RECEIVED
Dec 10 2021
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable Jocelyn J. Newman, Circuit Court Judge

JERMAINE HARRIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-000675

APPENDIX

VICTOR R SEEGER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

MICHAEL D. DAVIDSON
Assistant Attorney General
1000 Assembly Street
Columbia, SC 29201
(803)734-3737

ATTORNEYS FOR RESPONDENT

INDEX

INDEX i

GUILTY PLEA TRANSCRIPT DATED JANUARY 14, 2015 1

APPLICATION FOR POST-CONVICTION RELIEF 16

RETURN AND PARTIAL MOTION TO DISMISS 21

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED AUGUST 31, 2016 29

ORDER OF DISMISSAL 64

INDICTMENT AND SENTENCE SHEET 76

STATE OF SOUTH CAROLINA	)	GENERAL SESSIONS
	)	
County of Richland	)	2015-GS-40-00224
	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
JERMAIN CORNELIUS HARRIS,	)	
	)	
DEFENDANT,	)	

January 14, 2015
Columbia, South Carolina

BEFORE:

THE HONORABLE ROBERT E. HOOD, JUDGE.

APPEARANCES:

JOANNA MCDUFFIE, ASSISTANT SOLICITOR
Attorney for the State

CONSTANTINE POURNARAS, ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

JERMAIN HARRIS, after being duly sworn, testified as follows:

THE COURT: All right.

MS. McDUFFIE: Thank you, Your Honor. May it please the Court. Standing before you is Jermain Harris with his attorney Constantine Pournaras of the Public Defender's Office.

He is here to plead guilty as charged to one count of armed robbery and one count of auto breaking. The State is dismissing a petit larceny. We have negotiated, should Your Honor choose to accept it, a range of 10 to 15 years.

THE COURT: All right. Mr. Harris, are under the influence of any alcohol or drugs today?

THE DEFENDANT: No, sir.

THE COURT: Have you ever been treated for any mental health issues?

THE DEFENDANT: No, sir.

THE COURT: Excuse me?

THE DEFENDANT: No, sir.

THE COURT: They tell me you want to plead guilty to one count of armed robbery. That carries a mandatory ten up to 30 years in prison. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Do you further understand that that's a violent offense and a most serious offense?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand it's designated as what we call a no parole offense?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that whatever sentence I give you today, you will serve at least 85 percent of before you will even be eligible to be released?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that when you are released, you will be released on what is known as the Community Supervision Program?

THE DEFENDANT: Yes, sir.

THE COURT: You can be monitored by the Department of Corrections for two years --

THE DEFENDANT: Yes, sir.

THE COURT: -- once you are released?

THE DEFENDANT: Yes, sir.

THE COURT: Do you further understand that this is a most serious offense. Were you to receive one more most serious offense for the rest of your life, you would be facing mandatory life without parole?

THE DEFENDANT: Yes, sir.

THE COURT: Do you have any questions about any of that?

THE DEFENDANT: No, sir.

THE COURT: Are you on probation or parole now?

THE DEFENDANT: No, sir.

THE COURT: When you plead guilty, Mr. Harris, you give up certain important rights. The first is your right to remain silent. Do you understand that right?

THE DEFENDANT: Yes, sir.

THE COURT: And do you want to give up that right?

THE DEFENDANT: Yes, sir.

THE COURT: Second is your Constitutional Right to a jury trial. Do you understand what a jury trial is?

THE DEFENDANT: Yes, sir.

THE COURT: And do you want a jury trial, or do you want to plead guilty?

THE DEFENDANT: Plead guilty, sir.

THE COURT: The third is your Constitutional Right to confront the witnesses the State would call against you, to call witnesses on your own behalf and to present any defense you may have. If you plead guilty, none of that is going to happen. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: One of your indictments has not been to the grand jury. That's the armed robbery. Do you want to waive presentment to the grand jury on that indictment?

THE DEFENDANT: That's fine.

THE COURT: Your indictment says that on or about

November 28th, 2011 you committed an armed robbery at the Days Inn in Richland County, South Carolina. How do you plead to that charge?

THE DEFENDANT: Guilty.

THE COURT: Your second indictment says that on or about July 11th, 2011 you committed a breaking into a motor vehicle here in Richland County. How do you plead to that charge?

THE DEFENDANT: Guilty.

THE COURT: Now, essentially what they negotiated is a cap in your case between ten and 15 years, and what it -- what does that mean to you? There is really no wrong answer, but I want to understand what you understand it means.

THE DEFENDANT: I can get no more or nothing less than what I have now.

THE COURT: Okay. Good. That's exactly what I was going to say. There is no chance I could give you any less than ten years. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: There is also -- if I go along with the negotiation, there's no chance I could give you any more than 15 years. Does that make sense?

THE DEFENDANT: Yes, sir.

THE COURT: Besides that, has anybody promised you

anything to get you to plead guilty?

THE DEFENDANT: No, sir.

THE COURT: Has anybody forced you or threatened you to get you to plead guilty?

THE DEFENDANT: No, sir.

THE COURT: Are you pleading guilty freely and voluntarily?

THE DEFENDANT: Yes, sir.

THE COURT: Are you satisfied with your lawyer?

THE DEFENDANT: Yes, sir.

THE COURT: And are you pleading guilty because you are, in fact, guilty of these offenses?

THE DEFENDANT: Yes, sir.

THE COURT: You have ten days from today's date to appeal this plea. If you choose to do so, you must do so in writing to this court. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Ms. McDuffie?

MS. McDUFFIE: Thank you, Your Honor. The auto breaking did occur in Richland County on July 11th, 2011. This defendant did break into the motor vehicle of Willie Brown and remove from it an iPod and some other items from the vehicle.

Your Honor, that's the factual basis for the auto breaking. The armed robbery occurred on November 28th,

2011. This defendant did enter the Days Inn which is at 7128 Parklane Road here in Richland County and presented what appeared to the clerk to be a handgun with a red laser sight. The clerk clearly identified that.

The defendant jumped over the counter and told the clerk, Ms. Patel, to get down. He went through several drawers taking cash and also Ms. Patel's cellphone. He told Ms. Patel he wanted more money at which time she took him to the back room where the safe was located.

She tried to open the safe, but she wasn't able to. After several minutes of her trying to open the safe at one point, this defendant fled.

She -- Ms. Patel recognized this defendant because he had came into the hotel a few minutes before the robbery and said that he had a flat tire and needed help changing it.

She -- the man that came in and asked about the flat tire asked her -- excuse me. I'm sorry, Your Honor, had asked her if she was alone before he walked out and then returned a few minutes later during the robbery, Your Honor.

The video from the hotel was very clear and very good. He was not wearing a mask, and this incident was captured on video. It was put out to the media, and the media was able -- or the public was able to identify this

9

individual, Mr. Harris as the person who robbed the hotel.

He was placed in a photo lineup, and Ms. Patel immediately picked him out as the person that held her at gunpoint and robbed the Days Inn.

Your Honor, this plea originally was attempted in front of Judge Goodstein last week, Your Honor. The plea made it halfway through. Nicole Simpson was standing in at that time.

However, Mr. Harris disputed the facts. He said he didn't have a gun. He just had a laser that he was using as a gun, and the -- Judge Goodstein I guess asked everyone to stand down, and it never resumed, Your Honor.

We believe that even under his version of the facts, it would still be armed robbery. Ms. Patel believed it was a gun. She specifically told law enforcement about the laser sight that was on the gun.

She was in fear for her life and believed him -- I believe reasonably so to have a gun during the robbery. The video also, in my opinion, clearly shows what appears to be a gun or something that could easily have been mistaken for a gun or a representation of one.

Your Honor, this defendant's prior record is a 2004 disturbing schools, malicious injury to real property and malicious injury to personal property; 2009, burglary second degree nonviolent; and strong arm robbery, seven

years suspended to three years with two years probation. He was on probation from the strong arm robbery and burglary second when this incident occurred. His parole was violated, and he did receive two years on that and was in the Department of Corrections.

Your Honor, there is also a charge from Newberry that I believe is still pending for indecent exposure that occurred when he was in the Newberry jail. He was transferred from Alvin S. Glenn to Newberry for a time. I don't really know why but --

MR. POURNARAS: He was in safekeeping.

MS. McDUFFIE: In safekeeping. So anyway, that occurred while he was there in 2013.

THE COURT: Did Ms. Patel need to be heard from?

MS. McDUFFIE: Ms. Patel is not here. Our office is in contact with her. She understands the plea and the negotiations. We were prepared to go to trial on Tuesday, Your Honor, should this plea not go forward.

THE COURT: Okay. So Mr. Harris, do you materially agree with the facts as presented by the Solicitor's Office?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. Very well. I'll take his plea. I'll find there is a substantial factual basis for the plea. I further find his decision to plead guilty to be

freely, voluntarily, knowingly and intelligently made, and he's had the advice of a very competent attorney with whom he tells me he is satisfied.

Mr. Pournaras?

MR. POURNARAS: Yes, Your Honor. Just as a preliminary matter, as has been mentioned, he has been in several locations. Just so the record is clear, Your Honor, he was arrested on January 6th, 2012. By my calculations, that is a total of 1,106 days.

THE COURT: Say it one more time.

MR. POURNARAS: I'm sorry, 1,106 days.

THE COURT: Do you agree with that number, Mr. Harris?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. I'll put that specific number on there so you will get credit for that, okay.

MR. POURNARAS: Thank you, Your Honor. Part of the reason for the delay in this case, Your Honor, is it's been very difficult for Mr. Harris to come to terms. He is 24 now. He was 21 when he was originally arrested.

This is a very serious offense, and this does have a minimum. It's very difficult for a young person to kind of come to terms with that knowing that there's going to be at least a ten-year sentence with no chance of parole. He's had somewhat of a difficult life, Your Honor.

He was raised -- and his great grandmother is here. His mother and his grandmother did have substance abuse problems, so he was in the home with his great grandmother.

THE COURT: Where is his grandma?

MR. POURNARAS: She is right here in the pink.

THE COURT: Okay. Thank you for being here.

MR. POURNARAS: She is now in her 90s, and one of his great concerns was always -- and one of the reasons he had difficulty understanding, you know, the consequences, Your Honor, was that when he might -- his time with her is very limited. He, the whole time, always wanted to be able to see her one last time knowing that this is going to be a considerable sentence.

In addition to that, Your Honor, he -- when he was arrested in January, he did have a child on the way. That child was born on February 3rd. He has never seen this child. He has never had contact with this son.

He just wanted me to show you that photograph, Your Honor. He will be turning three years old in February which is how long he's been incarcerated, a little over three years now.

You know, it's been very difficult for him. He's had a lot of time to reflect on it, and we had a lot of time to discuss this. I don't think that a trial is ever

anything he wanted.

It was just coming here today has been very difficult for him. That was part of the reason he had some difficulty last week in going forward and saying that he did these things that he is now ashamed of, Your Honor.

He was running with a crowd, and he did kind of idolize the wrong types of people. In our discussions, while he's been locked up these last 36-and-a-half months, he has realized that those people he thought were his, you know, street family really weren't there for him.

He understands that it's really his real family who has loved and supported him the whole time, and he has come to an understanding that that lifestyle wasn't really working. This is -- you know, a consequence of going with that lifestyle, Your Honor. I think I have said a lot. He does want to address your Honor, I believe, at the appropriate time.

THE COURT: I'm happy to hear from you, sir.

THE DEFENDANT: Yes, sir. I want to say I apologize for what I did or whatever like that. I just want to be able to get back out there with my family and my child because I also have a daughter, too.

I have been incarcerated. I never got to see her, whatever like that. I just want to get back out there, hopefully be able to help my grandmama because I don't

want anything to happen to her while I'm locked up. I'm not trying to be a statistic. I learned my lesson. It's enough time for anybody to be locked up to learn their lesson.

THE COURT: All right. Thank you very much.

The sentence of this court on the breaking into a motor vehicle is five years, concurrent, credit for time served. No contact with the victims. The sentence on the armed robbery is 15 years. Have a good day.

MR. POURNARAS: Thank you.

MS. McDUFFIE: Thank you, Your Honor.

(Whereupon, the proceedings were concluded.)

15

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the 5th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 14th day of January, 2015.

March 22, 2016

Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter

RICHLAND COUNTY FILED
2015 DEC 18 PM 12:03
JEANETTE W. GRANT C.C.P. & G.S.

2015CP4007522

STATE OF SOUTH CAROLINA

County of Richland

In the Court of Common Pleas

Jermaine Harris 336851
Full name and prison number (if any) of Applicant,

vs.

State of South Carolina
Name of Respondent.

APPLICATION FOR POST-CONVICTION RELIEF

INSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis,* it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Lee Correctional Institution County of Bishopville South Carolina 29010

2. Name and location of Court which imposed sentence Richland County Court of General Sessions

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
   (a) Robbery, Armed with A allegedly armed deadly weapon 2015-GS40-00224 (Robbery)
   (b) _____
   (c) _____

4. The date upon which sentence was imposed and the terms of the sentence:
   (a) Jan-14-15 I was Sentence to 15 yrs for arm Robbery while arm with A deadly Weapon
   (b) _____
   (c) _____

5. Check whether a finding of guilty was made

(a) after a plea of guilty ✓

(b) after a plea of not guilty

(c) after a plea of nolo contendere

6. Did you appeal from the judgment of conviction or the imposition of sentence?

No

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i.

ii. N/A

iii.

(b) the result in each such Court to which you appealed:

i.

ii. N/A

iii.

(c) the date of each such result:

i.

ii. N/A

iii.

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i.

ii. N/A

iii.

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) My attorney didn't advise me of my right to do so

(b) I am Mental Health and do not understand the procedure

(c)

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Assistance of Counsel

(b) Erroneous Advice on Sentencing or Collateral Consequences that leads to plea

(c) I am Mental Health and was/am Incompetent to Knowingly plea

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) Attorney was Ineffective by failing to request a Blair Hearing

(b) Attorney erroneously advised me to plea guilty Knowing I didn't understand

(c) Knowing of my Mental Health Record I should have been given a Sanity Hearing before being allowed to plea guilty

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law? No

(b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No

(d) any other petitions, motions or applications in this or any other Court?

No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. N/A

ii. _____

iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

(a) Erroneous Advice on Sentencing or Collateral Consequences that

(b) leads to plea. It was not previously presented because my

(c) Attorney was inept and constitutionally ineffective in assistance.

16. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes

(b) your trial, if any? N/A

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. [redacted]

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Preliminary Hearing

ii. Bond Hearing

iii. Plea / Sentencing

18. State clearly the relief you seek in filing this application.

_____

_____

19. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA
County of Richland

VERIFICATION

I, Jermaine Harris, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Jermaine Harris

SWORN to and subscribed before me this 11Th day of December, 2015.

Larry D. Cohen Jr. (L.S.)
Notary Public

My Commission Expires: 12-10-2023

RICHLAND COUNTY FILED
2015 DEC 18 PM 12:03
JEANETTE W. McBRIDE C.C.P. & G.S.

APPLICATION TO PROCEED WITHOUT PREPAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, Jermaine Harris, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) ✓ I am the applicant in this action and I believe I am entitled to redress.

(2) ✓ Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Jermaine Harris
Applicant

SWORN or affirmed to and subscribed before me this 11Th day of December, 2015

Larry D. Cohen Jr.
Notary Public

My Commission Expires 12-10-2023

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS OF THE FIFTH JUDICIAL CIRCUIT
Jermaine Cornelius Harris, S.C.D.C. No. 336851, Applicant, v. State of South Carolina, Respondent.	Case No.: 2015-CP-40-7522 **RETURN AND** **PARTIAL MOTION TO DISMISS**

In response to Applicant's post-conviction relief application filed December 18, 2015, Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Richland County Clerk of Court's orders of commitment. Applicant waived presentment to the January 2015 term of the Richland County Grand Jury of his indictment for armed robbery (2015-GS-40-224). Constantine Pournaras, Esquire, represented Applicant.

Applicant pled guilty to the charge of armed robbery on January 14, 2015. The State negotiated a sentencing range of 10-15 years. The Honorable Robert E. Hood sentenced Applicant to concurrent terms of fifteen (15) years imprisonment for the armed robbery charge and a term of five (5) years for a pre-existing charge of breaking into a motor vehicle (2012-GS-40-1910). The court credited Applicant with 1,106 days' time served. Applicant did not appeal his conviction or sentence.

II.

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

1. "Ineffective assistance of counsel."
    a. "Attorney was ineffective by failing to request a Blair hearing."
2. "Erroneous advice on sentencing or collateral consequences that leads to plea."
    a. "Attorney erroneously advised me to plea [sic] guilty knowing I didn't understand."
3. "I am mental health and was/am incompetent to knowingly plea."
    a. "Knowing of my mental health record, I should have been given a sanity hearing before being allowed to plea [sic] guilty."

Applicant failed to supply a response to question 18, which asks: "State clearly the relief you seek in filing this application."

Respondent denies Applicant is entitled to relief on these claims, and demands strict proof thereof. Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRCP.

Attached to this return and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the records of this current PCR action. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

The Court should summarily dismiss this application because the Applicant has failed to request relief that can be granted. Applicant's allegations do not support a cognizable claim for post-conviction relief under any of the statutory grounds codified in the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160 (2003). Applicant explicitly neglected to state the relief he seeks in filing this application. As such, there is no available avenue of relief for this Court to grant. Where an applicant seeks only relief to which he or she is not entitled, "it is not incumbent upon [the] court to pass upon what relief, if any, he [or she] might, perchance, be entitled to." Young v. State, 250 S.C. 476, 479, 158 S.E.2d 764, 765 (1968); *see also* Grant v. MacDougall, 244 S.C. 387, 391, 137 S.E.2d 270, 272 (1964). Because Applicant failed to enumerate the relief sought by filing this application, the Application should be summarily dismissed.

IV.

Without waiving its motion to dismiss in Part III, *supra*, Respondent submits Applicant's allegation of ineffective assistance of counsel is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

A criminal defendant is competent to enter his guilty plea if "the accused [has] sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and [has] a rational as well as a factual understanding of the proceeding against him." Jeter v. State, 308 S.C. 230, 417 S.E.2d 594, 596 (1992). An Applicant challenging his competency to plead must prove this allegation by a preponderance of the evidence. Id.

An Applicant claiming that trial counsel was ineffective in failing to pursue this defense "must produce some evidence of insanity or showing that with the exercise of due diligence, an insanity defense could have been developed." Jeter v. State, 308 S.C. 230, 233-34, 417 S.E.2d 594 (1992). The Applicant must show that he was "unable to distinguish moral or legal right from wrong and to recognize the particular act charged as morally or legally wrong."

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

V.

Notwithstanding Respondent's motion to dismiss in Part III, *supra*, Respondent interprets Applicant's second allegation as that he entered his plea involuntarily. Respondent submits any allegation that Applicant's guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz, 338 S.C. at 363-64, 527 S.E.2d at 747 (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52; Jackson v. State, 342

S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). An applicant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. at 56. "A guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

Furthermore, PCR "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction." S.C. Code Ann. § 17-27-20(b); see also Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) ("It is uniformly held that an application for post-conviction relief is not a substitute for an appeal."). Applicant's allegations as to plea counsel's alleged failure to advise Applicant of the collateral consequences of his charges could have been raised during the plea colloquy or on appeal. His failure to do so has waived these allegations as grounds for relief. Therefore, Respondent requests these allegations be dismissed pursuant to Rule 12(b)(6), SCRCP.

VI.

The Respondent denies each allegation not expressly admitted, qualified or explained.

VII.

WHEREFORE, Respondent moves to summarily dismiss the application for failure to request relief that can be granted by way of post-conviction relief, and further moves for dismissal of the allegation regarding erroneous advice on collateral consequences. In the alternative, having made its Return, Respondent requests that a hearing be held and counsel appointed to represent Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

JESSICA E. KINARD
S.C. Bar #77889
Assistant Attorney General

By: _____
ATTORNEYS FOR RESPONDENT
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

June 20, 2016

STATE OF SOUTH CAROLINA COUNT OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
	)	2015-CP-40-7522
JERMAINE CORNELIUS HARRIS, #336851 Applicant,	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
STATE OF SOUTH CAROLINA, Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jonathan D. Waller, Esquire
Giese Law Firm
1315 Blanding Street
Columbia, SC 29201

DATED this 28th day of June, 2016.

Jenna C. Brown, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
) IN THE COMMON PLEAS COURT
COUNTY OF RICHLAND)

Jermaine Cornelius Harris,)
) TRANSCRIPT OF RECORD
Applicant,) 2015-CP-40-7522
)
-vs-)
) August 31, 2016
The State.) Columbia, South Carolina

B E F O R E:

HONORABLE JOCELYN NEWMAN, JUDGE

A P P E A R A N C E S:

JONATHAN D. WALLER, ESQUIRE
Attorney for the Applicant

JESSICA E. KINARD, ESQUIRE
Attorney for the State

Linda D. Moffitt
Circuit Court Reporter

INDEX

WITNESSES	PAGE
JERMAINE CORNELIUS HARRIS (AW)	
Direct examination by Mr. Waller	4
Cross-examination by Ms. Kinard	15
Redirect examination by Mr. Waller	18
CONSTANTINE GEORGE POURNARAS (AW)	
Direct examination by Mr. Waller	19
Cross-examination by Ms. Kinard	26
Direct examination by Mr. Waller	32

No exhibits entered into evidence.

MS. KINARD: The next case will be the matter of Jermaine Cornelius Harris.

THE COURT: Mr. Harris, come around and sit next to your lawyer here.

MS. KINARD: Thank you, Your Honor. May it please the Court.

This is the matter of Jermaine Cornelius Harris vs. the State of South Carolina. It's case No. 2015-CP-40-7522.

We're before the Court on an application for post conviction relief that was filed December 18th of 2015.

Mr. Harris is currently incarcerated with the South Carolina Department of Corrections pursuant to orders of commitment from the Richland County Clerk of Court.

Mr. Harris waived presentment at the January 20, 15th [sic] term -- excuse me -- 2015 term of the Richland County Grand Jury of his indictment for armed robbery.

Constantine Pournaras represented Mr. Harris. He pled guilty to the charge of armed robbery on January 14th of 2015 with a negotiated sentencing range of 10 to 15 years.

The Honorable Robert E. Hood sentenced Mr. Harris to concurrent terms of 15 years imprisonment for his armed robbery charge and a term of five years for a preexisting charge of breaking into a motor vehicle.

The Court credited Mr. Harris with 1,106 days, time

served, and he did not appeal his conviction or sentence.

The state is present and ready to proceed. Mr. Harris is present and represented by Jonathan Waller.

THE COURT: All right. Mr. Waller.

MR. WALLER: Thank you, Your Honor. Call Jermaine Harris.

JERMAINE CORNELIUS HARRIS, having been first duly sworn, testified as follows:

THE BAILIFF: State your full name for the record, and spell your last name.

THE WITNESS: Jermaine Harris, H-A-R-R-I-S.

THE BAILIFF: Thank you.

DIRECT EXAMINATION BY MR. WALLER

Q Good morning, Mr. Harris. How are you today?

A I'm all right.

Q Mr. Harris, you were arrested. You had two separate charges, is that right?

A Yes, sir.

Q You had an armed robbery and a breaking into a motor vehicle?

A Yes, sir.

Q And those were not from the same incident, is that right?

A No, sir.

Q Okay. And who was your lawyer on both of those

charges?
A Constantine Pournaras.
Q Okay. And which charge were you arrested on first?
A Armed robbery.
Q Okay. Were you arrested at the same time for both of them?
A No.
Q Okay. All right. So how soon after you were arrested did Mr. Pournaras come meet with you?
A Around four, four times.
Q Okay. What was the first time he met with you? How soon after you were arrested?
A It wasn't right away.
Q Okay. Do you remember how long it was?
A No, sir.
Q Okay. Was it a long time or a pretty short time, or how long?
A I say like -- like a month apart, in between.
Q Okay. When y'all first met, what did y'all talk about?
A We talked about how -- I told him I was in mental health and I told him I had a history of being mental health. And he told me that he was going to put in a motion to see if he could get me a mental health evaluation. And then he turned around and told me after

that he was going to -- he told me that he didn't see and feel that I need any mental evaluation.

Q Okay. Let's talk about -- let's talk about your mental health treatment for a minute.

How long have you been treated for mental health issues?

A Since -- since I been a teenager, years back. And I was in William S. Hall.

Q Okay. What's William S. Hall?

A Department of Mental Health.

Q Okay. So you went to the state hospital?

A Yes, sir.

Q How long were you there?

A Close to -- close to a year.

Q Okay. So your were in the state hospital for close to a year.

Were you there -- did you want to be there or did you have to be there?

A I had to be there.

Q Okay. Do you remember, did you have to go to court before you went there?

A No. It came with my therapy counseling.

Q Okay. Do you recall when that was?

A No. I can't remember it's been so long.

Q Okay. You said you first started receiving mental

health treatment when you were a teenager -- 13 or 19 or what, anywhere in between?
A I say like 15.
Q Okay. How old are you now?
A Twenty-five.
Q Okay. So about ten years you've been treated for mental health issues, including almost a year in the state hospital.
A Yes, sir.
Q Okay. And did you tell Mr. Pournaras all of these things?
A I told him. I told him that I had paperwork with my great-grandmother, which is my guardian. And I told him if he wanted to get the documents that he could see my great-grandmother. And he proceeded that he will do so and do so any other way he can to help me with my -- my work, my legal work.
Q Okay. How does your mental health issues -- how does that affect you?
A It affect me -- it affect me, like, right now, like, I'm calm and I'm on medication right now as we speak. I'm on medication right now to keep me calm and everything, because when I don't have my medicine, it's like I can't control myself, like I'm very anxious and nervous. And I be feeling depressed and stuff like that.

Q Okay. Does it affect your ability to understand things?
A Yes, sir, some, some, in some way.
Q Okay.
A I have history of that too.
Q Okay. Does it affect your ability to, like, focus?
A Yes, sir.
Q Okay. Do you have a hard time paying attention --
A Yes, sir.
Q -- when you're not on your medication?
A Yes, sir.
Q Okay. When you were -- when you were arrested, were you on medication then?
A No, sir, because I had to wait before I met with a counselor to get back on my medication.
Q Okay. Do you know how long from the time you were arrested, how long it was before you were back on medication?
A No, not at this moment. I can't remember.
Q Okay. Were you on medication at all while you were in the county?
A Yes, sir.
Q Okay. Were you on medication at the time of the incident?
A No, sir.

Q Okay. Were you on that medication -- and let me back up. What -- what does the medication do for you?
A It like -- it's like a entitled person. It help me with my bipolar.
Q Okay. Does it help you understand what's going on?
A Yeah, like, somewhat, but not really.
Q Okay. So it doesn't treat all of your issues. It just treats the issues that you said you get real worked up and angry.
A Yes, sir.
Q Okay. Do you take any medication to help you focus or understand or anything like that?
A No, sir.
Q Have you ever taken that medication?
A No. I know some of the medicines that I took, but I don't know, like, what they were for.
Q Okay. When you met with -- when you first started meeting with Mr. Pournaras were you on any medication?
A Yes, at that time I was.
Q Okay. So was it the same medication you're on today though?
A No, sir.
Q Okay. What medication were you on back when you met with him?
A Risperdal and Remeron.

Q Okay. What is that? What does that medication do for you?
A It make me calm and make me understand, like, more, like, what's going on. But I still have to have help understanding and knowing what's really going on, what the person talking about.
Q Okay.
A But I do understand a little bit.
Q Okay. And did you talk about all of these different issues with Mr. Pournaras?
A Yes, sir.
Q Okay. I want to fast forward a little bit to your -- the day you pled guilty.
Now, when Judge -- and it was Judge Hood -- was going over some things with you, your constitutional rights and other things, he asked you if you had ever been treated for any mental health issues. Do you remember that?
A Yes, sir.
Q Okay. You told him no. Okay. Why didn't -- why didn't -- why weren't you truthful with the judge?
A Because I didn't know what was going on. I didn't understand the proceeding.
Q Okay. But you were able to answer the question. So what -- how did you know how to answer the question then?
A Because my attorney, Mr. Pournaras, told me to agree

to everything that the judge was saying. And to get it over and get it done and outta the way, he told me to agree with everything that the judge said. And I still didn't know what was going on.

Q Okay. I want to back up a little bit.

How did you -- what did you and Mr. Pournaras talk about and how did you reach the decision to plead guilty?

A Because he told me if I didn't plead that day, he told me I was going to trial the next day. And the solicitor said I was going to trial. So I really didn't know what was going on, but I know that he told me it was for the better and for the best of me if I would've took the plea, what's going on.

Q Okay. He said you were going to trial the next day?

A That's what he told me.

Q Okay. Had y'all ever discussed going to trial?

A No. We just, hypothetically, just throwing it out there.

Q Okay. Had y'all started preparing to go to trial?

A No, sir.

Q Do you know which charge you were going to trial on?

A No, sir.

Q Okay. Had you and Mr. Pournaras gone over your Rule 5 discovery?

A Yes, sir.

Q Okay. Did you ever have a copy of it?
A Yeah, I had a copy.
Q Okay. I want to get back to y'all getting prepared for trial.
You said y'all had talked about it hypothetically. What do you mean by that?
A Like, he would tell me, like, what was the ends and out like that, if and what's if it was to happen, like.
Q Okay. Did you know you were scheduled to go to trial the next day?
A No, sir.
Q Okay. And were you locked up this whole time?
A Yes, sir.
Q Okay. Had he made arrangements to get you any regular street clothes or anything like that?
A No, sir.
Q Okay.
A I told him to contact my family members, and I told him that I wanted them to be in court. And he told me he was going to do it. And no one showed up.
Q Okay. Had you been able to talk to any of your family members to tell them you were going to trial?
A No.
Q Okay. Did you know you were going to trial?
A No.

Q Okay. How did you end up in court the day you pled guilty?
A How did I end up in court?
Q Yes, sir.
A He told me I was going to court, but we didn't negotiate anything. I didn't know what was going on. I just know I was going to court.

And it's like when I got in court Judge Hood was asking me things, and we didn't -- me and my attorney didn't have the same agreement and understanding on anything. Like, I really didn't know what was going on, because he told me one thing, and then when it was time for him to go ahead with the way he was doing, what we had going on, he was saying something different than what we talked about.

So I felt like that my word didn't matter and what we talked about shouldn't have been. He didn't bring it up at all.

Q Okay. Let me ask you this. When you were transported from Alvin S. Glenn, why did you think you were going to the courthouse?
A Because that's what he say.
Q Okay. Did you know what you were going to be doing there?
A No. He just told me I was going to court, but he -- he was throwing something about if I didn't took the plea

and do I know what happened if I didn't took the plea. But the whole time I really didn't know what was going on, like, I didn't know what was going on.

So when I got in there he told me I needed to do what he told me to do, everything would be all right. And that's how he got me to waive my own -- my rights. And I didn't know that I was waiving my rights.

Q Okay. At that time before you entered your plea did you want to go to trial?

A No, sir.

Q Okay. Had y'all discussed going to trial though?

A Yes.

Q Okay.

A Like I told you before, it just -- it wasn't like really a discussion. It was just illusion.

Q Okay. Mr. Harris, I've asked you all the questions that I have.

Is there anything the Court -- anything else that you think I've left out that the Court needs to be aware of Mr. Pournaras' representation of you?

A Yes. He told me that when I talked to him when I was in Lee Correctional -- I talked to him on a conference call. He told me -- I say I had someone help me, because my I.Q. level or whatever, I didn't understand what was going on. So I had someone help me with my legal work.

And I found out that he was ineffective or whatever like that. And he told me on the phone. We had a conference call. He told me. He say, "Mr. Harris." I remember him saying. He say, "Mr. Harris, if you feel like I was ineffective -- and I'm not going to lie -- I was ineffective." And he say, "I will admit when your post conviction relief" --

MS. KINARD: Your Honor, this is hearsay.

A He say he was going to say that he was ineffective.

Q Thank you, Mr. Harris. Please answer any questions Ms. Kinard has for you.

CROSS-EXAMINATION

BY MS. KINARD

Q Thank you, Mr. Harris.

So just to go back over a couple of things that I wasn't quite sure about, were you were on any medication at the time that you entered your plea?

A Yes, I was.

Q And that was the same medication you are on when you were in the county, right? Because you were in the county at that time.

A Yes.

Q And I believe I wrote down that this made you calm and kind of helped you understand things a little better, is that correct?

Okay. And please answer verbally so the court reporter can write it down.

So you talked to Mr. Pournaras about what it meant to enter a plea, is that correct?

A Come again.

Q Did you talk to Mr. Pournaras about what it meant to enter a plea, meaning the rights that you are going to give up?

A No. I never did.

Q You never did?

A No.

Q Did you feel like you understood those at all?

A No.

Q But you wanted to enter a plea rather than go to trial. Did I hear that correctly?

A I didn't understand what was going on, period. I said that, and understood, because he told me what to say and what to agree to. And I didn't know what was going on, that I was being manipulated at the time.

Q Did you tell him you didn't understand what was going on?

A Yes. I told him several times.

Q Yet you still went to court and -- and did what he asked you to do. Is that your statement?

A I really had no choice leaving it up to Mr. Pournaras,

because he told me I was going to trial the next day.
Q Am I correct in understanding that you did have a choice between pleading that day or going to trial the next day?
A That's what he told me.
Q Okay. And just to clarify, you told him about your history of mental health issues?
A Yes. And it's also on file on my record.
Q Did you tell him about your history of medications and what medicines you have been on?
A Yes, ma'am.
Q Did you tell him about your diagnoses, meaning what --
A I didn't --
Q I'm sorry.
A I did not know at the time what it was. I just know what the doctor told me it was.
Q And to make sure I understood. Your understanding when you entered your plea was that you were going to go trial the next day if you didn't plead.
A Yes.
Q And you felt unprepared. Is that what you're saying?
A Yes, I felt unprepared, because we did not have agreement on the same. We wasn't on the same accord. I didn't actually know what was going on. I told him, and I was on medication at the time. And so I told him to

present it to the judge, and he didn't do so.
Q Present what to the judge?
A He didn't present it to the judge like he told me he was.
Q Present what to the judge?
A To let the judge know that I have mental health history and I was on medication at the time.
Q Do you feel like you understood your conversations with Mr. Pournaras?
A No.
Q None of them? And how many times did you say you met with him?
A Like four times.
Q And you never felt like you understood any of those conversations?
A No, ma'am.
Q I don't have any further questions. Thank you.
THE COURT: Any redirect?
MR. WALLER: Just very briefly.

REDIRECT EXAMINATION

BY MR. WALLER

Q Mr. Harris, I just want to clarify. The medication that you're on now that you were on back then, I think you testified when I was asking you questions that it calms you down and it was an antidepressant, is that right?

A Yes, sir.
Q Okay. But you testified that it didn't help you focus or understand better, is that right?
A Yes, sir.
Q Okay. So when Ms. Kinard just asked you, she asked you both of those in the same question. Is it -- would it be a different medication that would help you focus and understand?
A Yes. It's -- it's like some of the medicines do different stuff, and at the time it don't work, like, instantly high, it's supposed to.
Q Okay. No further questions. Thank you.
MS. KINARD: Nothing further, Your Honor.
THE COURT: All right. Mr. Harris, you can go back and sit next to your lawyer.
Any additional witnesses?
MR. WALLER: I would call Constantine Pournaras.

CONSTANTINE GEORGE POURNARAS, having been first duly sworn, testified as follows:

THE BAILIFF: State your full name for the record, and spell your last name for me.
THE WITNESS: Constantine George Pournaras, P-O-U-R-N-A-R-A-S.
MR. WALLER: Thank you, Your Honor.

DIRECT EXAMINATION BY MR. WALLER

Q Good morning, Mr. Pournaras. How are you today?

A Good morning. I'm doing well. Thank you.

Q Mr. Pournaras, how did you come to represent Jermaine Harris?

A I was appointed to both of his cases.

Q Okay. And you're with the public defender's office?

A Yes.

Q Okay. So it was in your capacity as a public defender?

A Yes.

Q Okay. Do you recall which charge he was arrested on first?

A I believe it was the armed robbery first. No, no. I believe it was the autobreaking first.

Q Okay. Was he -- were you able to meet with him in the interim?

A I don't recall. That was several years ago.

Q Okay.

A But I did only meet with him while he was incarcerated.

Q Okay. So it was after he was arrested.

A Yes.

Q Okay. Were you aware of his mental health treatment?

A He did bring that up to me.

Q Okay. What was your understanding of his treatment?
A That he had some issues with depression, that he had some issues with mood disorders, possibly A.D.H.D., I think he mentioned, and that he had been -- that he had received treatment in the past.
Q Okay. Were you aware that he had been -- I guess for lack of a better term -- involuntarily committed at some point?
A That wasn't my understanding. I -- I don't know that he ever was involuntarily committed, but he did say he had been to Hall before.
Q Okay. Okay. So you knew what Hall was.
A Uh-huh.
Q Okay. Do you know how long? What was your understanding of how long he was there?
A I don't recall at this time.
Q Okay. Were you aware of any medications that he might have been on?
A Yes.
Q Okay. Do you know what those were? I know it's been a couple of years.
A He said specifically today, you know, that he was on those. I believe Remeron for depression and -- was it Risperdal for potentially bipolar disorder or mood and anxiety?

Q Okay. Ultimately, the decision was made to -- for him to plead guilty.
A Yes.
Q Or he made the decision to plead guilty.
A Yes.
Q Okay. What -- he mentioned that -- that the case was scheduled to be called for trial the next day. Was that your understanding?
A No. We had status conferences. Judge Hood at the time was our chief administrative judge and was having status conferences on the older cases, and at the time his case was approaching two years old. And he'd been incarcerated the whole time.

So we were attempting to resolve some of the older cases. Otherwise, Judge Hood would be scheduling them for trial should they not be disposed.
Q Okay. What was your understanding of when his was going to be scheduled if you know?
A We hadn't scheduled anything. We had -- we -- Jermaine and I had talked about a resolution to his case, because he was clear that he didn't want a trial. And when we reached a negotiation that he was okay with, we scheduled it for one day.

His grandmother was not available. He was insistent that his family be there. We rescheduled it again. And

that was the day that we actually went forward.
Q You mentioned that he had been incarcerated for two years, you said. He was actually given credit for 1,106 days.
A Right.
Q Is that a little more, almost three years?
A Correct. Apologize. Yes.
Q What was the -- what was the delay?
A We didn't get to a place where he was comfortable going forward. We were just waiting. His -- his intentions were to be able to postpone it. So a lot of our conversations revolved around him asking me to call his family to post his bond.
Q Okay. I want to -- did you ever have any -- any issues -- any meetings with him? Did you ever any problems with him?
A No. I mean, he was irritable sometimes, but we didn't always agree, but I didn't have any issues with him that would make me feel uncomfortable representing him.
Q Okay. When you say he was irritable, can you expound on that a little bit?
A Well, he was in jail looking at very serious charges and he didn't like what the prosecutor was offering and he didn't like that he was unable to post bond. So he would get upset sometimes.

Q Okay. Can you describe -- you say he would get upset. Can you describe it for me?
A Well, he'd just get mad and raise his voice and complain about things.
Q Okay. Was it -- was it your understanding that that was normal, getting upset, or was it relating to his mental health at all?
A I've had those conversations with a number of attorneys who had no mental health issues as well. I didn't -- I didn't see it as anything psychotic or anything delusional. He was just angry. I didn't -- I didn't feel as if it was in any way related to any mental health issues.
Q Okay. But you were aware that he had been treated for several years at that point and was on medication for control of mental health issues.
A Yes.
Q Okay.
A But I didn't feel that his mental health issues that he described or I observed related to our ability to communicate or his understanding of the legal system and the facts of this case. And I didn't feel from the review of the discovery or what he told me about the incident that he would have been psychotic or unable to control himself at the time of the incident.

So I understood that he had complained about mental health issues and he had some treatment, but I didn't feel that it met the level of where I would ask the Court to formally evaluate him for responsibility or competence.

Q Okay. Was he ever -- did he have any trouble focusing during your meetings with him?

A Not really. We always talked about -- he had questions for me every time we talked. I had questions for him that he answered. I didn't -- I didn't ever feel as if he wasn't understanding what we were saying.

Q Do you recall the hearing where he actually pled guilty?

A Yes.

Q Judge Hood asked him if he'd ever been treated for any mental health issues.

A Yes.

Q And he said no.

A Yes.

Q Were you aware of that at the time or did you catch it?

A I -- I was aware of it. I didn't catch that question, but, you know, that was his answer. I didn't object.

Q The judge actually -- when he says, "No, sir, Your Honor," it's on page three of the transcript. The judge actually says, "Excuse me." And he answers it again. I

guess the judge didn't hear him.
A Right.
Q So he asked him twice.
A Yes.
Q You didn't catch either time?
A No.
MR. WALLER: Beg the Court's indulgence, please.
THE COURT: Yes, sir.
(Pause.)
Q Thank you.
MR. WALLER: I have no further questions.
THE COURT: Ms. Kinard.
MS. KINARD: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. KINARD

Q Thank you for being here today.
A Thank you.
Q I want to back up a little bit and ask you some background questions.
A Sure.
Q How long have you been practicing law?
A Since 2011, I believe.
Q And what percentage of that has been criminal law?
A All of it.
Q So do you remember meeting with Mr. Harris to discuss

these charges? Would you agree that the number of approximately four meetings is correct?
A No. We've had many more than that. He was incarcerated for a long time. We did meet a significant number of times.
Q During those meetings did you discuss the indictments and the elements of the offenses with which he was charged?
A We discussed primarily the armed robbery case more than anything. If anything, we didn't really discuss the -- the autobreaking in great detail. We focused primarily on the -- the armed robbery offense.
Q But you did discuss, for example, what the state would have to prove in order to convict him.
A Yes.
Q And he understood that?
A Yes.
Q Did you review the possible punishments for each charge that he faced?
A Yes.
Q Did you discuss the collateral consequences?
A Yes.
Q And you thought he understood all of those.
A Yes.
Q Did you inform him of his constitutional rights that he would be waiving if he went forth with a guilty plea

rather than a jury trial?
A Yes.
Q Do you think he understood all of those?
A Yes.
Q And you discussed that if you did go to trial the state had to prove his guilt beyond a reasonable doubt.
A Yes. And he was pretty clear that he did not want to go to trial but he wasn't also -- also wasn't happy with the deal the state was giving him for the longest time.
Q Did you ever really discuss what would happen at trial or what your strategy would be at trial?
A Yes.
Q And, if you could, let us know about that briefly.
A Sure. The basis of the case was a video from the armed robbery at a hotel, and we discussed that.

His images were released to the media of the incident, and it was his sister who identified him as the person in the video.

So we discussed what the state would be presenting; we discussed who would possibly testify; and we discussed the possible defenses we had. And we really didn't have many other than trying to keep out some of the methods used to identify him specifically.
Q Do you believe that it was a fairly strong case against your client?

A Yes.
Q Did you agree with him that pleading would probably be in his best interest?
A Yes.
Q I believe this was discussed, but just in case, did you file a discovery motion or was one brought on your behalf by your office?
A Yes.
Q And you received everything that you expected to receive in the discovery packet?
A Yes.
Q And you reviewed all of that with Mr. Harris.
A Yes.
Q Did you give him a copy?
A I believe so. If not, I gave him access to it. But I believe I did give him an actual physical copy of it.
Q Did you learn of any fact witnesses that would have been helpful at trial had you gone to trial?
A No.
Q So did you have any character witnesses?
A Other than his sister and grandmother, no.
Q Do you feel that -- strike that.
All right. Was mental health ever a factor for you in the preparation of this case?
A No. Only -- in my opinion the only factor mental

health would play would be for mitigatory purposes.

Again, in reviewing the video and talking to him about it -- I had no concerns about criminal responsibility. In talking to him and the way we discussed things, I believe he understood everything we talked about. He was -- made very rational questions. He asked me things about his case. He understood everyone's role in court.

I didn't have any reason to believe that he wasn't competent or/and I had no reason to believe that any evaluator would find him not criminally responsible.

Again, the main -- the main topics of our conversation were trying to post bond, which was difficult. The issue was he already had his initial bond revoked, and the new bond was essentially moot. So that was one issue we had.

The other one was we had talked about this plea a number of times, and his concern was that his family would be there. And we did, in fact, talk to his family on speaker phone in holding where I let him talk to both his sister and his grandmother to see their availability for doing this plea.

Q I believe he testified regarding that phone call. Do you recall Mr. Harris' testimony?

A Yes.

Q Did you ever say at any time that you were ineffective?

A Of the phone call he made after he was in prison?
Q Oh, maybe he wasn't -- I apologize.
A Right.
Q Regardless, at any time did you ever say that you were ineffective?
A He called me from -- from prison -- I think it was Lee -- and asked about his P.C.R. and asked me if I would file the P.C.R. And I explained to him I can't file the P.C.R. And I said, you know, that's your right, you have up to one year.

He called me right around when it was getting to the point where he needed to file or lose his ability to file. So I said if you feel that, you know, you have any issues, then you most certainly should file your P.C.R.

I didn't tell him you should file your P.C.R. because I was ineffective. I said if you feel I'm ineffective, I will most certainly encourage you to file that before you lose your opportunity to.

And as far as, you know, what I would say, he asked me what I would say in the P.C.R., and I said I will answer all of your lawyer's questions. That was pretty much the extent of that conversation.

Q Is it your practice to file a motion for an evaluation if someone raises any kind of question regarding mental health or competency?

A I don't file it if there's any issue of mental health. I file it if I believe I have any difficulty with my client. If I think there -- if there's history of, you know, psychosis, if I have a hard time understanding them, if I think that their behavior at the time of the incident was erratic, irrational or unusual, then I most certainly always would do that.

Q And, again, you certainly did not see that in this case because you did not file a motion, is that correct?

A That's correct any time. Oh, I'm sorry.

Q I'm sorry. Please finish.

A I said just because I have concerns of mental health issues, I don't necessarily always file an evaluation unless I think there are current competency issues or that that incident itself was during some kind of mental health episode, which I didn't have concerns in this case.

Q Thank you very much.

MS. KINARD: I have no further questions.

THE COURT: Mr. Waller.

MR. WALLER: Just briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. WALLER

Q Mr. Pournaras, you just testified that any mental health issue was best used for mitigatory purposes. Did you do that in this case?

A No. I encouraged -- I didn't bring that up, but I encouraged Jermaine to address the Court and let them know all of his issues.

In this case we had negotiated a very tight range of 10 to 15. Obviously, he was hoping for that to be closer to the ten. But I encouraged him to let the judge know anything and everything.

I didn't particularly bring it up. You know, perhaps I should have. I don't know that it would have made a difference in the judge's consideration. But, you know, he also didn't bring it up himself.

Q Okay. Once he didn't bring it up did you feel the need to bring it up yourself?

A No. I think he did a pretty good job. He was very calm; he was very collected that day. No. I didn't -- I didn't think it would have had any significant benefit under the circumstances of the case.

Q Okay. Well, you just testified that it was best used in mitigatory purposes.

A Sure.

Q Now your testimony is that you didn't bring it up because you didn't feel it would have helped?

A What I said was if his mental health issues were relevant in any context it would have been strictly for mitigation purposes.

Q Okay.
A Not that I felt it necessary to discuss.
Q Okay.
MR. WALLER: No further questions.
MS. KINARD: Nothing further.
THE COURT: Okay. Thank you, sir.
Any additional witnesses, Mr. Waller?
MR. WALL: Nothing further, Your Honor.
THE COURT: Anything?
MS. KINARD: Nothing from the state, Your Honor.
THE COURT: All right. Would y'all like to make arguments, or not?
MR. WALLER: Your Honor, I don't feel the need to make any additional arguments. I think the testimony speaks for itself.
THE COURT: Okay.
MS. KINARD: I agree.
THE COURT: All right. I will take it under advisement and let y'all know.
END OF REQUESTED TRANSCRIPT OF RECORD

CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Richland County, South Carolina, on the 31st day of August 2016.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

January 26, 2018

s/Linda D. Moffitt

Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Jermaine Harris (SCDC #336851), Applicant, v. State of South Carolina, Respondent.	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT Civil Action No. 2015CP4007522 **ORDER OF DISMISSAL**

RICHLAND COUNTY
FILED
2021 MAY 26 PM 2:15
C.P., G.S., & F.C.

This matter came before the Court upon Application for Post-Conviction Relief filed by Jermaine Harris ("Applicant") on December 18, 2015. The State of South Carolina filed its "Return and Partial Motion to Dismiss" on July 7, 2016. On August 31, 2016, an evidentiary hearing was conducted at the Richland County Judicial Center. Applicant was present along with his counsel, Jonathan D. Waller, Esquire. The State was represented by Assistant Attorney General Jessica E. Kinard.

For the reasons set forth below, the Application for Post-Conviction Relief is DENIED; and this matter is DISMISSED WITH PREJUDICE.

FACTUAL AND PROCEDURAL HISTORY

I. Facts Adduced at Guilty Plea

On November 28, 2011, Applicant entered the Days Inn hotel in Dentsville area of Richland County. Upon entering, he leapt over the front counter and pointed at the desk clerk an object which appeared to her to be a pistol with a laser sigh. Applicant took the clerk's cellphone and approximately five hundred dollars in cash before fleeing. Law enforcement obtained a picture of Applicant from the hotel's surveillance cameras and sent that picture to several media outlets.

Several citizens, including Applicant's sister, identified Applicant as the man in the photo. The hotel clerk also identified Applicant in a photo lineup shown to her by law enforcement.

II. Conviction

Applicant was arrested in January 2012 and charged with Armed Robbery of the Days Inn. He was represented on that charge by Assistant Public Defender Constantine Pournaras ("Plea Counsel"). On January 14, 2015, Applicant waived presentment of the charge to the Richland County Grand Jury and pled guilty to Armed Robbery.[1] In exchange for his plea, the State agreed to a negotiated sentencing range of ten to fifteen years in the South Carolina Department of Corrections. The Honorable Robert E. Hood imposed a fifteen-year sentence, giving Applicant credit for over one thousand one hundred days of pre-trial detention. Applicant did not appeal the guilty plea or sentence.

III. PCR Application

On December 18, 2015, Applicant filed the instant PCR Application. In it, he alleges:

1. Ineffective assistance of counsel.
    i. Attorney was ineffective by failing to request a *Blair* hearing.
2. Erroneous advice on sentencing or collateral consequences that leads to plea.
    i. Attorney erroneously advised me to plea [sic] guilty knowing I didn't understand.
3. I am mental health and was/am incompetent to knowingly plea.
    i. Knowing of my mental health record, I should have been given a sanity hearing before being allowed to plea [sic] guilty.

The State responded to Applicant's allegations, contending that they are meritless, and requested summary dismissal of the PCR Application. In lieu of summary dismissal, the Court convened an evidentiary hearing on August 31, 2016, to address Applicant's allegations.

---

[1] On the same date, Applicant pled guilty to Breaking Into a Motor Vehicle (2012GS4001910); however, that conviction is not the subject of this PCR Application.

IV. Evidentiary Hearing

Both Applicant and Plea Counsel testified at the evidentiary hearing.

A. Applicant

According to Applicant, he met with Plea Counsel approximately four times. He testified that during their first meeting, he told Plea Counsel that he had a long history of mental health issues. Applicant testified that he suffers from bipolar disorder and that during his teenage years, he received approximately a year of inpatient counseling at the Department of Mental Health. He also stated that he received mental health treatment continuously from that time until the time of the evidentiary hearing – approximately ten years. Applicant claims to have conveyed this history to Plea Counsel, who initially replied that he'd request a mental health evaluation for Applicant but later said that the evaluation was unnecessary.

Applicant testified that he was not taking any medication at the time of the armed robbery, but by the time he met with Plea Counsel at the county jail, he was taking Risperdal and Remeron. According to Applicant, those medications help increase his level of understanding and keep him calm. Without them, Applicant testified, he is anxious, nervous, and angry. He also has difficulty paying attention, focusing, and understanding, but none of the medications help with those issues. Applicant testified that even while medicated, he still needs help "understanding and knowing what's really going on."

Applicant also testified that he was unable to understand the guilty plea proceeding. Plea Counsel told him "to agree to everything that the judge was saying," and that's why he denied ever having been treated for mental health issues. Applicant testified that he pled guilty to avoid trial because Plea Counsel was not prepared and they had only discussed trial in hypothetical terms. Applicant was unaware of a scheduled trial date until he appeared in court for his plea. At that

time, Plea Counsel told him that pleading guilty would be best. According to Applicant, he "didn't know what was going on" and the plea agreement was different from what he discussed with Plea Counsel, yet he pled guilty because he "felt like [his] word didn't matter." Applicant testified that he didn't know that he was waiving his constitutional rights by pleading guilty; rather, Plea Counsel "manipulated" him.

B. Plea Counsel

At the time of Applicant's arrest, Plea Counsel was employed by the Public Defender's Office. He was appointed to represent Applicant after his arrest.

Plea Counsel admitted that Applicant mentioned his history of mental health issues. He understood that Applicant had suffered from depression, ADHD and mood disorders, all of which had been treated in the past. Plea Counsel was aware that Applicant was taking certain medications to treat his mental health conditions; however, he denied any knowledge of an involuntary commitment at the Department of Mental Health.

He explained that Applicant was sometimes irritable during their meeting, but Plea Counsel believed that was due to the fact that Applicant was facing very serious charges and was unable to post bond while awaiting their resolution. Although Applicant would get angry and raise his voice with Plea Counsel from time to time, Plea Counsel "didn't feel as if it was in any way related to mental health issues." In fact, Plea Counsel testified that it didn't appear to him as though Applicant's psychological concerns impaired his ability to communicate, to focus, or to understand the legal system and the circumstances of his case. Plea Counsel ultimately determined that there was no need to have Applicant submit to a mental health evaluation.

According to Plea Counsel, it was clear that Applicant did not want a trial. After much negotiation with the State, he was able to procure a plea offer that Applicant was comfortable with.

Plea Counsel testified that he explained the trial process and the waiver of constitutional rights to Applicant, who appeared to understand. Although it was evident that Applicant was not interested in trial, Plea Counsel discussed with him the State's evidence, possible defenses to the charges, and a list of potential defense witnesses. Ultimately, because of the strength of the State's case, Plea Counsel agreed that a guilty plea was in Applicant's best interest.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony presented at the evidentiary hearing. The Court has also had the opportunity to observe each witness who testified at the evidentiary hearing, to closely pass upon their credibility, and to weigh their testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. CODE ANN. §17-27-80 (2003).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee criminal defendants the right to the effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984). In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." *Frasier v. State*, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where a PCR 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 the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

First, the applicant must show that counsel's performance "fell below an objective standard of reasonableness under prevailing professional norms." *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (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). The 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 the 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.* at 117-18, 386 S.E.2d at 625; *see Strickland*, 466 U.S. at 688, 692 ("the defendant must show that counsel's representation fell below an objective standard of reasonableness [and] . . . any deficiencies in counsel's performance must be prejudicial to the defense in order to constitute ineffective assistance under the Constitution."); *see also Porter v. State*, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006) ("PCR applicant must prove: (1) that counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) that the deficient performance prejudiced the applicant's case.").

"Where counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." *Watson v. State*, 370 S.C. 68, 72, 634 S.E.2d 642, 644 (2006) (citing *Stokes v. State,* 308 S.C. 546, 419 S.E.2d 778 (1992)). "Counsel's performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel 'rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.'" *Smith v. State*, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (quoting *Strickland,* 466 U.S. at 690). "Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." *Id.* (citing *Caprood v. State,* 338 S.C. 103, 110, 525 S.E.2d 514,

517 (2000)). "Courts must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992) (citing *Goodson v. U.S.*, 564 F.2d 1071 (4th Cir. 1977)).

I. Involuntary Plea

The essence of Applicant's claim is that his guilty plea was not voluntarily made. According to him, because Plea Counsel failed to request a competency hearing and ensure that Applicant was mentally sound, that rendered the plea involuntary. The Court disagrees.

In order for the Court to find that a guilty plea is voluntarily and knowingly entered into, the record must establish that Applicant had a full understanding of the consequences of his plea and the charges against him. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Dover v. State*, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. *Harris v. Leeke*, 282 S.C. 131, 318 S.E.2d 360 (1984). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, an applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. *Blackledge v. Allison*, 431 U.S. 63 (1977). Statements made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements. *Crawford v. U.S.*, 519 F.2d 347 (4th Cir. 1975).

Due process prohibits the conviction of a person who is mentally incompetent. *Bishop v. U.S.*, 350 U.S. 961 (1956). This right cannot be waived by a guilty plea. *Pate v. Robinson*, 383 U.S. 375 (1966). The test of competency to enter a plea is the same as required to stand trial. *State v. Lambert*, 266 S.C. 574, 225 S.E.2d 340 (1976). The accused must have sufficient capability to

consult with his lawyer with a reasonable degree of rational understanding and have a rational and factual understanding of the proceedings against him. *Carnes v. State*, 275 S.C. 353, 271 S.E.2d 121 (1980). In making this assessment, counsel may reasonably rely on his own perceptions of his client. *Jeter v. State*, 308 S.C. 230, 417 S.E.2d 594 (1992). A PCR applicant must, however, show a reasonable probability that he would have been found incompetent in order to sustain his allegation that counsel was wrong and, therefore, ineffective. *Id.*

In this case, Applicant has not sustained his burden of proof. Plea Counsel offered credible testimony that, based on his interactions and conversations with Applicant over a period of approximately three years, he believed that Applicant was competent. Plea Counsel was aware of Applicant's mental health history and generally made it a practice to seek psychological evaluations for clients with whom he has difficulty communicating or who he knows to have a history of psychosis. Neither of those options applied to Applicant, as Plea Counsel never had trouble communicating with Applicant, and Applicant appeared to understand all aspects of his case. Moreover, Applicant failed to present any evidence whatsoever of any probability that he would have been deemed not competent if Plea Counsel had requested an evaluation.

Applicant has failed to provide any credible evidence that Plea Counsel was deficient in his representation. Applicant also failed to prove that he suffered prejudice as a result of any alleged deficiency. On the contrary, the evidence demonstrates that Applicant was competent at the time of his guilty plea, that he had sufficient ability to confer with Plea Counsel, and that he had a reasonable degree of rational understanding of the charges and proceedings. Therefore, this allegation must be denied and dismissed with prejudice.

B. Collateral Consequences

Applicant's only other allegation is that Plea Counsel failed to properly inform him of the

consequences of pleading guilty. Specifically, he contends that Plea Counsel gave him "erroneous advice on sentencing or collateral consequences" and advised Applicant to plead guilty even though he knew that Applicant did not understand the consequences of doing so. Although Applicant contends that these actions rendered his guilty plea involuntary, the Court disagrees.

Plea Counsel offered credible testimony that he met with Applicant on several occasions and discussed with him, at length, the elements of the crimes charged, the State's burden of proof, the possible sentence he could receive, the collateral consequences of pleading guilty, and Applicant's constitutional rights. This testimony is corroborated by Applicant's sworn testimony during the guilty plea (which, of course, contradicts the testimony given at the evidentiary hearing). During the guilty plea, Applicant affirmed that he understood the charges against him, the maximum possible punishment, the consequences of being convicted of a "violent," "most serious" offense, and the constitutional rights he waived by pleading guilty.

Plea Counsel also testified that he discussed with Applicant all of the State's evidence against him and opined that the State's case was strong. He, therefore, agreed with Applicant's decision to plead guilty. Similarly, during the guilty plea, Applicant told the court that Plea Counsel had done everything Applicant asked him to do, and that he was satisfied with the representation. Applicant also made a solemn admission of his guilt and affirmed that he was pleading guilty freely, knowingly and voluntarily, without coercion, threats or promises.

Without any evidence to the contrary, this Court finds that Plea Counsel was effective in his representation. Any potential deficiencies in his representation or misstatements by Plea Counsel were cured by Applicant's thorough colloquy with the plea court. *See, e.g., Wolfe v. State,* 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997). Further, Applicant has failed to provide evidence of any alleged deficiency on the part of Plea Counsel. Therefore, this allegation must be denied

and dismissed with prejudice.

CONCLUSION

Applicant is hereby notified that he must file and serve any notice of appeal within thirty days from PCR 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. Further, 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 the appropriate procedures for appealing a judgment in a PCR action.

IT IS, THEREFORE, ORDERED that the Application for Post-Conviction relief is DENIED and DISMISSED with prejudice.

IT IS FURTHER ORDERED that Applicant Jermaine Harris be REMANDED to the custody of the State of South Carolina.

AND IT IS SO ORDERED.

Jocelyn Newman
Presiding Judge

May 26, 2021
Columbia, South Carolina.

74

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015CP4007522

JERMAINE HARRIS (SCDC #336851)	STATE OF SOUTH CAROLINA
PLAINTIFF(S)	DEFENDANT(S)

Submitted by: NEWMAN, J.	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ 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

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

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

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

RICHLAND COUNTY FILED
2021 MAY 26 PM 2:15
C.C.P., G.S., & F.C.

ORDER INFORMATION

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

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.

Jocelyn Newman
Circuit Court Judge

2757
Judge Code

May 26, 2021
Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

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.

WITNESSES

(S) Joshua Mauldin
– Richland County Sheriff

ARREST WARRANT NUMBER

I902510

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015GS4000224

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

JANUARY TERM 2015

154

THE STATE
vs.

Jermaine Cornelius Harris

Indictment for
ROBBERY / ARMED ROBBERY, ROBBERY WHILE ARMED OR ALLEGEDLY ARMED WITH A DEADLY WEAPON

SC Code: **16-11-0330(A)**
CDR Code: **0139**

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Jermaine Harris
Defendant

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

_____
Defendant

Witness:
_____
C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jeanette Williams Bride
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

76

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on , the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That Jermaine Cornelius Harris did in Richland County on or about November 28, 2011, commit robbery by feloniously taking from an employee of Days Inn, by means of force or intimidation, goods or monies of Days Inn, such goods or monies being described as US currency, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he or she was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of §16-11-330(A), SC Code of Laws (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

DAN JOHNSON, SOLICITOR

78

STATE OF SOUTH CAROLINA)
COUNTY OF Richland)
STATE VS.)
Jermaine Cornelius Harris)
AKA:)
Race: BLACK Sex: M Age: 24)
DOB: [redacted] SS#: [redacted])
Address: 3615 Truman St)
City,State,Zip: Columbia, SC 29204-1615)
DL#: [redacted] SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS4000224
A/W#: I902510
Date of Offense: 11/28/2011
S.C. Code § : 16-11-0330(A)
CDR Code #: 0139

RECOMMENDED SENTENCE SHEET NEGOTIATED X

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. JH (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Nicole Simpson 77500 SC Bar# Jermaine Harris Defendant [signature] Attorney for Defendant 60872 SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of 15 ~~days/months/years~~ or ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____ _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. (1,106 days)
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$
3% to County (if paid in installments)		$
TOTAL		$

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp.
May serve W/E begining
Substance Abuse Counseling
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

NO CONTACT WITH VICTIM(S) DIRECTLY OR INDIRECTLY

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

CERTIFIED TRUE COPY OF ORIGINAL FILED, Jeanette W. McBride C.C.C.P.&G.S. RICHLAND COUNTY SOUTH CAROLINA

Clerk of Court/ Deputy Clerk: Jeanette McBride
Court Reporter: Anthony Imbroglio
Presiding Judge: Pe Hood
Judge Code: 2164
Sentence Date: Jan 14, 2015

SCCA/217 (03/2012)

ORIGINAL