

STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Debra R. McCaslin, Circuit Court Judge

Case No. 2019-CP-32-00851

Joseph E. Mills, #376644,Petitioner,

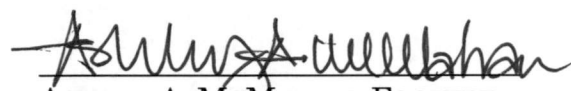
v.

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

NOTICE OF APPEAL

Applicant, Joseph E. Mills, appeals the order of the Honorable Debra R. McCaslin filed on May 27, 2021.

June 10th, 2021



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STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS)
FOR THE ELEVENTH JUDICIAL CIRCUIT)

Joseph E. Mills, SCDC #374512,)

Case No. 2019-CP-32-0851)

Applicant,)

v.)

ORDER OF DISMISSAL)

State of South Carolina,)

Respondent.)

FILED
FEBRUARY 27 AM 8:18
LEXINGTON COUNTY

The matter before this Court is an action for post-conviction relief (PCR) commenced by Joseph E. Mills (Applicant) on February 26, 2019. The State requested an evidentiary hearing through its return on August 2, 2019. Applicant, through PCR counsel, thereafter filed an amended application on April 14, 2021.

On April 29, 2021, a hearing into the matter convened at the Lexington County Judicial Center before the undersigned. Applicant was present and represented by Ashley McMahan, Esquire. Assistant Attorney General Lillian L. Meadows represented the State. Applicant testified on his own behalf at the hearing. The State presented testimony from Applicant's trial counsels, Sarah Mauldin, Esquire, and Robert Madsen, Esquire.

In addition to the pleadings in this action, this Court had before it a copy of the Lexington County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; the plea transcript; the withdrawal motion transcript; and the records of the current PCR action.

After hearing the testimony at the PCR hearing and reviewing the record in its entirety, this Court finds Applicant's allegations of ineffective assistance of counsel are without merit.

Therefore, for the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to the orders of commitment of the Lexington County Clerk of Court. Applicant was arrested on July 25, 2016, following an investigation into the shooting death of Charles Judge and Jonathan Prinse during an incident the day prior. During its April 2017 term, the Lexington County Grand Jury indicted Applicant for two counts of murder (2017-GS-32-1001, -1002) and one count of possession of a weapon during the commission of a violent crime (2017-GS-32-1003).

On May 31, 2018, Applicant appeared before the Honorable R. Knox McMahon and pleaded guilty as indicted to both counts of murder. The State dropped the weapons charge and an unindicted second-degree assault and battery charge in exchange for Applicant's plea. Chief Public Defender Robert M. Madsen and Deputy Public Defender Sarah Mauldin (collectively, Counsels) represented Applicant. Assistant Solicitor Gill Bell prosecuted the case. Pursuant to negotiations entered into between Applicant and the State, Judge McMahon sentenced Applicant to concurrent terms of forty years' imprisonment on each murder indictment.

On June 11, 2018, Counsel Mauldin filed a motion to withdraw his plea at Applicant's request. A hearing on the motion convened before Judge McMahon on June 18, 2018. Judge McMahon orally denied Applicant's motion at the hearing.

Applicant filed a timely notice of appeal. On August 10, 2018, the Court of Appeals dismissed Applicant's appeal pursuant to Rule 203(d)(1)(B)(iv), SCACR, for failure to provide a sufficient explanation as to why an appeal from his guilty plea should proceed. *State v. Mills*, S.C. Ct. App. filed August 10, 2018). By order dated October 5, 2018, the Court reinstated the appeal

because it was dismissed prior to receiving Applicant's *pro se* explanation. In the same order, the Court, after careful consideration of Applicant's explanation, again dismissed the appeal pursuant to Rule 203(d)(1)(B)(iv), SCACR. *State v. Mills*, (S.C. Ct. App. filed October 5, 2018). The case was remitted back to the circuit court on October 23, 2018. Applicant timely commenced this PCR action on February 26, 2019.

II. STATEMENT OF FACTS

On July 24, 2016, shortly after midnight, 911 began receiving a barrage of frantic phone calls reporting an active shooting at the Frayed Knot Bar & Grill. (Plea Tr. 15). The Frayed Knott is located off of Lake Murray at 1701 Dreher Island Road in Chapin. (Plea Tr. 15). First responders with the Lexington County Sheriff's Department rapidly responded to the scene. (Plea Tr. 15). When they arrived, they found chaos. (Plea Tr. 15). There were dozens upon dozens of people trying to flee the area on foot, by vehicle, and by boat. (Plea Tr. 15). As they tried to wade through the chaos and determine whether there was still an active threat, deputies found two clusters of people down by the waterside. (Plea Tr. 15). They quickly realized that those two clusters of people were surrounding two individuals who were lying prone on the ground. (Plea Tr. 15).

After law enforcement had an opportunity to examine the individuals, they realized both of them suffered what appeared to be gunshot wounds. (Plea Tr. 15–16). Those two individuals would later be identified as Mr. Charles Judge and Mr. Jonathan Prinse. (Plea Tr. 16). Jonathan Prinse suffered three gunshot wounds to the upper torso. (Plea Tr. 16). He was declared deceased at the scene. (Plea Tr. 16). Mr. Charles Judge suffered two gunshot wounds to the upper torso. (Plea Tr. 16). He was transported by EMS, but passed away shortly thereafter. (Plea Tr. 16).

In the meantime, law enforcement began the incredibly arduous task of trying to work a scene with more than 150 people present. (Plea Tr. 16). They began interviewing people and

reviewing the CCTV footage from the Frayed Knott. (Plea Tr. 16). In reviewing that footage, law enforcement identified Applicant chasing a female, who was identified as Leann Eldridge. (Plea Tr. 16). Law enforcement subsequently learned that Applicant and Ms. Eldridge were in a relationship for about a month preceding this incident; the relationship primarily revolved around Applicant providing Ms. Eldridge with narcotics; and the relationship was abusive in nature. (Plea Tr. 16–17).

Multiple witnesses reported seeing Ms. Eldridge running from Applicant that night. (Plea Tr. 17). The pursuit began in the parking lot by the road. (Plea Tr. 17). Applicant chased Ms. Eldridge into the fake beach area located between the tiki bar and the main bar or restaurant. (Plea Tr. 17). They ran down the beach towards the water, at which point Applicant caught up with Ms. Eldridge enough to tackle her from behind. (Plea Tr. 17–18). In tackling her, they both went crashing through wooden latticework located under the stairs, which leads back to the back of the main restaurant from the water. (Plea Tr. 18). Multiple witnesses corroborated what that video shows in that they saw Ms. Eldridge running and Applicant tackling her. (Plea Tr. 18).

Shortly thereafter, several concerned citizens started running toward the back of the restaurant, and eventually pull Applicant off of Ms. Eldridge. (Plea Tr. 18). The video then shows what appears to be yelling between Applicant and the other individuals at the scene. (Plea Tr. 18). There was no physical contact with Applicant aside from pulling him off of Ms. Eldridge until the one of the bar patrons shoves Applicant, causing him to fall off the dock approximately a foot down into the beach bed by the water. (Plea Tr. 18).

At that point, the video shows Applicant drawing a firearm and firing it a handful of times in an upward trajectory. (Plea Tr. 18). Multiple witnesses corroborated what is seen in the video. (Plea Tr. 18). At least one bullet effect recovered from the soffit under the roof of the main bar,

indicating the first few bullets were heading in an upward direction. (Plea Tr. 18).

Everyone then flees from the gunshots except for two people. (Plea Tr. 19). Two people ran toward the gunshots where they thought the danger was. (Plea Tr. 19). Those two people were later identified as Mr. Judge and Mr. Prinse. (Plea Tr. 19). The video clearly shows the two men running down the dock towards Applicant. (Plea Tr. 19). It shows them coming within several yards of Applicant while he is holding what a pistol. (Plea Tr. 19).

At first, they put their hands up, occasionally taking a step back. (Plea Tr. 19). Multiple witnesses stated they were simply trying to diffuse the situation at that point. (Plea Tr. 19). After some verbal back-and-forth verbally, the video shows Mr. Prinse, who is a few feet behind Mr. Judge, try and reach around to grab the pistol from Applicant's hand. (Plea Tr. 19). Unfortunately, he was unsuccessful in securing the pistol. (Plea Tr. 19).

Shortly thereafter, witnesses stated the next barrage of gunshots—anywhere from five to six shots—went off. (Plea Tr. 19). This time, however, Applicant was not shooting into the air. (Plea Tr. 19). He was shooting at two targets, and he hit those targets. (Plea Tr. 19–20). Applicant hit Mr. Judge twice and Mr. Prinse three times. (Plea Tr. 20). Mr. Judge fell where he was standing while Mr. Prinse scurried down the dock a few feet, tried to crawl off the side, and then under the dock to gain cover. (Plea Tr. 20). Unfortunately, the damage had already been done. (Plea Tr. 20).

Right after the shooting occurred, the video shows Applicant taking his t-shirt, putting it over his head, and pulling it down as if to create a hood to conceal his face. (Plea Tr. 20). He very calmly walked back from the water, up through that sort of fake beach area towards the parking lot. (Plea Tr. 20). Applicant is then seen getting into the passenger side of a vehicle, which drives away. (Plea Tr. 20). The murder weapon in this case was never recovered. (Plea Tr. 20). Applicant was arrested later that afternoon. (Plea Tr. 20).

During the investigation, multiple witnesses stated that no one made physical contact with Applicant beyond trying to restrain him off of Ms. Eldridge when he tackled her and then Mr. Prinse attempting to take the firearm. (Plea Tr. 20). The one exception is the patron who shoved him off of the dock. (Plea Tr. 20). The two victims never made physical contact except to try to secure the firearm. (Plea Tr. 20–21).

Multiple witnesses were friends with Applicant and readily able to give his identity to law enforcement. (Plea Tr. 20). Law enforcement also spoke with another group he had been with before the incident who knew Applicant was headed to the Frayed Knot. (Plea Tr. 21). They were then able to then find out who his known associates were and figure out where he was staying. (Plea Tr. 21).

When law enforcement went to arrest Applicant, he ran out the back of the residence where he was located into a wood line. (Plea Tr. 22). Law enforcement stated they pretended to have a K-9 they were about to release. (Plea Tr. 22). At that point, Applicant came back from the woods and back over the fence. (Plea Tr. 22). He was taken into custody without further incident (Plea Tr. 22). Ms. Eldridge, the victim of the assault, spoke to law enforcement the morning after and identified Applicant as the one who assaulted her. (Plea Tr. 22). There were no known prior interactions between Applicant and the two victims. (Plea Tr. 22).

II. SUMMARY OF TESTIMONY FROM EVIDENTIARY HEARING

Applicant

At the PCR hearing, Applicant recited his account of what happened the night of the shooting. He stated he first had an encounter with his ex-girlfriend, Ms. Eldridge, in the parking lot of the Frayed Knot. He testified they were in his car doing drugs but that she “decided she wanted them all.” She allegedly grabbed the drugs and took off running toward the bar. Applicant

ran after her. Applicant testified Ms. Eldridge fell and he stuck his hand out to help her up. According to Applicant, all of the sudden eight to ten bar patrons approached them and started hitting him from behind.

Two men in the crowd allegedly pushed him off the retaining wall, knocking the air out of him. He got up and began punching them when he was hit in the head with a beer bottle. He blacked out for three or four seconds before getting up and allegedly attempting to leave the bar. However, he stated the two men who pushed him were waiting for him at the top of the retaining wall, approximately twenty-five to thirty feet away from him. Applicant testified that "something clicked in his head that they were going to prevent him from leaving." He then pulled a firearm out of his pocket and shot it into the air. The crowd dispersed, including the two men who pushed him. Applicant testified he did not put the gun back into his pocket after he fired the initial shots into the air. He stated that once he climbed back up the wall, he saw the victims approach him. Applicant explained that he shot them because he believed they were also trying to prevent him from leaving.

Applicant recalled meeting with Counsel Mauldin three or four times at the Lexington County Detention Center and Counsel Madsen twice. Applicant testified he explained his version of events to Counsel Mauldin; however, he does not think she adequately looked into the facts. When asked what Counsel Mauldin should have done, Applicant stated she should have "figured out a way to help him. Applicant stated that neither of his lawyers reviewed the discovery with him; however, he admitted he watched the surveillance videos. Applicant testified the one time he was able to watch the videos, they were "shrunk down" and it appeared that the sides were cut off. He believed the witness hitting him in the head with a bottle was edited out. Applicant further explained he was not able to recognize many of the things Counsel Mauldin pointed out to him in

the video.

Applicant testified he had a clear case of self-defense, both when he fired his gun into the air and when he shot the victims. According to Applicant, his lawyers did not discuss self-defense with him; however, he recalled Counsel Mauldin explaining the elements of self-defense. He further recalled Counsel Mauldin telling him she did not think self-defense would be a successful trial strategy. He stated she told him the situation may have been a different had Applicant only fired his gun the first time, while he was purportedly being attacked.

Applicant further testified he did not think ending up with a life sentence was a possible outcome. He stated he told Counsel Mauldin that he “wasn’t scared of that” and “it didn’t put the fear in [him] because [he] didn’t commit murder.” Applicant recalled Counsel Mauldin explaining to him what the State would have to prove to convict him of murder, and she specifically pointed out the number of times the victims were shot. Applicant testified he told Counsel Mauldin he did not commit murder; however, he complained that she “never said that she could see that he did not commit murder.” He further stated he did not believe what he did was a “murderous action” and he did not have malice aforethought. Applicant testified Counsel Mauldin discussed manslaughter with him, but he did not think he committed manslaughter because he acted in self-defense. When asked about whether he talked to Counsel Mauldin about his alleged lack of malice, Applicant responded that none of his actions “were near murder or manslaughter.” Applicant did not respond when asked what crime he thought he committed.

Applicant further alleged Counsel Mauldin should have requested a mental health evaluation when she was first appointed to represent him because he has a history of mental health issues. The only mental health issue Applicant could identify he had previously suffered from is depression; however, he did not provide any further details. Applicant testified only that he was

not depressed at the time of the crime, but that he became depressed after he was arrested. He admitted he never asked or spoke with Counsels about possibly needing a mental health evaluation.

Applicant stated his case was scheduled to go to trial the week he pleaded guilty, and recalled meeting with his attorneys at the detention center five days before his trial was supposed to begin. When asked about the conversations he had with his lawyers at that time, Applicant recalled Counsel Mauldin advising him that accepting the forty-year plea offer was in his best interest because he would likely get convicted at trial and be sentenced to life. Applicant testified that by giving him such advice she was coercing and threatening him into pleading guilty.

Applicant further testified his attorneys coerced him into pleading guilty because they "didn't give him any options." He stated Counsel Mauldin made him think she had the best advice for him and had his best interest at heart. Applicant explained that Counsel Mauldin should have figured out a way to help him instead of focusing on the negative aspects of his case. He further claimed Counsel Mauldin was "coming up with every reason not to defend [him]" and he "never felt she wanted to fight for [him]."

Applicant testified that Counsel Mauldin told him to perjure himself "and tell the judge yes to everything when the answers should have been no." He testified she told him he had to answer the questions a certain way or Judge McMahon would not accept the plea. When asked specifically when Counsel Mauldin told him to perjure himself, he responded, "when she said to plead to murder." He stated he was never guilty but that he perjured himself by telling the plea court he was guilty on Counsel Mauldin's advice.

Applicant further testified Counsel Mauldin failed to object to "unconstitutional comments" that were made before his plea hearing started. He stated the solicitor and judge were conversing outside the courtroom "about having barbecues in the backyard over the weekend." Applicant alleged

the comments were improper and this was misconduct because they knew each other. When asked on cross-examination how the judge and solicitor conversing before his plea affected his case, Applicant responded that the "judge did not want to hear anything [he] had to say." Applicant further testified "the judge was doing everything for the prosecution" and believes the judge denied his motion to withdraw his plea because the prosecution did not want to go back to trial.

When asked about the allegation that Counsel Mauldin failed to inform him of his right to appeal or file an appeal on his behalf, Applicant testified he asked Counsel Mauldin before he pleaded guilty whether he could appeal it. He stated Counsel Mauldin told him has ten days to appeal and "made it seem like it would be easy and he could go back to trial." He then clarified that he was referring to the motion to withdraw. He stated his attorneys did not explain the difference between an appeal and withdrawal.

As to the allegedly improper comments, Applicant testified Counsel Mauldin falsely told the judge that he wanted to withdraw his plea because he changed his mind. When asked what he told her regarding why he wanted to withdraw his plea, Applicant testified he told Counsel Mauldin that he "appreciated her advice" but he thought pleading guilty was a bad decision because he did not commit murder and had not been able to sleep the night before his plea. He stated this was not the same as changing his mind.

Applicant further complained that Counsel Mauldin never told him she was going to tell Judge McMahon he changed his mind. He alleged she only said that so his motion would be denied. Applicant testified that when Counsel Madsen "let him talk," he told the court he was not guilty of murder and that he never said he "changed his mind." Applicant testified that he does not know why he "let them tell him to plead and perjure himself."

Applicant then proceeded to complain that Counsel Mauldin did not explain to him that

withdrawing his plea would be difficult. Specifically, he testified Counsel Mauldin “never said there would be a problem” and that she “made it seem like an easy process.” On re-cross, Applicant was asked specifically whether Counsel Mauldin told him it would be no problem to withdraw his plea after the fact. He responded rather that *she did not tell him it would be a problem*. He also testified she “did not make it seem” like he would have to “have any special answers.” He specifically stated that she did not tell him that he “could give an answer that would have it denied.”

Counsels

Counsel Mauldin testified she is currently the Deputy Public Defender for the Eleventh Judicial Circuit. She has been practicing criminal law for approximately fifteen years. In July of 2016, she was appointed to represent Applicant—approximately two years before he pleaded guilty. Counsel Madsen is currently the Chief Public Defender for the Eleventh Judicial Circuit, and has tried over 100 murder cases throughout his career. He recalled Counsel Mauldin asking for his assistance shortly after she was appointed because the case involved a double murder. Counsel Madsen testified he does not recall exactly how many times he met with Applicant in person; however, his notes indicate he met with Applicant at the jail at least five times and there were multiple phone calls. Counsel Mauldin testified she met with Applicant at least seventeen times over the course of her representation.

When she first received his file, Counsel Mauldin asked someone in the office to take pictures of Applicant’s injuries. She also had an investigator interview witnesses and obtain the surveillance video from the bar. Counsel Madsen visited the scene several times to orient himself and see where the cameras were located. Counsels and their investigators all reviewed the surveillance video, witness statements, and police reports.

Counsel Mauldin recalled discussing and reviewing the evidence extensively with

Applicant. Her notes indicate she gave him a copy of all documentary discovery in early 2017. She explained that the jail allowed inmates to keep copies of their discovery, including non-explicit photographs. She stated she cannot guarantee she gave Applicant every single piece of discovery she received, as she was getting regular discovery updates from the solicitors up until right before the case was set to go to trial.

Counsel Mauldin provided further details about the facts of the case. Counsel Mauldin stated Applicant had been drinking at the Frayed Knot when he ran into his ex-girlfriend, Ms. Eldridge. They went to the parking lot, where he gave her drugs¹ and thought she would go home with him. When she decided she did not want to go home with him, she grabbed the drugs and ran back toward the bar. Applicant told Counsel Mauldin he chased Ms. Eldridge before falling on top of her. However, multiple witnesses told law enforcement they saw Applicant tackle her and throw her on the ground. Upon seeing what appeared to be Applicant hitting Ms. Eldridge, a crowd quickly formed around them and pulled Applicant off of her. Applicant was pushed down the retaining wall and fell down. Someone hit him in the head with a bottle. Applicant was trying to escape from the rapidly growing crowd when he pulled the gun out of his pocket and fired into the air. The crowd mostly dispersed.

The surveillance video shows Applicant getting up, going back towards a walkway, and interacting with a man there. At the same time, two men who had been on a boat docked at the Frayed Knott ran toward Applicant after hearing the gunshots. When the men came within approximately ten feet of Applicant, he pointed his gun and fired at them. He hit one of the victims twice and the other three times. They did not physically touch Applicant; however, he felt they were trying to hurt him. The two victims were later identified as Charles Judge and Jonathan

¹ Counsel Mauldin testified Applicant told law enforcement the drugs were heroin.

Prinse. They were both active-duty service members.

Counsel Mauldin testified her paralegal and investigators showed Applicant the surveillance video, which she believed was by far the most damning piece of evidence. She discussed the video with Applicant at length, and they went over what the video showed and what was going through his mind at the time. Regarding Applicant's testimony that the video was shrunken down and cut off, Counsel Mauldin explained that the video player is proprietary and therefore the video opens in a small window with the desktop behind it. However, no part of the video is cut off and the entire video is clearly shown. Counsel Mauldin testified that the only thing not captured on the video was Ms. Eldridge falling and Applicant tackling her.

Counsel Madsen recalled Applicant telling him, "it would have never happened if those guys had minded their own business." Counsel Madsen told Applicant the jury would look at the victims as heroes and not people who should have "minded their own business." In fact, Counsel Madsen was concerned about the State possibly seeking the death penalty if Applicant's case had gone to trial. He believed the case had all the hallmarks of a capital case—the "death of heroes." The victims were two servicemen who, as the solicitor stated at the plea hearing, ran toward danger. Counsel Madsen specifically recalled a military recruitment commercial around that time that said something along the lines of, "military members don't run away from gunfire."

Counsels Mauldin and Madsen both testified they thoroughly discussed with Applicant the law on murder, manslaughter, and self-defense. In explaining to Applicant why he was charged with murder rather than manslaughter, Counsel Mauldin specifically recalled going over the elements and definition of each offense. She stated pursuing manslaughter would not work because there was no "heat of passion." Rather, the video showed Applicant drawing his weapon and shooting the victims as they approached him.

Counsel Mauldin also recalled Applicant telling her he felt he lacked malice because he was protecting himself after being assaulted by the crowd of people. However, she told him the video did not support his side of the story because anyone approaching the scene turned and ran as soon as Applicant fired the first shots into the air, as did most of the crowd surrounding him. Counsel Madsen agreed, explaining that the victims were not part of the initial incident that caused him to fire the first shots into the air. The video shows Applicant drawing his gun and shooting the men as they were approaching him. Counsel Madsen stated that one of the men appeared to be reaching toward Applicant; however, there was at least five or six feet between them. By the time Applicant shot the victims, the crowd who had initially assaulted him had already dispersed. Counsel Madsen added that the video clearly shows the victims were not armed. No witnesses reported anyone being armed other than Applicant.

In response to Applicant's testimony that she did not want to help or fight for him, Counsel Mauldin testified that part of her duty as a criminal defense attorney is to logically and realistically evaluate the circumstances of her client's case, including the likelihood of success at trial, and advise them accordingly.

She recalled telling Applicant several times that the State's case against him was strong, and she was confident the State could prove guilt beyond a reasonable doubt. She also told him multiple times she did not believe self-defense would be viable and that he could receive thirty years to life. Counsel Madsen testified he agreed with Counsel Mauldin's assessment, and that he did not believe Applicant had any viable defenses. He further noted that Applicant did not have a good insight into the strength of the evidence against him no matter what they told him or how many times they explained it to him.

Counsel Mauldin stated she was able to identify a few favorable aspects of some witnesses'

statements; however she did not find anything substantial that she thought would help them win the case. Beyond the surveillance video and witness statements, Applicant also confessed to the police over the course of several hours of interrogation. Counsel Mauldin did not see anything in the video of the confession indicating it was coerced. Therefore, she believed the likelihood of successfully challenging the admissibility of the recording in a pre-trial *Denno*² hearing was low.

Counsels Mauldin and Madsen both testified they never had any concerns about Applicant's ability to understand the proceedings against him or assist in his defense. Counsel Mauldin reviewed his mental health records from the jail, and did not recall seeing any diagnosis listed or symptoms that could have supported a mental health defense or cause her to question his competency. She recalled only that Applicant reported he had been experiencing nightmares since his arrest and incarceration. Neither Applicant nor his family members expressed to her any concerns about his mental health. Counsel Mauldin nonetheless consulted with Dr. Thomas Martin about the case. Dr. Martin did not personally evaluate Applicant; however, he reviewed the mental health records Counsel Mauldin provided to him.

Counsel Mauldin recalled engaging in extensive plea negotiations with the solicitor's office in this case. She testified the solicitor began working on a plea offer in January 2018. In early April 2018, she sat down with Applicant and discussed potential plea offers. She told him they had not yet received an offer at that point, but she let him know one would be forthcoming. About a week later, she met with Counsel Madsen and Applicant to discuss trial dates and further discuss plea offers.

Counsel Mauldin then met with the assigned solicitors and asked if they would consider recommending concurrent sentences and reducing the charges to manslaughter. They declined her

² *Jackson v. Denno*, 378 U.S. 368 (1964)

offer. When she and Counsel Madsen met with Applicant shortly thereafter, Applicant gave them an apology letter he prepared for the victims' families, which she hoped would help them get a better plea offer. They again explained the law on manslaughter, involuntary manslaughter, self-defense, and the problems with asserting self-defense in Applicant's case. Because the evidence against him was overwhelming, Counsel Mauldin strongly advised Applicant to accept any offer reducing his exposure to anything in the vicinity of thirty years. Applicant told her he would consider pleading to thirty-five years. Counsel Mauldin testified they gave Applicant's letter of apology to the solicitor; discussed a possible thirty-five year offer; and gave him Applicant's apology letter along with copies of the life expectancy tables in SCDC.

On May 28th, Counsels received the final offer from the solicitor's office; two counts of murder, concurrent, with a forty-year negotiated sentence. Applicant's trial was scheduled to start the following week. They met with Applicant on May 29th to consult with him about the offer. Counsel Mauldin recalled explaining to him that a negotiated plea means the judge can either accept the plea and issue the negotiated sentence or reject the plea entirely. In other words, she explained to him that the judge must sentence him to forty years as long as he accepts Applicant's plea. At Applicant's request, they contacted his mother and reviewed the offer with her. When they met with him again on May 30th, he asked them to make a thirty-five year counteroffer.

Counsel Mauldin then met with the solicitor and made the counteroffer, which the solicitor rejected. Counsel Mauldin then met with Applicant again later that afternoon and explained the solicitor would not offer anything lower. She again went over the terms of the plea offer extensively. Applicant ultimately decided to accept the offer. They both signed the sentencing sheets and Applicant entered his plea the following day.

Counsels Mauldin and Madsen both testified they felt it was in Applicant's best interest to

accept the forty-year offer. Counsel Mauldin stated Applicant was not necessarily thrilled the offer, but they told him it was his best chance to avoid dying in prison. Counsel Madsen agreed, and stated it was a good offer considering the facts of the case. However, Counsels Mauldin and Madsen both unequivocally testified they did not “threaten” Applicant or otherwise coerce him into pleading guilty. Although they were prepared to proceed to trial, it was ultimately Applicant’s decision to accept the State’s offer and plead guilty. Counsel Mauldin noted that Applicant was never particularly adamant about going to trial. Counsel Madsen testified he never tells his clients whether they should plead or go to trial. Rather, he lays out their options and tells them it is their decision alone.

Counsel Madsen testified he did not tell Applicant what to say at the plea hearing, but he and Counsel Mauldin told him the questions the judge would likely ask. He further stated he never heard Counsel Mauldin tell Applicant he had to answer the judge’s questions in a certain way.

Counsel Mauldin testified Applicant did not bring up the possibility of withdrawing his plea until he already pleaded. She testified she received a message on June 7th from Applicant’s mother stating he wanted to withdraw his plea. On June 11th she and Counsel Madsen spoke with him on the phone. Applicant told them he wanted to withdraw because he was not guilty. Counsel Madsen stated Applicant essentially told them he changed his mind.

Counsel Mauldin testified she let the solicitor know Applicant asked her to file a motion to withdraw, which she filed the same day she spoke with Applicant. She stated she has only ever had one other client who wanted to withdraw his plea. That motion was also denied. Counsel Madsen stated Applicant’s was the only withdrawal motion he has ever had; however, he surmised judges usually do not grant withdrawal motions that are opposed by the State.

When asked about her understanding of the case law, Counsel Mauldin stated there were

not many South Carolina cases involving motions to withdraw but that she reviewed several federal cases. She stated this was not a case of after-discovered evidence or anything like that. The only thing she had to present at the withdrawal hearing was what Applicant told her.

Counsels' were both asked about Applicant telling Judge McMahon at the end of the hearing that he made a "rash decision." Counsel Mauldin testified Applicant never told her what he meant by that. Counsel Madsen agreed, adding that Applicant did not by tell them much of anything except that he wanted to withdraw his plea. Counsels Mauldin and Madsen both testified Applicant just changed his mind. The only notes Counsel Mauldin had regarding why Applicant wanted to withdraw his plea is that he did not think he was guilty of murder.

III. ISSUES BEFORE THIS COURT

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

1. "Ineffective Assistance of Counsel in violation of the 6th and 14th Amendment rights of the U.S. Constitution."
 - a. "... for not getting Petitioner a[n] independent medical and mental health evaluations."
 - b. "... for threatening and coercing Petitioner into taking a plea instead of going to trial."
 - c. "... for making improper comments at Petitioner's plea hearing and sentencing."
 - d. "... for fail[ing] to object to Prosecutor's and Judge's unconstitutional improper prejudicial comments at plea hearing, which was ineffective."
 - e. "... for failing to inform Petitioner of his right to appeal his plea decision and failing to file 'Notice of Appeal' plea decision."
 - f. "... for failing to go over the defense of self-defense with Petitioner and failing to prepare Petitioner's case as a case of self-defense for trial."
 - g. "... for failing to investigate the evidence, the facts, and the circumstances of the case."
 - h. "... for not fully giving all discovery material to the Petitioner and not going over the discovery material with the Petitioner."

Pursuant to Rule 71.1, SCRCP, Applicant, through PCR counsel, amended his application to conform to the evidence presented at the PCR hearing in the event that any new issues arise during the court of the hearing.³

IV. 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

³ See *Simpson v. Moore*, 367 S.C. 587, 599, 627 S.E.2d 701, 708 (2006), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018); Rule 15(b), SCRCP (pleadings may be amended, even after judgment, to conform to issues tried by express or implied consent but not raised in the original pleadings)

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).

The reviewing court applies the two-part test outlined in *Strickland v. Washington* to determine whether counsel's conduct "was so defective 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); *see* Rule 71.1(e), SCRPC ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."). 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 that "there is 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). When reviewing a guilty plea, 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 range of competence demanded of attorneys in criminal cases.” *Hill*, 474 U.S. at 56. The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” *Id.* at 58–59. Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” *Id.* at 59.

This inquiry “focuses on a defendant’s decisionmaking” and does not turn on the outcome of a defendant’s actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. *Lee v. United States*, --- 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).

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*, 137 S. Ct. at 1967. Rather, judges should “look to contemporaneous evidence to substantiate a defendant’s expressed preferences.” *Id.* at 1958 In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the guilty plea and the evidence presented at the PCR hearing. *Harres v. Leeke*, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

V. 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 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. **Pre-Trial: Failure to Investigate, Prepare Defense, and Request Mental Health Evaluation⁴**

Applicant first makes a series of claims alleging Counsels’ were ineffective in their investigation, preparation, and overall performance prior to his guilty plea. Specifically, Applicant alleges Counsels’ were ineffective for failing to review discovery with him; failing to investigate the evidence, facts, and circumstances of his case; failing to prepare a self-defense case for trial;

⁴ Claims 1(a); 1(f)–(h).

and failing to request a mental health evaluation. This Court disagrees, and finds credible and persuasive the testimony of Counsels, who presented well-recollected testimony of the events leading up to Applicant's plea. Applicant's own testimony, although predominantly incredible, established he met with Counsels to discuss the prosecution's case and potential defenses several times prior to his plea. Judge McMahon specifically advised Applicant that by pleading guilty, he would waive any defenses he may have. (Plea Tr. 10). Applicant told the plea court he understood, and wished to waive that right in order to plead guilty. Further, Applicant failed to present evidence of any viable defense, investigative tactic, or alternate strategy Counsel should have explored which would have helped Applicant's case or affected his decision to plead guilty.

1. Failure to Investigate, Prepare, and Review Discovery

As an initial matter, 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*, 466 U.S. 668). "A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). "[W]hile the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." *Ard*, 372 S.C. at 331–32, 642 S.E.2d at 597 (internal quotation marks omitted) (emphasis omitted).

However, our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel's duty to investigate. *See, e.g., id.* at 331, 642 S.E.2d

at 597 (“Without a doubt, [a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation.”). “[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; *see id.* (“In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.”). Thus, in applying the *Strickland* standard to a claim of failure to investigate, counsel’s decision not to undertake a particular investigation must be evaluated with heavy deference to counsel’s judgment. *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 63 (Ct. App. 2014).

To prevail on a claim of ineffective assistance based on failure to investigate or prepare for trial, a PCR applicant must ordinarily present some evidence “that would have affected counsel’s advice to [him] to accept the plea bargain offered or that would have caused [him] to decline to accept it.” *Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009); *see, e.g., Jackson v. State*, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998) (reversing the PCR court’s grant of relief where the 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

Counsels’ credibly testified they met with Applicant prior to his plea, reviewed the discovery with him, and discussed his case with him at length. Considering Applicant admitted to watching the surveillance videos, this Court does not find credible Applicant’s claim that his attorneys never reviewed discovery with him. Likewise, this Court will not credit Applicant’s present claim he would have gone to trial absent Counsels’ deficient performance when he failed

to present evidence of any investigatory matter which would have helped Applicant's case or affected his decision to plead guilty. *See Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (holding trial counsel's failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result

Accordingly, Applicant's claims pertaining to Counsels' failure to adequately investigate and review his discovery are **DENIED**.

2. Failure to Pursue Self-Defense

Applicant further contends Counsels' were ineffective for failing to prepare a clear defense theory or trial strategy based on self-defense. To establish a case of self-defense in South Carolina, four elements must be present: (1) the defendant was without fault in bringing on the difficulty; (2) the defendant actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) a reasonable, prudent person of ordinary fitness and courage would have entertained the same belief; and (4) the defendant had no other probable means of avoiding the danger of losing his life or sustaining serious bodily injury other than to act as he did. *State v. Santiago*, 370 S.C. 153, 159, 634 S.E.2d 23, 27 (Ct. App. 2006) (citing *Jackson v. State*, 355 S.C. 568, 570–71, 586 S.E.2d 562, 562 (2003)).

i. *Without Fault*

This Court finds Applicant failed to show Counsels' determination that they could not meet the first element of self-defense fell below an objective standard of reasonableness. Counsel Madsen explained that even under Applicant's version of events, he brought on the difficulty by chasing Ms. Eldridge in an attempt to get his drugs back. When asked whether she would have argued self-defense had Applicant decided to go to trial, Counsel Mauldin stated they would have

tried to elicit as much testimony as possible in support of self-defense. However, neither she nor Counsel Madsen believed they would have even been able to get a jury charge on self-defense because they simply could not show Applicant was without fault in bringing on the difficulty.

ii. *Imminent Danger*

While Applicant asserts he actually believed he was in imminent danger, this Court finds Counsels Mauldin and Madsen reasonably determined they could not meet the third element of self-defense “because a reasonable, prudent person of ordinary fitness and courage would not have feared for his life or serious bodily injury under the circumstances of this case.” *Santiago*, 370 S.C. at 160–61, 634 S.E.2d at 27.

Applicant testified that both times he fired his gun he was protecting himself after being assaulted by the initial crowd of people. Counsel Mauldin also recalled Applicant telling her he felt he lacked malice because he was protecting himself after being assaulted by the crowd of people. However, she testified the video did not support his side of the story because anyone approaching the scene turned and ran as soon as Applicant fired the first shots into the air, as did most of the crowd surrounding him. Counsel Madsen agreed, explaining that the two victims were not part of the initial incident that caused him to fire the first shots into the air. By the time Applicant shot the victims, everyone involved in the initial altercation has dispersed like the rest of the crowd. Counsel Madsen added that the video clearly shows the victims were not armed. No witnesses reported anyone being armed other than Applicant.

iii. *Duty to Retreat*

Finally, this Court finds Applicant failed to show Counsels’ assessment they could not establish the third element of self-defense was objective unreasonable. An individual has a duty to retreat or take other probable means of avoiding danger unless it would increase his danger of

being killed or suffering serious bodily injury. *State v. Fuller*, 297 S.C. 440, 377 S.E.2d 328, 331 (1989).

Counsel Mauldin was asked on cross-examination whether it appeared from the video that two people were approaching Applicant from the front and another from behind. She stated there were lots of people around and someone may have been behind him; however, she did not see anyone “blocking his retreat.” Counsel Madsen agreed, explaining that the front of the Frayed Knott faced the road and the back faced the lake. The video shows the victims approaching from the lake side where the boats were docked while Applicant was located between the lake side and parking lot. Counsel Madsen explained Applicant could have safely retreated to the parking lot after he fired the initial shots into the air and the crowd dispersed. *See, e.g., State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999) (noting that the defendant easily could have avoided the conflict by leaving the open parking lot where the situation arose).

Accordingly, Applicant’s claims pertaining to Counsel’s failure to pursue a strategy of self-defense are **DENIED**.

3. Mental Health Evaluation

Applicant next contends Counsels’ were ineffective for failing to request a mental health evaluation. As an initial matter, this Court finds Counsels Mauldin and Madsen reasonably relied on their own perception and interactions with Applicant—over the course of nearly two years—in deciding a mental evaluation was not necessary. *See Medina v. California*, 505 U.S. 437, 450 (1992) (noting the significance of trial counsel’s opinion regarding competency because trial counsel interacts with the defendant on a daily basis and is in the best position to evaluate whether the defendant is able to participate meaningfully in the proceedings). *Compare Jeter v. State*, 308 S.C. 230, 233, 417 S.E.2d 594, 596 (1992) (finding trial counsel not deficient

for failing to request mental examination of defendant—which might have formed the basis of an insanity defense or determination that defendant was not competent to stand trial—where trial counsel reasonably relied on his own perceptions that defendant was not mentally deficient), *with Ramirez v. State*, 419 S.C. 14, 22–23, 795 S.E.2d 841, 845–46 (2017) (finding plea counsel was deficient in failing to seek an independent competency evaluation where plea counsel was “clearly on notice” the defendant had mental health issues based on his own personal interactions with the defendant, as well as a previous psychological evaluation identifying several mental health issues). Counsel Mauldin and a psychiatrist reviewed Applicant’s mental health records from the jail, and did not find any diagnosis listed or symptoms that could have supported a mental health defense or caused them to question his competency.

To establish *Strickland* prejudice in the context of plea counsel’s failure to fully investigate the applicant’s mental capacity, the applicant “need only show a ‘reasonable probability’ that he was either insane at the time [the crime was committed] or incompetent at the time of the plea.” *Matthews v. State*, 358 S.C. 456, 459, 596 S.E.2d 49, 51 (2004) (alterations in original) (quoting *Jeter*, 308 S.C. at 233, 417 S.E.2d at 596); *see id.* at 458–60, 596 S.E.2d 49, 50–51 (expanding the reasonable probability standard as the burden for proving both the deficiency of counsel and the prejudice prongs). As is the case with any other allegation that a defense attorney failed to adequately investigate some matter, an applicant must present some proof of identifiable mental health issues which undermine his or her competency; mere speculation and conjecture by the applicant is insufficient to establish prejudice. *Garren v. State*, 423 S.C. 1, 13–14, 813 S.E.2d 704, 711 (2018).

To the extent Applicant claims Counsels were ineffective for failing to pursue a mental health defense, this Courts finds Applicant wholly failed to meet his burden under *Strickland*. In

South Carolina, insanity is an affirmative defense to prosecution if the accused “lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong” at the time the offense. S.C. Code Ann. § 17-24-10(A); *see State v. Lewis*, 328 S.C. 273, 278, 494 S.E.2d 115, 117 (1997) (“[T]he key to insanity is ‘the power of the defendant to distinguish right from wrong in the act itself—to recognize the act complained of is either morally or legally wrong.’” (alterations in original) (citations omitted)).

Applicant failed to present any evidence suggesting he was insane under South Carolina law at the time of the shooting nor does his testimony at the PCR hearing in any way suggest an insanity defense could have been developed. *Jeter*, 308 S.C. at 233–34, 417 S.E.2d at 596. Even if depression could somehow support the idea he was insane, Applicant testified he had a history of depression but was not depressed at the time of the crime. Counsel Mauldin further testified Applicant was drinking that night and recalled Applicant mentioning only that he was “confused” at some point during the incident. Applicant testified he blacked out for three or four seconds after he was hit with the beer bottle. This Court does not find credible Applicant’s testimony that “the only reason he knows what happened is because he watched the video and knows what people told him.” However, even if Applicant remembered nothing from that night, his alcohol consumption would have precluded him from presenting a defense of insanity or obtaining a guilty but mentally ill verdict. *See United States v. Knott*, 894 F.2d 1119, 1122 (9th Cir. 1990) (emphasizing that “[a] mental disease or defect must be beyond the control of the defendant if it is to vitiate his responsibility for the crime committed” and “[i]nsanity that is in any part due to a defendant’s voluntary intoxication is not beyond his control”)

This Court similarly finds Applicant failed to establish a reasonable probability he was incompetent at the time of the plea. “The test of competency to enter a plea is the same as required

to stand trial”—the accused “must have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings against him.” *Jeter*, 308 S.C. at 232, 417 S.E.2d at 596.

Applicant failed to present evidence indicating he was at any point incapable of consulting with his lawyers or understanding the plea proceedings. Counsel Mauldin testified Applicant appeared to understand everything she told him about his case. Counsel Madsen agreed with Counsel Mauldin’s assessment, adding that Applicant seemed intelligent, responsive, and recalled him asking appropriate questions during their meetings. Counsel Mauldin’s testimony corroborates with what she told Judge McMahon at the outset of Applicant’s plea hearing. (Plea Tr. 6). Applicant further acknowledged telling Judge McMahon he was not aware of any physical or mental illnesses that would affect his ability to understand the proceedings. (Plea Tr. 6).

Applicant testified he had trouble sleeping and felt depressed after his arrest; however, he failed to show he was prevented from understanding the consequences of his plea as a result. *Miles v. Dorsey*, 61 F.3d 1459, 1470–71 (10th Cir. 1995) (“Although deadlines, mental anguish, depression, and stress are inevitable hallmarks of pretrial plea discussions, such factors considered individually or in aggregate do not establish that [a defendant]’s plea was involuntary.”).

Accordingly, Applicant’s claims pertaining to Counsels’ failure to request a mental evaluation are **DENIED**.

B. Involuntary Guilty Plea and Coercion⁵

Applicant next claims his attorneys advising him he would likely be found guilty and receive a life sentence at trial caused Applicant to enter into an involuntary and unknowing guilty plea. He further contends his attorneys made prejudicial comments prior to his plea hearing and

⁵ Claim 1(b)–(d).

failed to object to prejudicial comments made by the solicitor and judge. This Court disagrees, and finds the combined record from the plea hearing and the PCR hearing establishes Applicant freely, knowingly, and voluntarily pleaded guilty.

“[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. 1971) (Stevens, J., dissenting) (explaining that voluntariness relates to the trustworthiness of the admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one’s accusers, and the privilege against self-incrimination. *Boykin*, 395 U.S. at 243. Additionally, the defendant “must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” *Pittman*, 337 S.C. at 599, 524 S.E.2d at 624.

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*, 282 S.C. at 133; see *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).

1. Plea Hearing

At the outset of the plea hearing, Counsel Mauldin advised the court that she and Counsel Madsen had explained to Applicant the charges against him, possible punishments, and constitutional rights. (Plea Tr. 4). Counsel Mauldin also stated Applicant had not been ordered to or received a mental health examination. (Plea Tr. 6). She further stated she had no concerns about Applicant’s competency to enter the plea. (Plea Tr. 6). Applicant told the plea court he was not under the influence of any medications or alcohol and that he was not aware of any physical or mental illnesses that would affect his ability to understand the proceedings. (Plea Tr. 6).

Judge McMahon thereafter read each indictment into the record and advised Applicant that the mandatory minimum sentence for murder is thirty years’ imprisonment and the maximum is life without parole. (Plea Tr. 7–8). Applicant indicated he understood the charges against him and the exposure he faced on each indictment. (Plea Tr. 7–8).

Judge McMahon then explained to Applicant constitutional rights he waived by pleading guilty; including his right to remain silent, challenge the State’s evidence, and present a defense. (Plea Tr. 8–11). Applicant informed the court he was knowingly, voluntarily, and freely waiving those constitutional rights by pleading guilty. (Plea Tr. 8–11). Applicant then admitted he was guilty and committed the conduct outlined in the indictments. (Plea Tr. 10).

The solicitor then put the terms of the negotiated plea on the record. (Plea Tr. 11). Assistant Solicitor Bell stated Applicant is pleading guilty to a negotiated 40-year concurrent sentence on each murder indictment. (Plea Tr. 11). He stated they were dismissing the weapons and assault and battery charges. (Plea Tr. 11). Counsel Mauldin and Applicant both agreed with the solicitor's explanation of the terms of the plea agreement. (Plea Tr. 11). Judge McMahon explained to Applicant the nature of a "negotiated" plea, and that he would either accept the negotiated sentence of forty years, or give him the opportunity to withdraw his plea. (Plea Tr. 12). Again, Applicant confirmed he understood and wished to proceed forward. (Plea Tr. 12).

The following exchange then took place:

JUDGE MCMAHON: Has anyone promised you or held out any hope of reward to get you to plead guilty.

APPLICANT: No, sir.

JUDGE MCMAHON: Has anyone threatened you or used to force to get you to plead guilty?

APPLICANT: No, sir.

JUDGE MCMAHON: Has anyone used any pressure or intimidation to cause you to plead guilty?

APPLICANT: No, sir.

JUDGE MCMAHON: Have you had enough time to make up your mind?

APPLICANT: Yes, sir.

JUDGE MCMAHON: Are you pleading guilty of your own free will and accord?

APPLICANT: Yes, sir.

JUDGE MCMAHON: I want to ask you some questions about your lawyers. Are you satisfied with the manner in which your lawyers have advised you and represented you?

APPLICANT: Yes, sir.

JUDGE MCMAHON: Have you talked with your lawyers as often and for as long as you feel necessary for them to properly represent you?

APPLICANT: Yes, sir.

JUDGE MCMAHON: Have you understood your talks with your lawyers?

APPLICANT: Yes, sir.

JUDGE MCMAHON: Do you need any more time to talk with your lawyers?

APPLICANT: No, sir.

JUDGE MCMAHON: Have your lawyers done everything for you that you feel like they could have done or should have done?

APPLICANT: Yes, sir.

JUDGE MCMAHON: Have your lawyers done anything in your case that you feel like they should not have done?

APPLICANT: No, sir.

JUDGE MCMAHON: Are you totally and completely satisfied with your lawyers' services?

APPLICANT: Yes, sir.

JUDGE MCMAHON: Do you have any complaints you want to make about your lawyers?

APPLICANT: No, sir.

JUDGE MCMAHON: The solicitor?

APPLICANT: No, sir.

JUDGE MCMAHON: Or any police officers involved in your cases?

APPLICANT: No, sir.

(Plea Tr. 12–14). Applicant told Judge McMahon he understood all of his questions. (Plea Tr. 14).

Judge McMahon then advised Applicant he had a right to appeal within ten days. (Plea Tr. 14).

After hearing a factual recitation from Mr. Gill, the victims' statements, Applicant's criminal history, and mitigation from Counsels Mauldin and Madsen, Judge McMahon accepted the negotiated plea and sentenced Applicant accordingly. (Plea Tr. 11, 27, 38–39).

2. Discussion

i. *Coercion*

Applicant's claim counsel was ineffective for coercing, threatening, and telling him to

perjure himself in order to force him to plead guilty is an attack the knowing and voluntary nature of Applicant's plea. Specifically, Applicant contends Counsels' advice to accept the forty-year plea offer in light of the strength of the evidence against him somehow constitutes an impermissible form of "coercion" or "threat" because he otherwise faced a life—or even death—sentence. Applicant further alleges Counsel Mauldin instructed him to perjure himself by instructing him to agree with all of Judge McMahon's questions and admit he was guilty of murder.

Applicant complains essentially that his attorneys honestly assessed the strength of the State's case against him; yet, in doing so, Counsels' fulfilled their duty to their client. All criminal defense attorneys go through the process of investigating their client's case, exploring possible defenses, and developing a strategy for defending the client. As Counsel Mauldin mentioned, part of that process involves making a determination that certain defenses or strategies will not be effective based on an examination of the evidence, facts, and circumstances of a particular case.

"Sound advice by counsel does not constitute coercion merely because it is unpleasant to hear." *Davis v. State*, 754 S.W.2d 593, 594 (Mo. Ct. App. 1988). Counsels' advising Applicant that it was highly likely he would be convicted and sentenced to life at trial is not a "threat" despite Applicant's ridiculous characterization of it as such. *See Tollett v. Henderson*, 411 U.S. 258, 268 (1973) (explaining that the prospect of plea bargaining, the expectation or hope of a lesser sentence, or the convincing nature of the evidence against the accused are considerations that might well suggest the advisability of a guilty plea). As then-Judge Burger explained in *Brown v. United States*:

A lawyer has a duty to give the accused an honest appraisal of his case. This is commanded in part because without it the accused cannot make an informed judgment as to whether he should enter a plea of guilty—a course of action frequently to the advantage of an accused. The constitutional right to counsel does not mean counsel who will be optimistic in his private appraisal of the evidence and

his advice to the accused. Counsel has a duty to be candid; he has no duty to be optimistic when the facts do not warrant optimism.

264 F.2d 363, 369 (D.C. Cir. 1959) (en banc) (Burger, Circuit Justice, concurring in part).

This Court finds Applicant's claim of coercion is wholly without merit, particularly in light of his solemn declarations on the record at the plea hearing that no one promised him anything or held out any hope of reward to get him to plead guilty; no one threatened or used force to get him to plead guilty; no one used any pressure or intimidation to cause him to plead guilty; and that he was pleading guilty of his own free will and accord. (Plea Tr. 12–14). While Applicant now claims he was coerced by his attorneys into entering into a guilty plea, he made it clear to the plea court that the decision to plead guilty was his own.

Applicant failed to present any evidence Counsel threatened him or provided improper inducements—he merely contends that his attorneys advising him to plead guilty in light of the strong evidence against him amounted to a “threat.” See *Lunz v. Henderson*, 533 F.2d 1322, 1327 (2d Cir. 1976) (explaining that “advice—even strong urging” by counsel does not render a guilty plea involuntary); *Miles*, 61 F.3d at 1470 (“Merely because [counsel] attempted to persuade [defendant] that it was in his best interest to plea does not lead to the conclusion that his . . . plea was involuntary.”).

ii. *Improper Comments*

As to Applicant's allegation Counsel Mauldin was ineffective for failing to object to “unconstitutional comments” made before his plea hearing started, this Court finds Applicant failed to show any unconstitutional or improper comments were made by the judge, the solicitor, or his lawyers. Counsels Mauldin and Madsen both testified that neither they nor the solicitor nor the judge ever made any improper comments. Counsel Madsen stated it was normal to have casual conversation in the courtroom before proceedings begin. Counsel Mauldin therefore had nothing to object to.

Moreover, Applicant cannot show he was prejudiced by any allegedly improper comments between the solicitor and judge where the plea entered into was negotiated.

3. Conclusion

This Court finds Applicant knew the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty in accordance with the requirements of *Boykin* and *Pittman*. 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)). 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. *Id.* at 137–38, 654 S.E. at 874. While Applicant now claims he was coerced by his attorneys into entering into a guilty plea, he made it clear to the plea court that the decision to plead guilty was his own. This Court does not find credible Applicant’s claim he was prevented from informing the plea court his attorneys coerced him into pleading guilty. Nor will this Court credit Applicant’s ridiculous claim that Counsel Mauldin told him to perjure himself.

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*, 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**.

C. Post-Plea: Improper Comments and Withdrawal of Plea⁶

Finally, Applicant makes several claims regarding Counsels' performance after his plea. Applicant first alleges Counsel Mauldin was ineffective for leading him to believe he could easily withdraw his plea after the fact and proceed to trial. He further contends Counsel Mauldin's statement at the withdrawal hearing that Applicant "changed his mind" was improper. This Court disagrees, and finds Counsels' did not make any improper comments at his withdrawal hearing nor did they lead him to believe he could easily withdraw his plea.

1. Withdrawal Hearing

On June 18, 2018, Applicant and his attorneys appeared before Judge McMahon on his motion to withdraw the plea. Counsel Mauldin asked the Court to allow Applicant to withdraw his plea, stating "[t]his is a situation where he believes he made the wrong decision." (Mot. Tr. 5). Judge McMahon then sked Applicant if he had anything he would like to say. (Mot. Tr. 5). Applicant declined. The solicitor simply stated Applicant's plea was knowing and voluntary and asked that he not be permitted to withdraw it. Judge McMahon then asked Counsels Mauldin and Madsen to give him their educational background and experience as criminal defense lawyers, which they did. (Mot. Tr. 5–9).

Judge McMahon explained that he researched the issue of plea withdrawal in both the state and federal context. (Mot. Tr. 9). He stated that case law in South Carolina basically indicates that whether to allow withdrawal of the plea is left to the sound discretion of the trial judge. (Mot. Tr. 9). He also researched Rule 11 of the Federal Rules of Criminal Procedure to provide insight on what federal judges may consider or look to in determining whether or not to allow an individual

⁶ Claims 1(c) and 1(h).

to withdraw his guilty plea. (Mot. Tr. 9). Although a defendant is barred from withdrawing his plea after the sentence is imposed, a federal judge in his discretion may allow the defendant to withdraw "after the court accepts the plea, but before it imposes sentence if . . . the defendant can show a fair and just reason for requesting the withdrawal." Fed. R. Crim. P. 11(d)(2)(B). Judge McMahon stated he did not believe the defendant changing his mind was a sufficient reason. (Mot. Tr. 9–10).

Judge McMahon then pointed out the following: (1) the criminal justice system seeks finality; (2) Applicant is represented by experienced and well-qualified attorneys; and (3) he reviewed the transcript and asked all the necessary questions under *Boykin*. (Mot. Tr. 10). He further summarized everything that happened at the plea hearing, including portions of his colloquy, the terms of the plea agreement, and the facts of the case. (Mot. Tr. 10–14). At the end of the hearing, Judge McMahon asked Applicant again if he would like to say anything to the court. (Mot. Tr. 14). The following exchanged ensued:

APPLICANT: It was a very rash decision. It was only -- the plea was only on the table 24 hours, maybe more. And I'm not guilty of murder.

JUDGE MCMAHON: And you what?

APPLICANT: I'm not guilty of murder.

(Mot. Tr. 14–15). Judge McMahon stated he disagreed and denied Applicant's motion from the bench. (Mot. Tr. 15).

2. Discussion

This Court does not find credible Applicant's testimony that Counsel Mauldin somehow suggested that he could simply withdraw his plea for any reason and proceed to trial instead. It is well-established that "a plea of guilty is a confession of guilt made in a formal manner and is equivalent to and as binding as a conviction after a trial on the merits. It has the same effect in law

as a verdict of guilt and authorizes the imposition of the punishment prescribed by law.” *State v. Cantrell*, 250 S.C. 376, 379, 158 S.E.2d 189, 191 (1967); *United States v. Sweeney*, 878 F.2d 68, 70 (2d Cir. 1989) (“Society has a strong interest in the finality of guilty pleas, and allowing withdrawal of pleas ‘undermines confidence in the integrity of our [judicial] procedures . . . , increas[es] the volume of judicial work, [and] delays and impairs the orderly administration of justice.’” (alterations in original) (quoting *United States v. Timmreck*, 441 U.S. 780, 784 (1979)); *Premo v. Moore*, 562 U.S. 115, 125 (2011) (“Prosecutors must have assurance that a plea will not be undone years later,” lest they “forgo plea bargains that would benefit defendants,” which would be “a result favorable to no one.”). Moreover, this Court finds Counsels were not ineffective for stating at the withdrawal hearing that Applicant wished to withdraw his plea because he changed his mind. Accordingly, Applicant’s claims pertaining to withdrawal of his plea are **DENIED**.⁷

VI. ALL OTHER ALLEGATIONS

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

VII. CONCLUSION

Based on the evidence presented at the PCR hearing and a thorough review of the record, this Court finds and concludes Applicant failed to meet his burden of proof pursuant to *Strickland*

⁷ To the extent Applicant claims Judge McMahon erred in denying his motion to withdraw, trial court error does not constitute an appropriate basis for a finding of ineffective assistance of counsel, is not a cognizable claim for post-conviction relief, and is procedurally barred by S.C. Code Ann. § 17-27-20(b). *Wolfe v. State*, 326 S.C. 158, 162, 485 S.E.2d 367, 369 (1997) n.2.

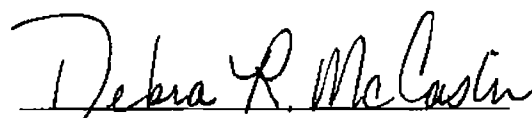
and Rule 71.1, SCRPC. This Court finds Counsels adequately conferred with Applicant; logically and realistically evaluated the circumstances of his case; provided effective assistance in advising him to plead guilty; and were thoroughly competent in their representation. Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, based on the foregoing, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

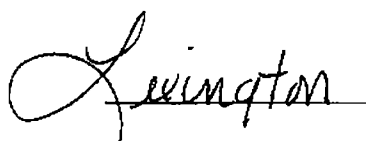
Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRPC, 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 26th day of May, 2021.


DEBRA R. MCCASLIN
Presiding Circuit Court Judge
Eleventh Judicial Circuit

, South Carolina