fully investigate the facts and circumstances surrounding the allegations in a manner that led to [Applicant's] plea, both of them being involuntarily and unknowingly entered into." (PCR Tr. 6). However, this Court finds Applicant's allegations of ineffective assistance of counsel are without merit.

In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied

upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 687; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP. 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 688). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "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). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he did so for tactical reasons rather than through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 8 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109-10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." *Yarborough*, 540 U.S. at 8; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable."). Applicant 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 Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112. "The prejudice analysis 'requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.'" *United States v. Basham*, 789 F.3d 358, 371 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, 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, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. *See Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

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." *Strickland*, 466 U.S. at 670. "[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." *Id.* at 697.

Applicant further claims his plea was not entered knowingly or voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of the plea and the charges against him or her. *Dover v. State*, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991); *see also Boykin v. Alabama*, 395 U.S. 238, 243-44 (1969) (Courts must make sure defendants have "a full understanding of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought, and forestalls the spin-off of collateral proceedings that seek to probe murky memories."). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. *See Harris 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 the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001); *Richardson v. State*, 310 S.C. 360, 363, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the

analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

1. Failure to Interview Witnesses

Here, Applicant alleges Counsel was ineffective in failing to adequately interview witnesses in his case. Specifically, Applicant alleges Counsel failed to interview witnesses who could show Applicant and the victim knew each other.

"[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." *Strickland*, 466 U.S. at 690-91. "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Id.* at 691. "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." *Id.*

"The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." *Id.* "Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant." *Id.* "In particular, what investigation decisions are reasonable depends critically on such information." *Id.*

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses the applicant could have requested counsel develop and present had counsel been more prepared. *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998). Furthermore, an

applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. *Davis v. State*, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); *Skeen v. State*, 325 S.C 210, 214, 481 S.E.2d 129, 132 (1997). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Harris v. State*, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

First, Applicant asserts that Counsel was ineffective for failing to interview two female witnesses whose names he gave to Counsel. Applicant argues that if Counsel had gone to talk to the witnesses that Applicant asked her to talk to, then the case would have been a "whole lot different." (PCR Tr. 17) However, Counsel testified that she did interview those witnesses. Specifically, Counsel testified that Applicant gave her the names of two individuals, Erica Montgomery and Ashley Gradner, who Applicant said knew him and the victim. Counsel spoke with both witnesses prior to trial and both witnesses said that, while they knew Applicant very well, they had never met the victim or seen the two together. Counsel further testified that Montgomery did say that when this incident occurred, she had heard conversations in which people said that Applicant and the victim knew each other prior to the incident. Counsel testified that she asked Montgomery to give Counsel the name of any person who could verify the victim and Applicant knew each other; however, Montgomery could not give Counsel any more information. Counsel explained she asked Montgomery to ask people she knew to see if she could get any more information and to call Counsel back. Further, Counsel testified that she spoke with Gradner again closer to trial and that Gradner told Counsel she could not provide Counsel any additional information other than she did not know that Applicant and victim knew each other, nor had she ever met the victim. (PCR Tr. 44).

Second, Applicant also asserts that Counsel should have interviewed the bartender of the club that night. Applicant testified that he told Counsel to go to the bar where the incident took place and talk to the bartender because the bartender could be a witness to support his claim that he and the victim walked out of the bar together; however, Applicant testified that Counsel never tried to do that. (PCR Tr. 11–12). Notably, Applicant could not provide the name of the bartender to Counsel at the time, nor at the evidentiary hearing. In contrast, Counsel credibly testified that Applicant never told her about the bartender and explained the club Applicant was at the night of the incident was shut down prior to Applicant's trial. (PCR Tr. 47–48).

This Court finds Counsel was not ineffective for failing to interview Montgomery and Gradner because Counsel did as Applicant requested, and interviewed the two witnesses Applicant asked Counsel to find. Furthermore, Counsel reasonably determined that the witnesses were not helpful to Applicant's defense because they could not connect Applicant to the victim. *See Strickland*, 466 U.S. at 690 ("[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable . . . ."). Additionally, this Court finds Counsel was not ineffective for failing to contact the bartender, because even if Applicant had asked Counsel to do so, Applicant failed to provide identifying information, like the bartender's name, for Counsel to be able to reasonably investigate. *See Strickland*, 466 U.S. at 691 ("The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions."). Therefore, this Court finds Counsel was not constitutionally ineffective.

Additionally, this Court finds Applicant failed to show any resulting prejudice from Counsel's alleged deficiencies. Other than his own self-serving testimony that had Counsel done what he asked, "That would have made things a whole lot different," (PCR Tr. 40), Applicant

produced no probative evidence towards meeting his burden of showing how the witnesses' testimony would have resulted in a different outcome. *See Harris v. State*, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) (Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief). Counsel, on the other hand, demonstrated through her testimony a thorough command of the facts and circumstances of Applicant's charges, and credibly testified to fully reviewing the evidence against Applicant in its entirety and investigating all reasonable avenues to connect Applicant to the victim.

Ultimately, Applicant has produced no probative evidence towards meeting his burden as to either prong of *Strickland*, and accordingly, his demand for relief by way of this allegation is **DENIED**.

2. Involuntary Guilty Plea

Applicant alleges Counsel was ineffective, and his guilty plea was not voluntarily entered, because Counsel was unprepared for trial which left him no choice but to plead guilty. "To find a guilty plea voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him." *Roddy v. State*, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000) (citing *Boykin v. Alabama*, 395 U.S. 238 (1969)). Also, an applicant's statements during the plea hearing are considered "conclusive unless [he] presents valid reasons why he should be allowed to depart from the truth of his statements." *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007). Finally, the plea colloquy can cure any alleged deficiency if counsel did not properly advise an applicant about the consequences of accepting it. *See Wolfe v. State*, 326 S.C. 158, 164-65, 485 S.E.2d 367, 370 (1997) (stating that plea counsel's deficient performance can be cured by the plea court's colloquy).

This Court finds that the record of the plea hearing establishes the knowing and voluntary nature of Applicant's plea. Near the outset of the plea colloquy, the plea court confirmed that Applicant understood the potential sentence for both offenses, kidnapping and first degree assault and battery, and that the potential sentence for the former was thirty years and the latter was ten years. (Plea Tr. 4, ll. 3–12). Upon further inquiry, Applicant confirmed he understood he was entering a plea without recommendation or negotiation and he was facing up to forty years, depending on what the Judge saw fit to give him. (Plea Tr. 4). Applicant told the court that he had spoken with Counsel about the matter, told Counsel everything he knew about it, that Counsel had answered all of Applicant's questions and done everything he was asked to do, and that Applicant was satisfied with Counsel's services. (Plea Tr. 9). Applicant confirmed that no one promised him anything, nor did anyone threaten, force, pressure, or intimidate him to get him to plead guilty. (Plea Tr. 9–10). Additionally, Applicant affirmed that he wished to plead guilty and he was doing so of his own freewill. (Plea Tr. 10). After the plea court read the indictment and elicited Applicant's "guilty" plea, the Judge further clarified that he could require Applicant to register as a sex offender under the assault and battery first degree charge. (Plea Tr. 18). The plea court confirmed Applicant understood and confirmed that he still wished to plead guilty. (Plea Tr. 18, ll. 8–19).

This Court finds that the record establishes Applicant had a full understanding of the consequences of his plea and the charges against him. Ultimately, the plea transcript reflects Applicant understood the proceedings, interacted intelligently with the plea court, and entered his guilty plea knowingly and voluntarily. Accordingly, Applicant's claim for relief by way of this allegation is **DENIED**.

III. CONCLUSION

Based on all the foregoing, this Court finds and concludes that 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 notifies the Applicant that he must file and serve a notice of appeal within thirty (30) 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*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g) of the South Carolina Rules of Civil Procedure provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 1 **day of** APRIL **, 2021.**

WALTON J. MCLEOD, IV.
Presiding Judge
Twelfth Judicial Circuit

Lexington, South Carolina