STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
George M. McFaddin, Jr., Circuit Court Judge

2019-CP-21-00875

Omar Rick Williams, # 322531,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Omar Rick Williams, # 322531, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed October 6, 2021, issued by the Honorable George M. McFaddin, Jr., Presiding Judge, Twelfth Judicial Circuit.

Jonathan D. Waller

Waller Law Group
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1116 Blanding Street
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ATTORNEY FOR PETITIONER

October 27, 2021

Other Counsel of Record:
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(803) 734-3319

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2019CP2100875

Omar Rick Williams Sr		**South Carolina State Of**	
PLAINTIFF(S)		**DEFENDANT(S)**	
Submitted by:		**Attorney for:** ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant	

DISPOSITION TYPE (CHECK ONE)

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

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

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

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

FILED
2021 OCT -6 PM 3:40
DORIS POUNDS CLARK
CCP & GS
FLORENCE COUNTY, SC

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

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

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

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	**Judge Code**	10/6/2021 **Date**

For Clerk of Court Office Use Only

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

CERTIFIED: A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Jonathan D Waller 1821 Hampton Street Columbia, SC 29201

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Doris P. O'Hara

Court Reporter

Doris Poulos O'Hara - Clerk of Court

Court Reporter:

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

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

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

FILED
2021 OCT -6 PM 3:40
DORIS POULOS O'HARA, CCCP & GS
FLORENCE COUNTY, SC

FILED

2021 OCT -6 PM 12:32

DORIS POULOS O'HARA
C.C.P. & G.S.
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA) COUNTY OF FLORENCE)	IN THE COURT OF COMMON PLEAS FOR THE TWELFTH JUDICIAL CIRCUIT
Omar Rick Williams, #322531)	2019-CP-21-875
Applicant)	
v.)	**ORDER OF DISMISSAL**
State of South Carolina,)	
Respondent)	

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Applicant, Omar Rick Williams on March 28, 2019. Respondent made its Return on July 15, 2020. An evidentiary hearing into the matter was convened on August 30, 2021 at the Florence County Courthouse. Applicant was present at the hearing and represented by Jonathan D. Waller, Esquire. Yasmeen E. Klein, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Respondent presented testimony from Daniel T. Jordan, Esquire.

Following a thorough review of the record in its entirety, and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to meet his requisite burden of proof, denies relief, and dismisses this application with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections. During the June 2018 term, the Florence County Grand Jury indicted Applicant for assault and battery of a high and aggravated nature (ABHAN) (2018-GS-21-1096) and second-degree assault and battery (2018-GS-21-1092). Applicant was represented by Daniel T. Jordan, Esquire (Plea Counsel). Assistant Solicitor Susan McGill prosecuted the case.

Applicant entered an *Alford*[1] plea to ABHAN as indicted on January 23, 2019, before Judge Thomas A. Russo. Applicant pled to a negotiated sentence of a ten-year cap, with the State dismissing Applicant's remaining second-degree assault and battery charge. Judge Russo accepted Applicant's plea and sentenced him to serve eight years' imprisonment. Applicant appealed.

Plea Counsel filed a notice of appeal pursuant to Rule 203(d)(1)(B)(iv), SCACR, with the Court of Appeals on January 31, 2019. The Court of Appeals dismissed the appeal by written Order on April 18, 2019. The Case was remitted back to the circuit court on May 7, 2019.

FACTS

Applicant's charge stems from an incident that occurred on November 26, 2017. Officers responded to a call in reference to a man lying in the driveway of his home bleeding and crying for help. (Plea Tr. 12). When deputies arrived at the location they made contact with the victim, Walter Treadway. (Plea Tr. 12). Earlier that day, an altercation involving Applicant and Treadway occurred, and as a result Treadway sought medical treatment. (Plea Tr. 12). Later, Treadway returned to his residence where he found Applicant waiting for him. (Plea Tr. 12). Applicant demanded Treadway give him a bag, which the State believed was filled with drugs. (Plea. Tr. 12-13). Treadway did not have the bag and called his father for money to help settle the disagreement between himself and Applicant. (Plea Tr. 13). When Treadway could not produce the bag or the money, Applicant armed himself with a gun and shot Treadway in the foot. (Plea Tr. 13).

ISSUES RAISED

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

[1] *North Carolina v. Alford*, 400 U.S. 25 (1970).

1. Judicial misconduct:
    a. Judicial misconduct resulted when the trial court having fore knowledge of the State holding over the Applicant's head the State having Applicant's wife and informing Applicant that if we proceed to trial detective McFadden would bring false charges against her.
2. Plea was entered involuntarily and unknowingly plead under duress:
    a. Applicant plea was entered under duress wherein the State used the possibility of falsely incarcerating Applicant's wife if he didn't plead guilty. Applicant was also denied a preliminary hearing subsequent to requesting one. In violation of due process.
3. Trial court was/lacked subject matter jurisdiction:
    a. Applicant alledges [sic] that there was not a Grand Jury convened during the month of June as indicated on his indictment. Thereby depriving the court of subject matter jurisdiction.

At the evidentiary hearing, PCR counsel for Applicant proceeded solely on the second pled allegation, that Applicant claims his guilty plea was involuntary due to duress.

SUMMARY OF RELEVANT TESTIMONY

Applicant's testimony

At the evidentiary hearing, Applicant testified Plea Counsel represented him as soon as he was arrested because Plea Counsel had already represented Applicant on a different set of charges. Applicant claimed the first thing Plea Counsel said when he met with Applicant was "you shot that boy" and Applicant told Plea Counsel he did not shoot anyone. Applicant testified the charges occurred from two separate incidents. Applicant acknowledged he pled pursuant to *Alford* and testified he still maintains his innocence. Applicant testified no video of the incident was included in his paperwork. Applicant admitted he received discovery including statements from the victim. Applicant testified he and Plea Counsel never discussed the discovery and claimed Plea Counsel was not aware he had the case. Applicant indicated he went to speak to Plea Counsel to ask what the State was offering and that Plea Counsel told him four years, but this amount was for the other charges Plea Counsel represented Applicant on. Applicant testified there was a hung jury on those charges which occurred before Applicant was indicted with the current charges. Applicant stated

he and Plea Counsel discussed possible sentencing exposure and the right to remain silent. Applicant testified the day of his guilty plea, he and Plea Counsel spoke in a separate room of the courthouse where Applicant alleges Plea Counsel told him the Solicitor had Applicant's wife across the street and the State would bring false charges and incarcerate her unless Applicant pled guilty. Applicant claimed he intended to go to trial on the charge, and when this conversation happened the morning of the trial, he felt forced to accept the plea out of fear for his wife. Applicant testified he has seen judges refuse to accept a plea before when the defendant did not admit guilt, and Applicant did not want the judge to refuse his plea.

On cross-examination, Applicant confirmed he and Plea Counsel discussed his rights including the right to a jury trial, testify, and challenge the evidence against him. Applicant testified Plea Counsel told him in the room at the courthouse that if Applicant did not take the plea, the Solicitor was going to charge his wife because a witness would testify she was involved. Applicant acknowledged he did not have any additional record or corroborating documentation of this alleged conversation. Applicant testified he understood what pleading pursuant to *Alford* meant, and understood the charges and his possible sentencing exposure. Applicant additionally acknowledged portions of the plea colloquy where he told Judge Russo he was satisfied with Plea Counsel's performance; however, Applicant claimed he only said this because if he indicated otherwise he believed Judge Russo would stop the proceedings and he did not want the Judge to reject his plea. Applicant acknowledged that during the colloquy Judge Russo asked him three separate times whether he was pleading freely and voluntarily, whether Applicant had been promised anything or threatened to enter the plea, and whether Applicant was under any coercion or threats. (Plea Tr. 11-12). Applicant admitted he told the Judge his plea was voluntary and denied being under any threats or coercion at the time of the plea. Applicant testified that he did not tell

Judge Russo about the threats against his wife because he believed Judge Russo would have stopped the proceeding. Aside from his continued statement that he did not want to stop the proceedings, Applicant could not articulate why he did not believe bringing the issue to the Judge's attention would have prevented the alleged threat from occurring, or why that information would have been important for the Judge to know in consideration of the plea.

Plea Counsel's testimony

Plea Counsel testified he represented Applicant on a number of charges from different incidents. Plea Counsel testified he received discovery including incident reports, medical records, and statements from the victim which he reviewed with Applicant. Plea Counsel testified that Applicant originally wanted to go to trial because the State was unable to locate the victim. However, when the victim was located and indicated he would testify against Applicant, Plea Counsel testified he conveyed this to Applicant, who was concerned about how the victim would testify. Plea Counsel indicated Applicant then became interested in a plea. Plea Counsel testified Applicant was not thrilled about taking a plea deal, but Applicant knew he would not get a better offer than ten years and wanted to negotiate to the lower end of ten years. Plea Counsel testified he kept Applicant updated throughout plea negotiations and accepted the Solicitor's offer of a ten year cap. Plea Counsel denied any conversation occurred between himself and Applicant where Plea Counsel told Applicant his wife was being held. Plea Counsel testified he had no knowledge of any pending or possible charges against Applicant's wife. Plea Counsel denied ever telling Applicant he had to enter a plea to stop the State from falsely charging his wife. Plea Counsel testified that Applicant told Judge Russo several times his plea was free and voluntary. Plea Counsel testified he and Applicant discussed Applicant's rights and waivers by pleading guilty. Plea Counsel additionally testified he explained the nature and meaning of an *Alford* plea with

Applicant. On cross-examination, Plea Counsel testified the jury on Applicant's previous charges was not "hung" they had just been out for a long time and seemed to be unable to reach a decision. Plea Counsel testified while the jury was out, Applicant accepted and entered a plea from the Solicitor for eight months on those charges. Plea Counsel confirmed he had no knowledge of anything regarding possible pending charges against Applicant's wife, and denied any quid pro quo. Plea Counsel testified Applicant's wife was not a part of his second charges and could not recall whether Applicant's wife's charges on the first offenses were resolved when Applicant entered his plea.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court further had the opportunity to observe the witnesses at the evidentiary hearing and evaluate their credibility, and the Court has weighed their testimony accordingly in its discussion below. This Court finds the combined record of the plea transcript and the testimony and evidence presented at the evidentiary hearing establishes Applicant received effective assistance of counsel, and his plea was freely and voluntarily entered. Accordingly, this Court denies relief and dismisses this application with prejudice. Set forth below are the relevant findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code.

INEFFECTIVE ASSISTANCE OF COUNSEL & INVOLUNTARY GUILTY PLEA

Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's

conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Strickland*, 466 U.S. 668. As such, an applicant must overcome this presumption in order to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989). 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), SCRCP.

Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 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." *Id.*, 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 would not have pled guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985); *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). 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 conclusive, 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)). 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 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). 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 will be treated as such.

This Court finds Applicant has failed to meet his burden of proving he is entitled to post-conviction relief on his allegation of ineffective assistance of counsel. Applicant has failed to prove both deficiency on the part of Plea Counsel and any prejudice therefrom. Therefore, for the reasons stated below, the Court denies relief and dismisses the allegations with prejudice.

Applicant argues his plea was not given freely and voluntarily. This Court finds otherwise and concludes that Applicant's plea was entered freely and voluntarily. "[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 find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. 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, in order to knowingly and voluntarily plead guilty, the defendant must have a full understanding of the consequences of the plea, including the nature and crucial elements of the offense(s); 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.

A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." *Roddy v. State*, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid

reasons why he should be allowed to depart from the truth of his statements. *Crawford v. United States*, 519 F.2d 347 (4th Cir.1975).

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. The standard 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). Where a defendant is represented by counsel during the plea process and enters his plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel's advice "was within the range of competence demanded of attorneys in criminal cases." *Hill*, 474 U.S. at 56.

To ensure the defendant understands the consequences of his guilty plea, the trial judge "usually questions the defendant about the facts surrounding the crime and punishment that could be imposed." *Dover v. State*, 304 S.C. 433, 434–35, 405 S.E.2d 391, 392 (1991). However, the trial judge "does not have to direct the defendant's attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea." *Carter v. State*, 329 S.C. 355, 362, 495 S.E.2d 773, 776 (1998). The voluntariness of a guilty plea, however, "is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." *Harres*, 282 S.C. at 133, 318 S.E.2d at 361.

This Court finds Applicant failed to present any valid reason why he should be able to depart from the truth of his statements made during his guilty plea. *See Dalton,* 376 S.C. at 137–38, 654 S.E.2d at 874. Applicant's testimony regarding his plea is found to be wholly not credible.

Applicant alleges he did not plead guilty freely and voluntarily because before he entered the plea, Plea Counsel told him that the Solicitor had his wife and the State would incarcerate his wife unless he entered a guilty plea. Applicant provided no evidence to corroborate this account aside from his own self-serving testimony. By contrast, this Court finds Plea Counsel's explicit denial this interaction occurred to be credible. Plea Counsel credibly testified no conversation occurred between him and Applicant regarding possible pending charges against Applicant's wife, and Plea Counsel did not tell Applicant he had to enter a plea or else his wife would go to prison. Plea Counsel additionally credibly testified that while Applicant was initially interested in a trial, once Applicant learned the victim planned to testify, Applicant wanted to enter a plea. Plea Counsel credibly testified that it was Applicant's choice to enter a plea to the negotiated ten year cap for his charges. Moreover, this Court finds the plea colloquy is dispositive as to the issue of voluntariness. Applicant was asked on three separate occasions by Judge Russo whether his plea was voluntary, whether Applicant had been promised or threatened to enter the plea, and whether Applicant was pleading under threat or coercion. (Plea Tr. 11-12). At each instance, Applicant gave no indication to the plea court his plea was not voluntarily and intelligently given. Applicant's claim of threats and duress are unsubstantiated.

The Court finds Applicant knew the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty pursuant to the requirements of *Boykin* and *Pittman.* Any deficiency regarding Plea Counsels alleged "threats" to plead guilty was cured by the plea colloquy. *See Wolfe v. State*, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997) (stating any possible misconceptions due to counsel's alleged deficiencies can be cured by the plea court's colloquy). The plea transcript reflects Applicant entered his plea knowingly and voluntarily,

engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the court's questions.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. The Court finds Plea Counsel's representation was neither deficient nor prejudicial. The Court finds Applicant knew the meaning and consequences of pleading guilty to the charge against him. The Court further finds Applicant voluntarily pled guilty. His voluntariness is evinced by the plea transcript and testimony given at the PCR hearing. The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. Post-conviction relief is denied and the application for post-conviction relief be dismissed with prejudice; and

2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 30 day of October, 2021.

GEORGE M. MCFADDIN, JR.
Presiding Judge
Twelfth Judicial Circuit

FILED
2021 OCT -6 PM 12:32
BERKELEY COUNTY, SC
CLERK OF COURT
CHARLESTON COUNTY, SC

RECEIVED
NOV 02 2021
S.C. SUPREME COURT

ALAN WILSON
ATTORNEY GENERAL

October 4, 2021

The Honorable Doris Poulos O'Hara
Florence County Clerk of Court
180 N. Irby Street MSC-E
Florence, SC 29501

Re: **Omar Rick Williams, #322531 v. State of South Carolina**
2019-CP-21-875

Dear Ms. O'Hara:

Enclosed please find Order of Dismissal signed by the Honorable George M. McFaddin, Jr., in the above-captioned case, for filing in your office. In addition, please forward proof of service and a time stamped copy back to our office for our file.

Sincerely,

Yasmeen E. Klein

Yasmeen E. Klein
Assistant Attorney General

YEK/em

cc: Jonathan D. Waller, Esquire