

NOTICE OF APPEAL FROM COMMON PLEAS REGARDING A
POST CONVICTION RELIEF

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

George M. McFaddin., Circuit Court Judge

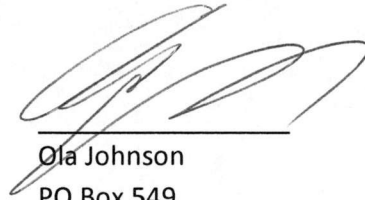
Case No. 2019-CP-40-05705

The State,.....Respondent,

Charles Lamb,.....Appellant,

Notice of Appeal

Charles Lamb appeals the order of the Honorable George M. McFaddin, dated September 21st, 2021, which denied his application for Post-Conviction Relief with prejudice. Appellant received written notice of the order on October 7, 2021.



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arm robbery (2017-GS-40-03270). Applicant was represented by Assistant Public Defender Robert Bank. Deputy Solicitor Daniel R. Goldberg prosecuted the case.

On December 7, 2018, Applicant pleaded guilty as indicted to one count of criminal sexual conduct in the first degree, kidnapping, and attempted robbery/strong arm robbery before the Honorable DeAndrea Benjamin. Judge Benjamin sentenced Applicant, pursuant to negotiations between Applicant and the State, to concurrent terms of imprisonment for twenty-four years for kidnapping, twenty-four years for criminal sexual conduct in the first degree, and fifteen years for attempted robbery/strong arm robbery. Applicant did not appeal.

Applicant timely commenced this PCR action on October 9, 2019. In his original application, Applicant alleged:

1. Guilty plea was not knowingly, intelligently made.

a. "I told my lawyer that I did not understand what the judge was saying."

Applicant amended his application on April 6, 2021. Applicant alleges by and through PCR counsel that he is being held unlawfully for the following reasons:

1. Plea counsel failed to explain detail of guilty plea and concurrent or consecutive
2. Plea counsel failed to explain the deadline or process for filing appeal after the plea
3. Plea Counsel failed to correctly identify the indictment applicant was entering a plea to
4. Plea counsel failed to provide copy of states evidence to applicant
5. Plea counsel coerced him to enter the guilty plea by statements and threats made to the defendant
6. Following plea, counsel refused to explain the sentence to applicant
7. Plea counsel failed to convey questions to court regarding sentencing
8. Applicant's history of mental health problems prevented applicant from fully understanding his rights and he was not capable of giving up these rights and entering a voluntary guilty plea.

As relief, Applicant seeks to have his conviction vacated or to have his sentences vacated or to be granted a belated appeal. At the evidentiary hearing, Applicant struck and waived his third allegation outlined in the amended return—Plea Counsel failed to correctly identify the indictment applicant was entering a plea to—and proceeded forward on the remaining seven allegations as set forth in the April 6, 2021, amendment.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

A. Summation of Record and Credibility Findings

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

1. Plea Proceeding

Near the outset of the plea colloquy, the Plea Court confirmed that Applicant understood the potential sentence for the criminal sexual conduct in the first degree, kidnapping, and attempted robbery/strong arm robbery charges. (Plea Tr. 3; 9–10). Upon further inquiry, Applicant confirmed he understood he was entering a plea to the aforementioned charges, as indicted, pursuant to a negotiated plea of twenty-four years, and all sentences would run concurrent. (Plea Tr. 3). Applicant affirmed to the court that he had spoken with Counsel about the matter, told Counsel everything he knew about it, that Counsel had answered all of Applicant's questions and

done everything he was asked to do, and that Applicant was satisfied with Counsel's services.

(Plea Tr. 12-13). After appraising Applicant of his various rights, the plea court inquired:

Q. All right. Is anyone forcing you to plead guilty today?

A. No, ma'am.

Q. And are you pleading guilty of your own free will?

A. Yes, ma'am, I am.

Q. And are you -- has anyone offered you anything in exchange for your plea? I know Ms. Goldberg, the solicitor, has offered you this negotiated sentence, but other than that, has anyone offered you anything in exchange for your plea today?

A. No, ma'am.

Q. And so you are pleading freely and voluntarily?

A. Yes, ma'am, I am.

Q. All right, and have you understood all of my questions today?

A. Yes, ma'am.

Q. And have you answered them truthfully?

A. Yes, ma'am.

(Plea Tr. 15-16). The court inquired as to whether Applicant understood he had the right to appeal within ten days, to which Applicant affirmed he understood. (Plea Tr. 16). Based on Applicant's answers, the Court found a substantial factual basis for Applicant's plea, and found that Applicant's decision to plead guilty was freely, voluntarily, knowingly, and intelligently made. (Plea Tr. 16). The Court further found that Applicant was competent for the purposes of entering a plea based on the competency evaluations performed on Applicant and the opinion of Counsel that Applicant was competent. (Plea Tr. 17). Accordingly, Judge Benjamin accepted Applicant's guilty plea, and sentenced Applicant to a concurrent sentence totaling twenty-four years, as negotiated. (Plea Tr. 17; 20-21).



2. Evidentiary Hearing

Applicant testified on his own behalf at the evidentiary hearing. Applicant testified Robert Bank represented him for his plea and that he was present in the courtroom the day of the evidentiary hearing. Applicant testified the day of his plea, he asked Counsel if his sentences were going to run consecutive. Applicant explained that if they were going to run consecutive, that he did not want to take the deal and wanted to go back to jail. Applicant testified that he asked the Judge to explain, but the Judge “got an attitude with him and would not explain things to him.” Applicant testified that after the plea, he asked counsel to ask the judge if the sentences were going to run consecutive, but Counsel would not ask the Judge to “explain things.” Applicant testified that during this conversation, Counsel began speaking in tongues and Applicant could not understand what Counsel was saying. Applicant testified he again asked Counsel to ask the Judge whether the sentences were going to run concurrent, and in response, Counsel began to threaten Applicant. Applicant testified Counsel went to speak with the Judge to tell her Applicant wanted a trial, but the Judge ignored Counsel. Applicant testified he told Counsel he wanted to go back to jail because he felt Counsel needed professional counseling.

Applicant testified he thought he needed to go to trial, and alleged Counsel said he did not understand what the judge was saying about Applicant’s sentence. Applicant testified he told Counsel that Counsel needed to get counseling and therapy classes so Counsel could understand what the judge was saying in the court room. Applicant testified he and Counsel never discussed an appeal.

Applicant testified he never reviewed the evidence or got discovery. Applicant testified he never saw any actual documents. Applicant further explained the threats he received from Counsel. Specifically, Applicant testified Counsel said his family would hurt Applicant and “mess



him up” because Counsel did not like what Applicant “did to that old lady.” Applicant testified he told Counsel, “I do not like the way you speak to me. I’ll go back to county jail.” Applicant testified Counsel began cussing him out and told him he could not go back to the county jail. Applicant testified Counsel told him he had to go through with the plea, and that if Applicant did not go through with the plea, Counsel would kill Applicant. Applicant testified he told Counsel he did not appreciate Counsel’s attitude with him and Applicant did not appreciate what Counsel said to him. Applicant testified Counsel told Applicant that the sentences would run concurrent and Counsel refused to do anything when Applicant asked Counsel to do something about it.

Applicant additionally testified to his mental health treatment history. Applicant testified he was treated on the street and receives SSI due to police brutality, who Applicant claimed, “injured him really badly, sexually harassed him, and sexually raped him bad.” Applicant testified these events mentally and physically injured him, which is why he filed for disability for his paranoid schizophrenia. Applicant testified he was treated in Columbia and the facility gave him sleeping medicine because he could not sleep. Applicant testified Counsel should have told the Judge that Applicant did not want to take the deal, Counsel should have clarified that his sentence was concurrent, Counsel should not have made threats against applicant, and Counsel should have gotten another lawyer after he was unprofessional in the courtroom.

On cross-examination, Applicant testified he met with Counsel two times, once on the day of the plea and in the county jailhouse. Applicant was asked on cross-examination if he was currently serving twenty four years. In response, Applicant testified he was in fact serving twenty four years, but the classification system at Lieber, the institution he was in before Broad River, told him that all of his sentences were running concurrent. Applicant explained that another person at Lieber told him he should go back to court to get it all straightened out because Applicant’s time



was running consecutive and people were lying to Applicant. Applicant testified on cross-examination that Applicant filed for PCR because everything was Counsel's fault, and had Counsel asked people these things about his time, Applicant would not have to go through pain and suffering under these conditions—under false imprisonment—because Counsel did not do it right.

Robert Bank ("Counsel") also testified at the evidentiary hearing. Counsel testified he has been practicing criminal law for almost eight years. Counsel testified he was appointed to represent Applicant, and they met fourteen times at the jail and twice at the courthouse. Counsel testified he received all the discovery he needed and went over it with Applicant. Counsel explained he gave Applicant a copy of discovery July 6, 2017—evidenced by a signed receipt—and Counsel advised Applicant against keeping a copy of the discovery in jail. Counsel testified Applicant requested a second copy because the first copy got wet. Counsel testified he gave Applicant a third copy after sentencing on June 21, 2019. Counsel testified Applicant confessed he was at the scene of the crime and that he digitally penetrated the victim's vagina with his finger. Counsel testified that based on Applicant's account of the incident and the discovery he had, he did not see any defenses that he thought would be successful. Counsel testified when there is a significant sentence, he tells clients that he supports them either way, but advises he does not think they will be successful at trial. Counsel explained that it is ultimately the client's decision. Counsel testified that Applicant shifted from wanting to plead to wanting a trial; however, as time went on, Applicant more consistently wanted a plea deal. Counsel testified Applicant was facing seventy-five years total and that he explained this to Applicant.

Counsel testified once Applicant decided he wanted to plea, Applicant wanted Counsel to secure unreasonable offers ranging from seven to ten years. Counsel testified he went to meet with Applicant one final time prior to Counsel leaving the country for a prior scheduled trip. At that



meeting, Counsel testified that he explained to Applicant that Counsel could try to get plea offer before he left the country, that Applicant could wait until Counsel got back in the country to negotiate a plea, or Applicant could have a new attorney appointed. Counsel testified Applicant told Counsel to ask the solicitor for twenty years. Counsel testified he went to the Solicitor with that number and the Solicitor countered with twenty-five years. Counsel testified Applicant agreed to the twenty-five years with all charges running concurrent. Counsel explained that the morning before the plea hearing, Counsel asked the Solicitor for some additional time to speak with Applicant. Counsel testified that in response to Counsel's request, the Solicitor lowered the offer to a concurrent twenty-four year sentence. Counsel testified he informed Applicant of the one year reduction on a negotiated, concurrent sentence the morning of the plea hearing. Counsel testified he explained what concurrent meant to Applicant and Applicant understood, and that the plea achieved what Applicant wanted.

Counsel testified he had some reservations about Applicant's competency. Counsel explained Applicant struggled with mental health his entire life and was inconsistently treated. Counsel testified that Applicant's mental health fluctuated while in jail, and the fluctuation seemed to be associated with whether Applicant took his medication or not. Counsel testified he got ahold of Applicant's prior health records and copy of criminal file. Counsel testified he retained private forensic psychologist who conducted an evaluation on August 15, 2017, at the detention center. Counsel testified the private forensic psychologist gave an opinion that Applicant was competent, which Counsel put on the record at Applicant's plea hearing.

Counsel testified he did not recall Applicant asking him questions during the plea hearing. Counsel refuted that he ever threatened to kill Applicant. Counsel testified he did not recall telling Applicant that Counsel did not understand what the Judge was saying. Counsel denied coercing

Applicant into pleading guilty. Counsel testified Applicant did not ask him any questions immediately after the plea, but Counsel did get a letter from Applicant requesting Counsel clarify whether Applicant's sentences were concurrent or consecutive. Counsel explained he wrote a letter to Applicant explaining that Applicant's sentences were concurrent, attached the sentencing sheets, and highlighted concurrent on all of the sentencing sheets. Counsel testified he did not recall specifically informing Applicant of his right to appeal, but Counsel recalled the Judge doing so on the record. Counsel testified Applicant did not ask him to appeal, but if Applicant had, he would have. Counsel testified Applicant gave him no inclination that Applicant would have wanted to appeal, and that if Counsel thought he wanted to appeal, Counsel would have spoken with Applicant; however, Counsel testified he did not see any meritorious issues with the plea. Counsel testified the ultimate decision to plead guilty was Applicant's.

On cross-examination, Counsel testified he explained the difference between concurrent and consecutive to Applicant. On cross-examination, Counsel testified he used the laptop at the jail to review the digital file with Applicant, but later, SCDC prohibited videos, so Applicant likely did not see those. On cross-examination, Counsel affirmed he had no memory of ever threatening Applicant. On cross-examination, Counsel testified he requested and received all of the mental health history and records that he could get access to. Counsel affirmed that the doctor who he hired to perform Applicant's mental health evaluation was qualified and had previously worked for the South Carolina Department of Mental Health. On cross-examination, Counsel testified that during his representation of Applicant, he did not believe that Applicant was more vulnerable to coercion due to Applicant's mental health history.

3. Credibility and Weight

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

The Court finds Applicant's testimony to not be credible in its entirety and affords it zero probative weight. While in many post-conviction relief actions less-than-credible witnesses can be said to be truthful in at least some respects or as to certain details, Applicant's testimony affords few such opportunities to give credit.

The Court finds the testimony provided by Counsel to be highly credible and affords it substantial probative weight. Counsel was thorough and forthright in each of his answers, and eagerly offered information beyond the narrower scope of the questions asked of him. Counsel's candor to the Court was palpable and informative.

B. Ineffective Assistance of Counsel & Involuntary Guilty Plea

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's



performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRPC. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109-10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable."). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference



between *Strickland's* prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." *United States v. Basham*, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he/she would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. *See Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that

course should be followed. *Id.* at 696-97. Below, the Court will address each of Applicant's claims of ineffective assistance of counsel individually.

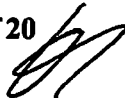
1. Plea counsel failed to explain detail of guilty plea and concurrent or consecutive

Applicant alleges Counsel failed to explain detail of guilty plea and concurrent or consecutive. This allegation is resolved by the Court's credibility findings as set forth in Section II.A., above, and by the record: Counsel and the Court explained the details of the guilty plea and that the sentences would be concurrent. The Plea Court thoroughly explained to Applicant that his sentences would run concurrent and that Applicant would serve a total of twenty four years. (Plea Tr. 5; 10; 14; 15). At the evidentiary hearing, Counsel testified Applicant told Counsel to ask the solicitor for twenty years. Counsel testified he went to the Solicitor with that number and the Solicitor countered with twenty-five years. Counsel testified Applicant agreed to the twenty-five years with all charges running concurrent. Counsel explained that the morning before the plea hearing, Counsel asked the Solicitor for some additional time to speak with Applicant. Counsel testified that in response to Counsel's request, the Solicitor lowered the offer to a concurrent twenty-four year sentence. Counsel testified he informed Applicant of the one year reduction on a negotiated, concurrent sentence the morning of the plea hearing. Counsel testified he explained what concurrent meant, that he felt Applicant understood what concurrent meant, and that the plea achieved what Applicant wanted.

Accordingly, Applicant has failed to present any evidence to meet his burden as to either prong of *Hill*, and his claim for relief by way of this allegation is **DENIED**.

2. Plea counsel failed to explain the deadline or process for filing appeal after the plea

Applicant alleges Counsel failed to explain the deadline or process for filing appeal after the plea. This allegation is resolved by the Court's credibility findings as set forth in Section II.A., above, and by the record: Applicant was aware he had ten days to file an appeal. At the plea



hearing, the Court inquired as to whether Applicant understood he had the right to appeal within ten days, to which Applicant affirmed he understood. (Plea Tr. 16). Furthermore, at the evidentiary hearing, Counsel testified he did not recall specifically informing Applicant of his right to appeal, but Counsel recalled the Judge doing so on the record. Counsel testified Applicant did not ask him to appeal, but if Applicant had, he would have. Counsel testified Applicant gave him no inclination that Applicant would have wanted to appeal, and that if Counsel thought he wanted to appeal, Counsel would have spoken with Applicant; however, Counsel testified he did not see any meritorious issues with the plea. Counsel testified the ultimate decision to plead guilty was Applicant's.

Accordingly, this Court finds that Applicant was aware he had ten days to appeal and that any alleged deficiency of Counsel was cured by the plea colloquy. *See Wolfe v. State*, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997) (stating that plea counsel's deficient performance can be cured by the plea court's colloquy). Therefore, this Court finds Applicant has failed to present any evidence to meet his burden as to either prong of *Hill*, and his claim for relief by way of this allegation is **DENIED**.

3. Plea counsel failed to provide copy of states evidence to applicant

Applicant alleges Counsel failed to provide copy of states evidence to applicant. This allegation is resolved by the Court's credibility findings as set forth in Section II.A., above, and by the record: Counsel provided Applicant with discovery materials two times prior to Applicant's plea and Counsel went over the discovery with Applicant. At the evidentiary hearing, Counsel brought Applicant's case file with him, which was eight to ten inches thick. Counsel testified he received all the discovery he needed and went over it with Applicant. Counsel explained he gave Applicant a copy of discovery July 6, 2017—evidenced by a signed receipt—and Counsel advised Applicant against keeping a copy of the discovery in jail. Counsel testified Applicant requested a



second copy because the first copy got wet. Counsel testified he gave Applicant a third copy after sentencing on June 21, 2019.

Given Counsel's testimony and the thickness of his file, this Court finds it clear that Counsel did extensive work on this case. Furthermore, this Court finds Counsel's testimony extremely credible as to providing Applicant two copies of the discovery and reviewing the discovery with Applicant. Accordingly, Applicant has failed to present any evidence to meet his burden as to either prong of *Hill*, and his claim for relief by way of this allegation is **DENIED**.

4. Plea counsel coerced him to enter the guilty plea by statements and threats made to the defendant

Applicant alleges Counsel made statements and threats to Applicant which coerced Applicant to enter the guilty plea. This allegation is resolved by the Court's credibility findings as set forth in Section II.A., above, and by the record: Applicant's plea was freely and voluntarily entered, and Counsel did not threaten Applicant to get him to plead guilty.

During the plea hearing, as to whether Applicant was pleading guilty freely and voluntarily, the plea court inquired:

Q. All right. Is anyone forcing you to plead guilty today?

A. No, ma'am.

Q. And are you pleading guilty of your own free will?

A. Yes, ma'am, I am.

Q. And are you -- has anyone offered you anything in exchange for your plea? I know Ms. Goldberg, the solicitor, has offered you this negotiated sentence, but other than that, has anyone offered you anything in exchange for your plea today?

A. No, ma'am.

Q. And so you are pleading freely and voluntarily?

A. Yes, ma'am, I am.



Q. All right, and have you understood all of my questions today?

A. Yes, ma'am.

Q. And have you answered them truthfully?

A. Yes, ma'am.

(Plea Tr. 15–16). Based on Applicant's answers, the Court found a substantial factual basis for Applicant's plea, and found that Applicant's decision to plead guilty was freely, voluntarily, knowingly, and intelligently made. (Plea Tr. 16). The Court further found that Applicant was competent for the purposes of entering a plea based on the competency evaluations performed on Applicant and the opinion of Counsel that Applicant was competent. (Plea Tr. 17). Accordingly, Judge Benjamin accepted Applicant's guilty plea, and sentenced Applicant to a concurrent sentence totaling twenty-four years, as negotiated. (Plea Tr. 17; 20–21).

At the evidentiary hearing, Counsel refuted that he ever threatened Applicant. Further, Counsel denied coercing Applicant into pleading guilty. Based on the record and Counsel's credible testimony, this Court finds Applicant's plea was freely, voluntarily, knowingly, and intelligently made. Accordingly, Applicant has failed to present any evidence to meet his burden as to either prong of *Hill*, and his claim for relief by way of this allegation is **DENIED**.

5. Following plea, counsel refused to explain the sentence to applicant

Applicant alleges that following the plea, Counsel refused to explain the sentence to Applicant. This allegation is resolved by the Court's credibility findings as set forth in Section II.A., above, and by the record: following the plea, Counsel explained the sentence to Applicant. At the evidentiary hearing, Counsel testified Applicant did not ask him any questions immediately after the plea, but Counsel did get a letter from Applicant requesting Counsel clarify whether Applicant's sentences were concurrent or consecutive. Counsel explained he wrote a letter to



Applicant explaining that Applicant's sentences were concurrent, attached the sentencing sheets, and highlighted concurrent on all of the sentencing sheets.

This Court finds, based on Counsel's credible testimony, that Counsel appropriately explained Applicant's sentence with him prior to, and after, the plea. Further, this Court finds that the sentence was explained at outset of the plea hearing by the judge and the solicitor, and Applicant never asked the plea judge to clarify any questions he may have had. Accordingly, Applicant has failed to present any evidence to meet his burden as to either prong of *Hill*, and his claim for relief by way of this allegation is **DENIED**.

6. Plea counsel failed to convey questions to court regarding sentencing

Applicant alleges Counsel failed to convey questions to court regarding sentencing. This allegation is resolved by the Court's credibility findings as set forth in Section II.A., above, and by the record. At the evidentiary hearing, Counsel testified he did not recall Applicant asking him questions during the plea hearing.

This Court finds, based on Counsel's credible testimony, that Applicant did not ask Counsel any questions during the plea hearing that Counsel should have conveyed to the plea judge. Therefore, this Court finds Counsel was not constitutionally ineffective. Furthermore, this Court finds that any prejudice from Counsel's alleged deficiency was cured by the plea colloquy, as the sentence was explained at outset of the plea hearing by the judge and the solicitor, and Applicant never asked the plea judge to clarify any questions he may have had. *See Wolfe v. State*, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997) (stating that plea counsel's deficient performance can be cured by the plea court's colloquy). Accordingly, Applicant has failed to present any evidence to meet his burden as to either prong of *Hill*, and his claim for relief by way of this allegation is **DENIED**.

7. Applicant's history of mental health problems prevented applicant from fully understanding his rights and he was not capable of giving up these rights and entering a voluntary guilty plea.

Applicant claims his history of mental health problems prevented him from fully understanding his rights, and therefore, he was not capable of giving up these rights and entering a voluntary guilty plea. However, this Court disagrees and finds Applicant's plea was freely, voluntarily, knowingly, and intelligently made.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of the plea and the charges against him or her. *Dover v. State*, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991); *see also Boykin v. Alabama*, 395 U.S. 238, 243 (1969) (Courts must make sure defendants have "a full understanding of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought, and forestalls the spin-off of collateral proceedings that seek to probe murky memories."). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. *See Harris v. Leeke*, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001); *Richardson v. State*, 310 S.C. 360, 363, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

At the evidentiary hearing, Counsel testified he had some reservations about Applicant's competency. Counsel explained Applicant struggled with mental health his entire life and was inconsistently treated. Counsel testified that Applicant's mental health even fluctuated while in jail, and the fluctuation seemed to be associated with whether Applicant took his medication or not. Counsel testified he got ahold of Applicant's prior health records and copy of criminal file. Counsel testified he retained private forensic psychologist who conducted an evaluation on August 15, 2017, at the detention center. Counsel testified the private forensic psychologist gave opinion that Applicant was competent, which Counsel put on the record at Applicant's plea hearing.

This Court has reviewed Applicant's competency evaluation report from prior to the plea, which found Applicant was competent to enter a plea. This Court finds there is nothing in that report, nor in the mental competency evaluation report conducted in 2020, that raises any concern about whether Applicant was competent to enter the plea. Additionally, this Court finds that the record of the plea hearing establishes the knowing and voluntary nature of Applicant's plea. Therefore, based on the plea hearing transcript, Counsel's credible testimony, and the two mental competency evaluation reports, this Court finds Applicant's plea was freely, voluntarily, knowingly, and intelligently made. Accordingly, Applicant's claim for relief by way of this allegation is **DENIED**.

III. CONCLUSION

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

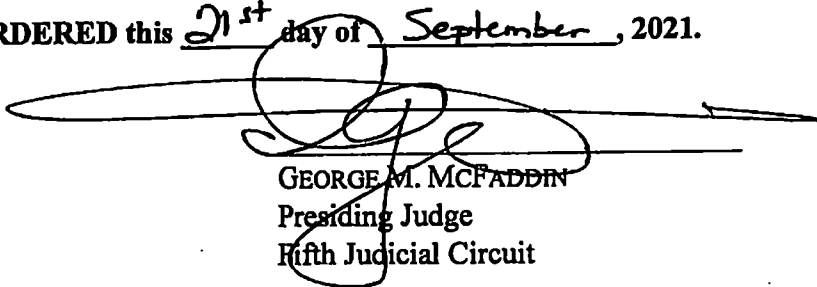


This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 21st day of September, 2021.


GEORGE M. MCFADDIN
Presiding Judge
Fifth Judicial Circuit

Sumter, South Carolina

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S.C. SUPREME COURT