THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

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Case No. 2019-CP-02-00826

Willie A. Seawright #377348.....Applicant/Appellant

v.

State of South Carolina.....Respondent/Respondent

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**NOTICE OF APPEAL**

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This is a post-conviction relief case. Appellant appeals from the Order of Dismissal entered in this case on August 18, 2021. Appellant received written notice of the entry of the Order of Dismissal entered on August 18, 2021, by email on August 23, 2021. A copy of the Order of Dismissal appealed from is attached.

September 22, 2021

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| STATE OF SOUTH CAROLINA<br>COUNTY OF AIKEN | ) | IN THE COURT OF COMMON PLEAS<br>FOR THE SECOND JUDICIAL CIRCUIT |
| Willie A. Seawright, #377348,<br><br>Applicant,<br><br>v.<br><br>State of South Carolina,<br><br>Respondent. | ) | 2019-CP-02-00826<br><br>**ORDER OF DISMISSAL** |

This matter comes before the Court by way of an application for post-conviction relief filed on April 5, 2019. The State (Respondent) filed a Return on June 13, 2019, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on June 2, 2021, at the Aiken County Courthouse in Aiken, South Carolina before the Honorable Jennifer B. McCoy. Applicant was present at the hearing and represented by Arthur Aiken, Esquire. Assistant Attorney General Michael Neubauer of the South Carolina Attorney General's Office appeared on behalf of Respondent. At the hearing, Applicant testified on his own behalf. Victor Li, Esquire, also testified. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof of establishing any constitutional or statutory violations or deprivations to entitle him to relief. Accordingly, this Court denies and dismisses this application with prejudice. Specific findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code of Laws are set forth below.

## PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. During its June 2018 term, the Aiken County Grand Jury indicted Applicant for failure to stop for a blue light resulting in death (2018-GS-02-01273), and possession of a stolen vehicle (2018-GS-02-

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01434)[1]. Assistant Solicitor Sam Grimes of the Second Circuit Solicitor's Office prosecuted the case. Assistant Public Defender Victor Li (Counsel) of the Second Circuit Public Defender's Office represented Applicant.

On August 10, 2018, Applicant pleaded guilty without negotiations to failure to stop for a blue light resulting in death and possession of a stolen vehicle before the Honorable William P. Keesley. Judge Keesley sentenced Applicant to thirty days in county jail for the possession of a stolen vehicle charge, and a concurrent sentence of twenty-five years' imprisonment for failure to stop for a blue light resulting in death. Applicant did not appeal his guilty pleas or sentence.

## SUMMARY OF FACTS

On January 13, 2017, Chief Goldman of the Sally Police Department was running radar as a vehicle approached approximately five or six miles per hour over the speed limit on Poplar Street. (GP Tr. p. 8). The radar showed the vehicle increasing to a speed of 44 miles per hour in a 30 mile per hour zone. (GP Tr. p. 8). Chief Goldman followed Applicant and ran the vehicle's license plate before he attempted to pull Applicant over, which revealed that the vehicle was stolen. (GP. Tr. p. 8). Chief Goldman notified the Aiken County Sheriff's Office and South Carolina Highway Patrol about his pursuit. (GP Tr. p. 8). Subsequently, Applicant began driving 68 miles per hour in a 55 mile per hour zone. (GP Tr. p. 8). Chief Goldman attempted a traffic stop by initiating his blue lights, however Applicant did not pull over his vehicle. (GP Tr. p. 8-9). Chief Goldman then

[1] At the time of Applicant's indictment, Applicant had outstanding arrest warrants stemming from a separate incident (armed robbery, two counts of attempted murder, and two counts of possession of a weapon during the commission of a violent crime). However, during Applicant's guilty plea hearing Assistant Solicitor Sam Grimes indicated the attempted murder and possession of a weapon charges would be dismissed as a result of Applicant's guilty plea. Assistant Solicitor Sam Grimes further clarified that federal prosecutors were waiting to hear the result of the guilty plea hearing before determining whether they would dismiss the armed robbery charge against Applicant.



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activated his siren, and Applicant's speed increased to 124 miles per hour in a 35 mile per hour zone. (GP Tr. p. 9). Applicant then turned right onto Center Street at a speed in excess of 100 miles per hour. (GP Tr. p. 9). Thereafter, Applicant ran through a stop-sign at a high rate of speed, then lost control of the vehicle causing the vehicle to veer off the right side of the road and hit a tree. (GP Tr. p. 9). The vehicle was cut in half by the tree. (GP Tr. p. 9).

The passenger of the vehicle (Victim) was killed. (GP Tr. p. 9). At the time of the incident, Applicant's license was suspended, and Applicant had outstanding warrants for attempted murder and armed robbery as well as associated charges from separate incidents. (GP Tr. p. 10). Applicant was sitting on a pistol and was driving a stolen vehicle. (GP Tr. p. 10). The vehicle involved in this incident was a 1999 Toyota Camry that had been reported stolen in Orangeburg County a month prior. (GP Tr. p. 9).

## ALLEGATIONS RAISED

In Applicant's post-conviction relief application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
    a. Counsel informed Applicant that he could not discuss his case with the judge due to attorney/client privilege, and that he had to tell the judge "what was expected" so that the Judge would accept the plea.
    b. Counsel promised Applicant that he would receive a sentence between eight and fifteen years, but was ultimately sentenced to twenty-five years. Counsel failed to obtain a "written plea agreement" to ensure that Applicant would receive a sentence between eight and fifteen years.
    c. Counsel failed to take any "corrective action" regarding Applicant's twenty-five year sentence.
    d. Counsel failed to inform Applicant that he was required to serve two years of community supervision and pay a supervision fee.
    e. Counsel did not inform Applicant that by pleading guilty, Applicant was admitting all facts constituting the crimes charged and was agreeing to be sentenced.



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2. Involuntary Guilty Plea
    a. Applicant did not want to plead guilty but was "induced" to plead guilty because counsel "hurried" him to plead guilty and "deprived him of all the information necessary for Applicant to make a knowing and intelligent choice."

As requested relief, Applicant states he is seeking "to have the guilty plea and sentence vacated, set aside or reversed and to have the cases against him dismissed and/or such other and further relief that this Court deems fair, just, and proper."

On September 27, 2019, Applicant, through his attorney, filed an amended application alleging:

1. Ineffective Assistance of Trial Counsel
    a. Seawright's guilty plea was not made with or based on advice of competent counsel;
    b. Seawright's guilty pleas was not intelligently made;
    c. Trial counsel did not prepare Seawright's case for trial, and Seawright was left with no choice but to plead guilty;
    d. Trial counsel did not discuss the elements of the offense or potential defenses with Seawright;
    e. Trial counsel never discussed the advantages and disadvantages of a trial versus the advantaged and disadvantages of a plea with Seawright so that Seawright could make an informed choice of whether to enter a plea or try his case;
    f. Trial counsel did not investigate Seawright's case;
    g. Trial counsel did not tell Seawright the possible penalty for his offense;
    h. Trial counsel had Seawright sign the Sentencing Sheet without explaining it to him.

At the evidentiary hearing, Applicant stated he was going forward on the allegations set forth in his original application and his amended application.

## FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses, evaluated their credibility, and weighed the testimony and evidence accordingly in its discussion below. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the guilty plea transcript, the application for post-conviction relief, the amended application for post-conviction relief, and the legal arguments made by the attorneys. Set forth



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below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. § 17-27-80 (2003).

**1. Ineffective Assistance of Counsel**

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Petitioner, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Petitioner has the burden of proving the allegations in his PCR action, and when alleging counsel was constitutionally ineffective, he 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, 466 U.S. at 686. In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Petitioner must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Petitioner must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Petitioner such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness



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of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from a rigid rule of representation. Rather, Strickland requires the applicant to prove "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed to the defendant by the Sixth Amendment." Id. at 697. The function of the PCR court is to determine if "in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance" required of a criminal defense attorney." Id. at 690. "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel." Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel).

When reviewing a guilty plea, the analysis of counsel's performance under the first prong of Strickland remains unchanged—the applicant must show counsel's representation fell below the objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58-59. The second, or "prejudice" prong, however, "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Id. at 58-59.



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Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59. This inquiry "focuses on a defendant's decision making" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. ___ (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.

***a. Counsel informed Applicant that he could not discuss his case with the judge due to attorney/client privilege, and that he had to tell the judge "what was expected" so that the judge would accept the plea.***

Applicant alleges his attorney told him that he could not discuss his case with the judge, due to an existing attorney-client privilege. Additionally, Applicant alleges his attorney told him to tell the judge "what was expected" so that the judge would accept the plea. This Court finds these allegation are without merit.

Applicant testified he spoke with Counsel regarding attorney client privilege, and was informed by counsel that "whatever we discussed was between us" and that he could not disclose any of that information to anyone else, including the judge. Applicant testified he would have spoken up about his belief he would not receive more than fifteen years if counsel had not given him that advice.

Counsel testified he met with Applicant and discussed Applicants case. Counsel testified he did discuss attorney client privilege with Applicant, but he did not tell Applicant that he could not disclose any information to the plea judge. Counsel testified Applicant wanted to write the judge who was handling his plea hearing a letter. However, Counsel testified he told Applicant to



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not write the judge a letter prior to his plea. Counsel testified he did not tell Applicant how to answer the court's questions, but Counsel testified he probably told Applicant to be honest, and that he should not question or argue with the judge. Counsel testified he usually tells his clients to answer the court's questions honestly and to let Counsel know if they have any questions.

This Court finds Applicant's allegation is without merit. This Court finds Counsel's testimony credible. Counsel credibly testified he discussed attorney-client privilege with Applicant, however he did not tell Applicant he could not disclose the terms of his plea agreement with the Court. Counsel testified he told Applicant to not argue with Judge Keesley at Applicant's plea, however he did not tell Applicant to answer yes to all of Judge Keesley's questions. Applicant has failed to show his counsel was deficient. Applicant testified he spoke with Counsel prior to entering his guilty plea. Counsel testified he told Applicant not to write the plea judge a letter, and he told Applicant to be honest and not to question or argue with Judge Keesley during his plea hearing, and instead to let Counsel know of any concerns. Applicant was properly advised about the attorney-client privilege, and what privileged communications meant. Counsel provided general advice to Applicant regarding his interactions with Judge Keesley, however Counsel did not direct Applicant to answer Judge Keesley's questions with a specific response.

This Court finds Applicant has failed to show how Counsel's advice was deficient. Applicant additionally has failed to show Counsel's performance prejudiced Applicant. Although Applicant testified he felt he couldn't say anything to Judge Keesley regarding his sentence, Applicant has offered no explanation for why he did not tell Counsel that he felt the plea was not what he agreed to prior to appearing in court. Applicant has failed to provide any evidence to show his counsel was ineffective for telling Applicant not to discuss his case with the judge, and that he



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had to tell the judge "what was expected". Therefore, this claim is denied and dismissed with prejudice.

***b. Counsel did not tell Applicant the possible penalty for this offense. Counsel promised Applicant that he would receive a sentence between eight and fifteen years, but was ultimately sentenced to twenty-five years. Counsel failed to obtain a "written plea agreement" to ensure that Applicant would receive a sentence between eight and fifteen years.***

Applicant alleges his counsel was ineffective failing to advise him of the possible penalty for his offenses. Applicant asserts he was promised a sentence between eight-and-fifteen years, but was ultimately sentenced to twenty-five years. Additionally, Applicant alleges his counsel was ineffective because he failed to obtain a written plea agreement for eight-to-fifteen years. This Court finds these allegations are without merit.

Applicant testified he did not want to plead guilty. Applicant testified he discussed plea offers with Counsel, and Applicant wanted a sentence between four-to-six years and to have his other charges dismissed. Applicant testified Counsel told him that he could get eight to fifteen years if he pleaded guilty, but if he went to trial he would get the maximum possible sentence. Applicant further testified Counsel said he was almost positive that Applicant would receive a sentence between eight-and-fifteen years. Applicant testified Counsel did not tell him there was an agreement for a sentence between eight-and-fifteen years, nor was Applicant promised a specific sentence, but Applicant stated Counsel seemed pretty confident that Applicant's sentence would be between eight-and-fifteen years. Applicant testified he wanted to plead guilty to a sentence ranging between eight-and-fifteen years, and he would not have pleaded guilty if he had known he could receive up to twenty-five years. Applicant did not dispute before this Court that he was aware of the range of sentences that could be imposed if he pleaded guilty, however he testified he believed he would receive a sentence between eight-to-fifteen years. Applicant



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testified at his evidentiary hearing that he told the plea court that he understood he could be subject to the maximum possible penalty if he pleaded guilty, but also testified that he made this affirmation at plea counsel's direction. Applicant testified he recalled telling the plea judge he understood he could receive a sentence up to twenty-five years for Failure to Stop for a Blue Light, Death Resulting. GP Tr. p. 6. Applicant further testified he recalled the plea judge's explanation that he would have to serve at least eighty-five percent of his sentence. GP Tr. p. 6. Applicant also testified he recalled telling the plea judge he understood he could receive a sentence up to thirty days for Possession of a Stolen Vehicle. GP Tr. p. 7.

Counsel testified he entered into plea negotiations with the Solicitor's Office, but the solicitor handling the case did not engage in much negotiation. Counsel testified the Solicitor's Office agreed to drop all the other pending charges Applicant was facing except for the two charges related to the car chase. Counsel testified he did not receive any plea offers referring to a specific sentencing range. Counsel credibly testified that he informed Applicant of the sentencing range for the underlying charge and, though he told Applicant that his professional opinion was that Applicant would possibly receive a sentence of eight-to-fifteen years, he told Applicant his plea was an "open plea" and he could face up to twenty-five years. Counsel further testified the Solicitor's Office in Aiken County does not usually extend formal, written offers, and Counsel conveyed all plea discussions with Applicant. Counsel testified he told Applicant they would ask the court for eight-to-fifteen years. Counsel testified he told Applicant he would not receive a probationary sentence, but Counsel would ask the court for a sentence in the eight-to-fifteen year range, and they would hope for the best possible result. Counsel testified he believed Applicant understood the plea was an open plea, and he could be sentenced up to the statutory maximum.



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The Due Process Clause of the United States Constitution requires that a defendant enter a guilty plea voluntarily, knowingly, and intelligently. Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citing Boykin v. Alabama, 395 U.S. 238 (1969). The defendant must be aware of, among other things, the maximum possible penalty that could be imposed. Id. (citations omitted). "Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made." Stalk v. State, 375 S.C. 289, 302, 652 S.E.2d 402, 408 (Ct. App. 2007), aff'd as modified, 383 S.C. 559, 681 S.E.2d 592 (2009) (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997)). A colloquy with a guilty plea court can cure an alleged deficiency in advice given to a defendant by his lawyer. Holden v. State, 393 S.C. 565, 575, 713 S.E.2d 611, 616 (2011) (citations omitted) (concluding that any alleged deficiency in plea counsel's advice to Holden was cured by the plea court's colloquy), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

This Court finds Applicant's allegation is without merit. Applicant has failed to show how Counsel's performance was deficient. Applicant testified that he was never told by Counsel that he would receive a specific sentence. Applicant testified he was not guaranteed a specific sentence, however he believed that he would receive a sentence between eight-and-fifteen years. Counsel testified he told Applicant he would ask the court for a sentence between eight-and-fifteen years, however he also informed Applicant that he was entering an open plea and could receive a sentence up to twenty-five years. The plea court engaged in thorough colloquy with Applicant and clearly stated the applicable sentencing range, which Applicant told the plea court he understood. GP Tr. p. 6-7. The assistant solicitor requested at the guilty plea hearing that Judge Keesley impose a



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twenty-five year sentence, which served as further indication to Applicant that it was possible that by pleading guilty he could be imprisoned for more than eight-to-fifteen years. GP Tr. p. 12.

Additionally, Applicant has failed to show how Counsel's performance prejudiced Applicant. The plea court explained to Applicant the charges he was pleading guilty to, the possible sentences, the fact that Failure to Stop for a Blue Light, Death Resulting was a violent and no-parole offense, and Applicant would be required to serve at least eighty-five percent of his sentence before he would be released from prison. GP Tr. p. 6-7. Though Applicant testified he felt confident he would receive a sentence between eight-to-fifteen years, Applicant acknowledged he was not promised that he would receive a sentence within this range. Counsel testified he informed Applicant he was entering an open plea and could receive a sentence up to twenty-five years. The plea court additionally informed Applicant, prior to accepting his guilty plea, that Applicant could receive a sentence up to twenty-five years, and Applicant would be required to serve at least eighty-five percent of the sentence he received before being released from prison. GP Tr. p. 6-7. Though Applicant testified he would not have pleaded guilty if he knew he could receive twenty-five years, this Court finds Applicant's testimony is not credible.

Applicant has given this Court no compelling reason to allow him to retract his statements at his guilty plea hearing about his understanding of the possible sentencing range, even if it is clear that Applicant is motivated to disavow this affirmation now because he did not receive as lenient a sentence at the guilty plea hearing as he had hoped. The evidence before this Court establishes that Applicant was aware the sentence imposed by Judge Keesley could exceed fifteen years' imprisonment, despite Applicant's hope that it would not. Therefore, this claim is denied and dismissed with prejudice.



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*c. Counsel failed to take any "corrective action" regarding Applicant's twenty-five year sentence.*

Applicant asserts Counsel was ineffective because he failed to take any corrective action regarding Applicant's twenty-five year sentence. This Court finds this allegation is without merit.

Applicant testified he believed he would receive a sentence between eight-and-fifteen years. Applicant testified he would not have pleaded guilty if he knew that he could receive a sentence of twenty-five years. Applicant provided no testimony indicating he told Counsel after his sentencing that he misunderstood the possible consequences of his guilty plea, that he was unhappy with his sentence, or that he asked Counsel to file a motion to reconsider his sentence.

Counsel testified Applicant was aware the plea was an "open plea" and Applicant could receive a sentence up to twenty-five years. Counsel acknowledged he could have filed a motion to reconsider Applicant's sentence, but he did not do so. Counsel testified he was not asked to file a motion to reconsider by Applicant. Counsel further explained that he did not feel that a motion to reconsider would have been successful with the plea judge.

This Court finds Applicant's allegation is without merit. This Court finds Applicant has failed to show how Counsel was deficient. Applicant did not direct Counsel to file a motion, and Counsel testified he felt such a motion would be futile. "[D]ecisions primarily involving trial strategy and tactics may be made by trial counsel." Abney v. State, 408 S.C. 41, 48, 757 S.E.2d 544, 547 (Ct. App. 2014). What motions to file and "whether to put on evidence so as to preserve the final word in closing argument" are also strategic and tactical decisions to be made by trial counsel. Id. (citing Wright v. State, 322 Ga. App. 622, 745 S.E.2d 866, 868 (2013)).

Applicant has failed to prove Counsel's advice was not within the range of competence demanded of attorneys in criminal cases. Though Applicant was hoping for a lesser sentence than he received, Applicant was informed prior to his plea that he would be facing up to twenty-five



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years. This Court views Counsel's testimony as credible, and Counsel was not deficient by choosing to not file a motion to reconsider. Counsel has testified he did not file a motion to reconsider because he felt it would not have been successful with Judge Keesley following Applicant's guilty plea. Applicant has additionally failed to establish he was prejudiced by Counsel's advice. Applicant's sentence of twenty-five years fell within the statutory sentencing range for Failure to Stop for a Blue Light, Death Resulting as set out in section 56-5-570 of the South Carolina Code. Additionally, Applicant failed to provide any evidence or information to Counsel, or the Court, which would have changed his sentence. The Court finds find Applicant has failed to demonstrate ineffective assistance of counsel based on Counsel's failure to take corrective action following Applicant's guilty plea. Therefore, this claim is denied and dismissed with prejudice.

***d. Counsel failed to inform Applicant that he was required to serve two years of community supervision and pay a supervision fee.***

Applicant alleges his counsel was ineffective for failing to inform Applicant he would be required to serve two years of community supervision and pay a supervision fee as a result his guilty plea. This Court finds this allegation is without merit.

Applicant testified he did not recall if Counsel explained that he would have to serve community supervision once he was released from prison. Applicant further testified he did not understand that based on the community supervision rules, he could end up serving all twenty-five years of his sentence. Applicant further testified that if he knew he could serve one-hundred percent of his sentence, he would not have pleaded guilty. On cross-examination Applicant testified he did not remember the plea judge discussing community supervision at his plea hearing. Additionally, Applicant testified he did not remember the plea judge telling him that if he did not complete the community supervision program, he could go back to jail for the remainder of his sentence.



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Counsel agreed he did not discuss community supervision with Applicant, nor did he inform Applicant that community supervision could cause Applicant to serve one hundred percent of his sentence.

"Participation in a community supervision program is a collateral consequence of sentencing, and thus counsel was not ineffective in failing to inform defendant about the program when advising him to plead guilty." Jackson v. State, 349 S.C. 62, 63-64, 562 S.E.2d 475, 475-76 (2002). A colloquy with a guilty plea court can cure an alleged deficiency in advice given to a defendant by his lawyer. Holden v. State, 393 S.C. at 575, 713 S.E.2d at 616 (citations omitted) (concluding that any alleged deficiency in plea counsel's advice to Holden was cured by the plea court's colloquy). For a plea hearing to cure deficient advice, the plea hearing must unambiguously address and resolve the incorrect advice. Robinson v. State, 422 S.C. 78, 88, 810 S.E.2d 32, 38 (2018).

This Court finds Applicant has failed to show Counsel was ineffective for failing to inform Applicant that he would be required to serve two years of community supervision and pay a supervision fee. It is well established that community supervision is a collateral consequence of a guilty plea, and Counsel will not be found to be ineffective for failing to advise an applicant of a collateral consequence. See Jackson v. State, 349 S.C. at 63-64, 562 S.E.2d at 475-76. Applicant has failed to demonstrate how Counsel was deficient, or how Counsel's failure to discuss this collateral consequence prejudiced Applicant. Additionally, this Court finds the plea judge discussed this collateral consequence with Applicant prior to accepting Applicant's guilty plea, and Applicant was therefore aware of this collateral consequence prior to entering his guilty plea. GP Tr. p. 7. This Court finds Applicant's allegation that Counsel was ineffective for failing to



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inform Applicant he was required to serve two years of community supervision and pay a supervision fee is without merit. Therefore, this claim is denied and dismissed with prejudice.

e. ***Counsel did not investigate or prepare Applicant's case for trial, and Applicant was left with no choice but to plead guilty.***

Applicant alleges his counsel provided constitutionally ineffective assistance for failing to properly prepare a defense for trial and for failing to investigate Applicant's case. This Court finds these allegations are without merit.

At his evidentiary hearing, Applicant testified Counsel investigated his case "a little." However, Applicant did not provide any evidence or present witnesses to show what Counsel could have investigated that would have provided a defense at trial. On cross-examination, Applicant testified he reviewed discovery with Counsel and watched the dash cam video of his arrest. Applicant testified he also discussed possible defenses with Counsel.

Counsel testified he investigated all of the charges Applicant was facing, including charges unrelated to the incident Applicant pleaded guilty to. Counsel testified he contacted Applicant's mother as he attempted to get in touch with the victim's family. Counsel testified he hired an investigator to meet with the family of the victim, but the victim's family refused to speak with Counsel's investigator. Counsel testified he reviewed the dash cam video of the incident with Applicant. Counsel further testified he discussed the possibility that police used excessive force during Applicant's arrest. However, Counsel testified that after he viewed the dash cam footage of the incident, he realized the officer never touched Applicant's car, and he felt there was no need to investigate this issue further. At Applicant's evidentiary hearing, Counsel testified Applicant's case was not set for a trial at the time of Applicant's plea. Counsel testified he would have done more extensive trial preparations if this case had been in a trial posture. However Applicant



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indicated to Counsel for several weeks that Applicant intended to plead guilty and did not want to proceed to trial.

Counsel has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. Strickland v. Washington, 466 U.S. at 691. Thus, "[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). To establish counsel failed to adequately prepare for trial, applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998). An applicant is not entitled to relief where no evidence is presented at the PCR hearing to show how additional preparation would have had any possible effect on the result at trial. Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997). Moreover, counsel's decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel's judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). "[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Strickland, 466 U.S. at 690.

This Court finds Applicant has failed to show Counsel was ineffective for failing to properly investigate this case or prepare for trial. Applicant has failed to show how Counsel's performance was deficient. Applicant acknowledged he discussed discovery with Counsel, and Counsel investigated his case. Additionally, Counsel testified about the investigation that he conducted, including hiring a private investigator to try to speak with the family of the deceased



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victim. Counsel also testified he would have engaged in more intensive trial preparation if the case had been in a trial posture, but Applicant decided to plead guilty several weeks ahead of the plea hearing, and the case was never set for a trial date. Moreover, Applicant has failed to produce any evidence or testimony showing what Counsel could have discovered through further investigation or preparation, and therefore, Applicant has failed to show how he was prejudiced by Counsel's performance. Accordingly, this claim is denied and dismissed with prejudice.

***f. Counsel did not discuss the elements of the offense or potential defenses with Applicant.***

Applicant alleges his counsel provided constitutionally ineffective assistance for failing to discuss the elements of the offenses or potential defense with Applicant. This Court finds this allegation is without merit.

Applicant provided no testimony to support his allegation that Counsel was ineffective for failing to discuss the elements of the offense with which Applicant was charged. Applicant testified he spoke with Counsel about possible defenses to the charges prior to his guilty plea.

Counsel testified he discussed the charges Applicant was facing along with the elements of each charge with Applicant. Counsel testified he discussed the indictments and did not see any basis for challenging the indictments. Additionally, Counsel testified he discussed possible defenses with Applicant; however after reviewing discovery and the dash cam footage from Applicant's arrest, he did not feel there were any defenses available to Applicant for these charges.

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 v. Alabama, 395 U.S. 238, 243 (1969). 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."



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Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). 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. at 243 (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."). A colloquy with a guilty plea court can cure an alleged deficiency in advice given to a defendant by his lawyer. Holden v. State, 393 S.C. at 575, 713 S.E.2d at 616. In evaluating the voluntariness of a guilty plea, the court must consider both the guilty plea transcript and the record established during the post-conviction relief hearing. Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

This Court finds Applicant has failed to show Counsel was ineffective for failing to discuss the elements of Applicant's charges along with any possible defenses. Applicant testified he discussed possible defenses with Counsel. Applicant failed to provide any evidence to support his allegation that Counsel failed to discuss the elements of the charges Applicant was facing. Conversely, Counsel credibly testified he discussed the charges Applicant was facing along with any defenses that may be presented. Additionally, at Applicant's guilty plea, the plea judge asked Counsel if he discussed the nature and elements of the offenses, and Counsel confirmed he did without objection from Applicant. GP Tr. p. 4. Applicant was asked by Judge Keesley, and confirmed he understood the charges he was pleading guilty to. GP Tr. p. 6-8. Applicant has failed to establish how Counsel's performance was deficient, or how Applicant was prejudiced by Applicant's performance. Therefore this allegation is denied and dismissed with prejudice.



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***g. Counsel never discussed the advantages and disadvantages of a trial versus the advantages and disadvantages of a plea with Applicant so that Applicant could make an informed choice of whether to enter a plea or try his case.***

Applicant alleges his counsel failed to discuss the advantages and disadvantages of pleading guilty versus proceeding to trial. This Court finds this allegation is without merit.

Applicant testified he did not want to plead guilty. Further, Applicant testified he only pleaded guilty because he believed that he would receive a sentence between eight-to-fifteen years. Applicant testified he did not know when his case would have gone to trial if he had not pleaded guilty. On cross-examination, Applicant admitted Counsel explained the advantages and disadvantages of pleading guilty versus proceeding to trial.

Counsel testified he discussed the charges with Applicant, along with the possible punishments and any possible defenses. Counsel testified he felt the plea was in Applicant's best interest, and ultimately it was Applicant's decision to plead guilty. Counsel testified he was prepared to proceed to trial if Applicant decided he did not want to plead guilty.

In evaluating issues concerning guilty pleas, this Court will consider the entire record, including the transcript of the guilty plea proceeding and the evidence presented at the post-conviction relief hearing. Roddy v. State 339 S.C. 29, 528 S.E.2d 418 (2000).

This court finds Applicant has failed to show Counsel was ineffective for failing to discuss the advantages and disadvantages of pleading guilty versus proceeding to trial. Applicant, through his testimony, admits his attorney discussed the advantages and disadvantages of pleading guilty versus proceeding to trial. Therefore, Counsel was clearly not deficient, and Applicant has failed to meet his burden of proving he received ineffective assistance. Therefore, this allegation is denied and dismissed with prejudice.

***h. Counsel had Applicant sign the sentencing sheet without explaining it to him.***



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Applicant alleges his counsel was ineffective for failing to explain the sentencing sheet before Applicant signed. This Court finds this allegation is without merit. Specifically, this Court finds credible Counsel's testimony that he discussed the charges Applicant was pleading to prior to Applicant signing his sentencing sheet.

Applicant at his evidentiary hearing testified that he does not recall discussing the sentencing sheet with Counsel prior to his plea.

Counsel testified he did not take an example sentencing sheet to Applicant when they discussed the sentencing sheet. However, Counsel testified he discussed the charges Applicant was pleading to and the consequences of Applicant pleading guilty and signing a sentencing sheet.

This Court finds this allegation is without merit. Applicant was informed of the charges he was pleading guilty to prior to entering his guilty plea. Additionally, this Court finds Applicant was aware of the consequences of his guilty plea prior to signing the sentencing sheet. Though Counsel did not provide Applicant with an example of the sentencing sheet, Applicant was aware of the consequences of his guilty plea prior to entering his plea and signing his sentencing sheets. Applicant has failed to demonstrate how Counsel's performance was deficient, or how Applicant was prejudiced by Counsel's performance. Therefore, this allegation is denied and dismissed with prejudice.

### 2. Involuntary Guilty Plea

***Applicant's guilty plea was not knowing and intelligently 'made to the court.' Counsel did not inform Applicant that by pleading guilty, Applicant was admitting all facts constituting the crimes charged and agreeing to be sentenced.***

Applicant asserts his plea was not knowingly and intelligently made to the court. Applicant argues his plea was not made with or based on advice of competent counsel. Applicant additionally asserts his counsel failed to inform Applicant that by pleading guilty, Applicant was admitting all



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facts constituting the crimes charged and agreeing to be sentenced. This Court finds these allegations are without merit.

"[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced." Reed v. Becka, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). Accordingly, because a criminal defendant waives several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. Boykin v. Alabama, 395 U.S. 238 (1969); Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999). To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. Brady v. United States, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant's choice. *Id.* at 755; see also United States v. Smith, 440 F.2d 521, 528–529 (7th Cir.) (Stevens, J., dissenting) (explaining that voluntariness relates to the trustworthiness of the admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

The test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." North Carolina v. Alford, 400 U.S. 25, 31 (1970). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, Brady, 397 U.S. at 750–53, or by increasing the risks of punishment on those who do not. Alford, 400 U.S. at 37 (1970); cf. United States v. Cox, 464 F.2d 937, 942 (6th Cir. 1972) ("It is well established that a guilty plea is not rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment." (citing Brady, 397 U.S. 742)). An applicant who enters a plea on the



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advice of counsel may "only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the [applicant] would not have pled guilty, but would have insisted on going to trial." Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill, 474 U.S. 52).

The voluntariness of a guilty plea, however, "is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." Harres v. Leeke, 282 S.C. at 133, 318 S.E.2d at 361. In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. Wolfe v. State, 326 S.C. at 165, 485 S.E.2d at 370.; cf. Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that, where the transcript of the guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant's claim his lawyer misadvised him).

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. 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



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v. Alabama, 395 U.S. at 243 (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. at 134, 318 S.E.2d at 361.

Applicant testified he did not want to plead guilty, and only pleaded because he believed he would receive a sentence between eight-to-fifteen years. Applicant testified he spoke with Counsel regarding the advantages and disadvantages of pleading guilty versus proceeding to trial. Applicant testified if he knew he could receive a twenty-five-year prison sentence by pleading guilty, he would not have pleaded and instead proceeded to trial. Applicant testified he just said yes to everything during the plea hearing because Counsel told him to agree and answer affirmatively to all questions the court asked at Applicant's plea hearing.

On cross-examination, Applicant testified he remembered discussing discovery with Counsel. Applicant agreed he spoke with Counsel regarding a plea, and he understood Counsel was not promising a sentence between eight-and-fifteen years. Applicant testified he told the plea judge he did not need more time to talk with his attorney prior to pleading guilty. GP Tr. p. 14. Applicant testified he recalled telling the plea judge he was not threatened or promised anything to get him to accept the plea. GP Tr. p. 13-14. Applicant testified he recalled telling the plea judge he was pleading guilty on his own free will. GP Tr. p. 12-13. Applicant testified he recalled telling the plea judge Counsel did everything Applicant wanted him to do. GP Tr. p. 14. Applicant testified he recalled the plea judge informing him of his charges, the maximum sentence his charge carried, and the plea agreement Applicant and the State agreed to which included the dismissal of multiple



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pending charges. GP Tr. p. 11-13. Applicant testified he recalled the plea judge informing Applicant of his right to appeal his plea, but he had a short period of time to appeal his plea. GP Tr. p. 21. Applicant further testified he recalled the plea judge discussing his constitutional rights, including the right to remain silent, the right to confront witnesses, and the right to challenge the State's evidence against him. GP Tr. p. 5.

Counsel testified he had discussions about a plea deal early into his representation of Applicant, and Applicant initially did not want to accept a plea. Counsel testified he explained the pros and cons of going to trial or accepting a plea, and left the ultimate decision to Applicant. On cross-examination, Counsel testified he reviewed discovery with Applicant including the dash cam footage of the incident leading to Applicant's arrest. Counsel testified he discussed Applicant's constitutional rights and stated Applicant was well aware of his rights. Counsel testified he discussed with Applicant the fact that the plea offer did not include any recommendation regarding sentencing, but it did include the dismissal of multiple other pending charges. Counsel testified he felt Applicant was not under any more pressure than any other criminal defendant. Counsel testified that he did not inform applicant that he was admitting the facts constituting the crime because he felt it was self-explanatory, and it was ultimately covered in the plea colloquy. Counsel testified it was Applicant's choice to plead guilty, and Counsel would have been prepared to go to trial if Applicant chose to not enter the plea.

This Court finds Applicant's allegation to be without merit. Applicant was aware of the crimes he was charged with, and the possible penalties if he was convicted. The Court finds Applicant was informed of the terms of the plea offer from the State, and he knew accepting this plea would result in the dismissal of multiple pending charges. The Court further finds Applicant was aware that there was no sentencing recommendation or negotiation, and Applicant could



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receive a sentence of up to twenty-five years. The record reflects Applicant had ample opportunity to speak with his counsel prior to and during the plea hearing, Applicant was informed of his constitutional rights by Counsel and the plea judge, and Applicant made an informed decision to plead guilty. GP Tr. p. 5 Applicant was informed by the court at his guilty plea that by pleading guilty Applicant was admitting the charges against him were true. GP Tr. p. 5. Applicant was additionally informed by the court at his plea hearing that by pleading guilty he may be sentenced to twenty-five years for Failing to Stop for a Blue Light, Death Resulting, and thirty days for Possession of a Stolen Vehicle. GP Tr. p. 6-7.

This Court finds Applicant made an informed decision to plead after being informed of the facts which lead to Applicant's charge for Failure to Stop for a Blue Light, Death Resulting, and Applicant has failed to show his plea was not knowingly and intelligently made. Additionally Applicant has not provided any evidence, outside of his own self-serving testimony, to indicate he would have rejected the plea offer, and proceeded to trial, if he was provided with more information. Therefore, Applicant's claim is denied and dismissed with prejudice.

## CONCLUSION

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

The Court notes Applicant must file and serve a notice of appeal within thirty days from post-conviction relief counsel's receipt 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), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to



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seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED THAT:**

1. The application for post-conviction relief is denied and dismissed with prejudice; and

2. Applicant is to remain in the custody of the Respondent.

**AND IT IS SO ORDERED** this 9 day of August, 2021.

JENNIFER B. McCOY
Presiding Judge
Second Judicial Circuit

Charleston, South Carolina



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