THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Case No. 2018-CP-20-13

Lucruz McCloud #362427.....Applicant/Appellant

v.

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

NOTICE OF APPEAL

This is a post-conviction relief case. Appellant appeals from the Order of Dismissal entered in this case on October 27, 2021. Appellant received written notice of the Order of Dismissal entered on October 27, 2021, by mail on November 1, 2021. A copy of the Order of Dismissal appealed from is attached.

December 1, 2021

Arthur K. Aiken
Aiken & Hightower, PA
PO Box 90707
Columbia, SC 29290
Telephone: 803-799-5205
Fax: 803-799-5206
Email: art@aikenandhightower.com
ATTORNEYS FOR APPELLANT

OTHER COUNSEL OF RECORD:
South Carolina Attorney General's Office
Assistant Attorney General Michael D. Davidson
PO Box 11549
Columbia, SC 29201
ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD

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COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

FAIRFIELD COUNTY
CLERK OF COURT
JUDY M BONDS

LuCruz McCloud #362427,

Applicant

vs.

State of South Carolina,

Respondent.

Case No.: 2018-CP-20-13

ORDER

2017-CP-28-745

I, Judy M. Bonds, Clerk of Court, Fairfield County, South Carolina, do hereby certify this is a true copy of the original on file in this office.
9/10/18
Clerk of Court

FILED FOR RECORD
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JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

INTRODUCTION

This is a PCR case. The Applicant, LuCruz McCloud (McCloud) made a Motion to change venue of this case to the Kershaw County Court of Common Pleas and a Motion to consolidate this case with LuCruz McCloud v. State – C/A Number 2017-CP-28-745 – (Kershaw County action) a PCR action pending in the Kershaw County Court of Common Pleas. This Court heard argument on these Motion on July 16, 2018 with Arthur K. Aiken arguing on behalf of McCloud and Assistant Attorney General DeShawn Mitchell arguing on behalf of the State. Based on the following Findings of Fact and Conclusions of Law, this Court grants the Motion to change venue and grants the Motion to consolidate the cases with the stipulation that the two cases must be tried separately during the same Fifth Circuit PCR term.

FINDINGS OF FACT

The PCRs that are the subject of these Motions arise out of a guilty plea in the Kershaw County Court of General Sessions and a guilty plea in the Fairfield County Court of General Sessions. According to the Transcripts of the two guilty pleas, the guilty pleas occurred within days of each other, and the guilty pleas were the result of a single negotiated resolution of all

charges in both counties. Attorney Ronald Moak (Moak) represented McCloud on the charges pending in both counties. The Transcript for the Fairfield County guilty plea suggests that Attorney William Frick (Frick) also appeared on behalf of McCloud at that guilty plea.

The ends of justice would be promoted by the transfer of venue of this case to the Kershaw County Court of Common Pleas. This venue transfer will permit the Kershaw County action and this action to be consolidated; it will also ensure that the two cases are heard during the same term of court. Having the two cases heard at the same term of court will allow the cases to proceed at the same time through the state appellate process and through the federal habeas corpus process.

CONCLUSIONS OF LAW

S.C. Code § 15-7-100 (A)(3) permits this Court to change venue of a case if "the ends of justice would be promoted by the change." As noted above, the ends of justice would be promoted by the change of venue of this case to the Kershaw County Court of Common Pleas.

Rule 42(a) SCRCP permits this Court to consolidate "actions involving a common question of law or fact." Under this authority, this Court has the power to make such orders "as may tend to avoid unnecessary costs or delay." The Kershaw County case and the Fairfield County case have enough, common questions of law and fact to warrant consolidation, but the apparent involvement of Frick suggests that the two cases should be heard separately during the same Fifth Circuit PCR term.

WHEREFORE, this Court **GRANTS** McCloud's Motion to change venue of this action to the Kershaw County Court of Common Pleas and **GRANTS** McCloud's Motion to consolidate this action with the Kershaw County action with the stipulation that the two actions must be tried separately at the same 5th Circuit PCR term.

AND IT IS SO ORDERED!

Brooks P. Goldsmith
Presiding Circuit Court Judge

_____, SC

August 16, 2018

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Lucruz McCloud, #362427, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2017-CP-28-0745 **ORDER OF DISMISSAL**

This matter comes before the Court by way of Applicant Lucruz McCloud's application for post-conviction relief (PCR) filed August 18, 2017, and amended May 20, 2019. A hearing convened at the Richland County Courthouse on June 19, 2019, at which time Applicant was present in court and represented by Kristy Goldberg, Esquire. Assistant Attorney General Samuel L. Key represented the State. At the hearing, Applicant testified on his own behalf. Respondent presented testimony from Ronald Moak, Esquire.

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

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections. In February of 2017, Applicant was indicted by the Kershaw County Grand Jury for trafficking cocaine base, 10 grams to 28 grams – third offense (2017-GS-28-0355), and simple possession of marijuana (2017-GS-28-0356). Ronald Moak, Esquire ("Plea Counsel"), represented Applicant, and Deputy Solicitor Brett Perry prosecuted the case. On May 15, 2017, Applicant pled guilty to the lesser-included offense of trafficking in

cocaine base, 10 grams to 28 grams – second offense, and simple possession of marijuana before the Honorable R. Knox McMahon. Judge McMahon sentenced Applicant to a negotiated fifteen years' imprisonment for trafficking in cocaine base, 10 grams to 28 grams – second offense, and thirty days' imprisonment for simple possession of marijuana to run concurrently. Applicant did not appeal his sentence or conviction, but timely commenced this PCR action on August 18, 2017.

FACTS

The charges stem from an incident that occurred on October 24, 2016, at the Econo Lodge hotel on Highway 601 in Camden. Applicant was out on bond, but he had an active arrest warrant for additional drug charges in Fairfield County. Law enforcement learned Applicant was staying at the hotel and after speaking to the clerk, found out he rented room 202 and viewed video footage of Applicant initially renting the room, and signing paperwork to renew the room under the name of the woman he was with (Plea Tr. 15). Officers went to the room and knocked on the door, but Applicant was not inside at the time. They found Applicant on the breezeway just around the corner from the room, where he told officers his name was John John (Plea Tr. 15). The officers recognized Applicant by sight, placed him under arrest, and conducted a search of Applicant's person. They found a small quantity of marijuana and a room key in his pocket. Officers received permission from the hotel owner to walk a K-9 around the common areas and the entire second floor of the hotel. The K-9 then alerted the officers to the presence of narcotics in room 202, which was Applicant's room (Plea Tr. 16). Officers entered the room to secure it and observed a small amount of marijuana in plain view; they then exited the room to obtain a search warrant (Plea Tr. 16).

After executing the search warrant, Applicant was Mirandized and officers found several pieces of evidence connecting Applicant to the room including men's clothing, a pizza box with his cell phone number and "John John" on it, and Airhead candy that matched the color of Applicant's tongue (Plea Tr. 16-17). Officers found approximately 14.4 grams of crack cocaine on the room's kitchen sink. Applicant admitted post-Miranda that the drugs and room were his (Plea Tr. 17).

ISSUES RAISED

In his *pro se* application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
    a. Conspired with solicitor and officer to coerce me to take plea;
2. Involuntary plea;
    a. Misinforming me that the other suspect could not take the charge;
3. Illegal sentence;
    a. Sentence could not be enhanced to second without prior trafficking off.;

Through counsel, Applicant amended his application to include the following allegations:

1. Ineffective assistance of counsel:
    a. Counsel failed to review and discuss all discovery information and evidence with the Applicant;
    b. Counsel failed to identify, investigate, research, and make Applicant aware of issues regarding the illegal search which could and should have been challenged during a jury trial or in pre-trial motions and failed to prepare for a jury trial and failed to advise Applicant that he should proceed to a jury trial;
    c. Counsel was ineffective in that he unfairly and improperly pressured and coerced Applicant into giving up his right to trial and accepting a plea offer;
    d. Counsel was ineffective in that he made promises regarding what the outcome of the case would be when he was hired and failed to uphold those promises;
    e. Counsel was ineffective in that he should have been able to negotiate a better plea deal on Applicant's behalf;
    f. Counsel was ineffective for inaccurately explaining the plea negotiations to Applicant prior to the plea being entered; and

g. Counsel failed to alert the Court regarding time the Applicant had served on this charge and time he had served on house arrest for a Fairfield County charge that could be credited to his sentence.

At the evidentiary hearing, PCR counsel for Applicant proceeded on the allegations raised in the amended application, which encompasses and expands upon the allegations in Applicant's original application.

SUMMARY OF RELEVANT TESTIMONY

Applicant's testimony

At the evidentiary hearing, Applicant testified he was represented by a different attorney during his bond hearing. Applicant then chose to hire Plea Counsel in January 2017 after he heard from several people that Plea Counsel was "pretty good." (PCR Tr. 10). Applicant stated he and Plea Counsel met at Applicant's apartment where they discussed the charges, and Applicant retained Plea Counsel for $500. Applicant stated he asked Plea Counsel if Plea Counsel could handle the charges, and at one point, Plea Counsel asked Applicant if he was okay with doing three years, and Applicant said he was. (PCR Tr. 10). Applicant testified he told Plea Counsel about the pending charges in Fairfield County.

Applicant initially testified that between January and May of 2017 he only met with Plea Counsel to pay him, and they did not talk about evidence, the plan for resolving the case, or merits of his case (PCR Tr. 11-12). Applicant testified he was never given a copy of the discovery or saw any evidence against him until he filed his PCR application (PCR Tr. 14-15). However, on cross-examination Applicant admitted he saw Plea Counsel a few times between January and May, and that during one meeting Plea Counsel conveyed that the solicitor had made a plea offer of sixteen years (PCR Tr. 25-56). Applicant testified he told Plea Counsel he

did not want to accept that plea deal, but he never gave Plea Counsel a range for further negotiations. (PCR Tr. 26).

Applicant alleged Plea Counsel told Applicant he was going to try to negotiate the plea to five or six years, and he told Plea Counsel to accept if the solicitor agreed. According to Applicant, the next time they spoke, Plea Counsel informed Applicant the solicitor was not willing to offer anything lower, and fifteen years was the best deal offered (PCR Tr. 13). Applicant testified that when he voiced complaint about the deal, Plea Counsel said they would either go to trial or accept the plea agreement. Applicant testified Plea Counsel advised that if he were in Applicant's position, he would rather do fifteen years than the twenty-five years Applicant faced if he went to trial (PCR Tr. 14). Applicant testified the original charges were for a third trafficking offense, which raised the mandatory minimum to twenty-five years, although he eventually pled guilty to a second offense.

Applicant further testified that after reviewing the discovery in his case, he now believed the search was illegal because the hotel room was not registered in his name and because police initially entered without a search warrant (PCR Tr. 17). Applicant stated he thought Plea Counsel did not investigate his case based on Applicant's issues with the execution of the search warrant, and he believed the case should have gone to trial because the police entered the hotel room before obtaining a search warrant (PCR Tr. 19-20).

Applicant testified he felt his case should not have gone further than a preliminary hearing, but he never discussed the search with Plea Counsel. Applicant stated he did not go to trial because he was "basically forced to take a plea" (PCR Tr. 20). Applicant alleged that when Plea Counsel told him about the fifteen-year offer, he told Plea Counsel he did not think Plea Counsel was representing him properly and he was going to hire another attorney (PCR Tr. 21).

Applicant testified this other attorney told him to let the court know that Applicant was retaining him and wanted to relieve Plea Counsel. According to Applicant, Plea Counsel and the solicitor took Applicant to a jury room where the solicitor told him it did not matter whether he hired another attorney or not, Applicant would get the same sentence and the solicitor would not change the plea offer (PCR Tr. 20). Applicant alleged the solicitor told him that if Applicant proceeded to trial, the solicitor would make sure he got thirty years. Applicant indicated Plea Counsel was present for this discussion, and when he asked Plea Counsel why Plea Counsel did not stand up for him, the solicitor responded that they were friends and the situation "is what it is." (PCR Tr. 22). Applicant testified he did not want to plead guilty and would have not accepted the plea offer and would have instead gone to trial if he had read the discovery prior to that date, even though he was facing a mandatory minimum of twenty-five years at trial (PCR Tr. 22-23).

On cross-examination Applicant acknowledged that during the plea colloquy he was asked whether he understood the plea negotiations, and he responded "Yes, sir" – despite now claiming that he did not understand (PCR Tr. 28-29). Applicant testified he was agreeing to the deal so he said "yes" to the questions that sounded correct and "no" to the questions that did not (PCR Tr. 29). He conceded that, at the time, he wanted the plea court to accept the plea (PCR Tr. 29). Applicant acknowledged he answered "No, sir" when asked by the judge whether he had been coerced to plead guilty, and he could not articulate why he did not bring up the meeting in the small room and his desire to retain new counsel at the time (PCR Tr. 29). Applicant testified he did not want to take the deal, but he felt he had no choice. Applicant acknowledged that he told the judge he was satisfied with Plea Counsel's representation, and he understood his first discussion with Plea Counsel about possibly negotiating a sentence of three years did not

constitute a promise (PCR Tr. 30). Applicant testified he served approximately one week of time in jail for the charges prior to the plea hearing (PCR Tr. 30).

Plea Counsel's testimony

Plea Counsel testified he never promised a three-year deal; rather, he explained, the policy at the time the minimum for a first trafficking offense in Kershaw County was three years (PCR Tr. 32). Plea Counsel testified he asked Applicant if he would agree to a three-year sentence, if the State agreed the charges could be brought down to the first offense, in an attempt to figure out his goals for the representation. Plea Counsel testified he received discovery and reviewed it with Applicant at Applicant's grandmother's home (PCR Tr. 32-33). Plea Counsel testified he brought two copies and went through his own copy with Applicant, but Applicant did not take his copy.

Plea Counsel explained he had to reassess the case and discussing trial strategies and defenses with Applicant after the State presented its evidence at the preliminary hearing tying Applicant to the hotel room by multiple means, including: the positive identification from the hotel clerk, camera footage, colored candy in the room, and the pizza box with Applicant's phone number on it (PCR Tr. 34-37). Plea Counsel testified the only other occupants of the room were Applicant's girlfriend and son, and a significant defense challenge would have been disputing whether Applicant gave a statement to law enforcement (PCR Tr. 36). Plea Counsel indicated investigators told him that when they were considering removing an X-Box from the room as evidence, Applicant asked investigators why they were "taking his boy's stuff," which would have additionally been used to connect him to the room (PCR Tr. 36). Plea Counsel testified he told Applicant they had some scope to question the investigation, but ultimately the problem was whether the jury would believe the officers were lying about how they got into the

room, and if after hearing all the evidence, the jury would tie Applicant to the room (PCR Tr. 37). Plea Counsel testified he spoke to Applicant about the reality of the jury tying him to the room with all of his stuff in it, and pointing the finger at Applicant's girlfriend and eight-year-old son was not a viable defense or trial strategy (PCR Tr. 37).

Plea Counsel testified he met with Applicant at an apartment two or three times, and at Applicant's grandmother's home an additional three or four times (PCR Tr. 37-38). He stated that the weekend before trial, he met with Applicant on both Saturday and Sunday. Plea Counsel affirmed that Applicant mentioned hiring different counsel, and he told Applicant that if he were seeking new representation, the other attorney would have to be ready Monday morning because the judge would not allow Applicant to change attorneys if the other counsel was not present (PCR Tr. 38). That Monday, Plea Counsel testified, he wanted to speak to Applicant privately so he took Applicant to the jury room where the solicitor came in. Plea Counsel corroborated Applicant's testimony that the solicitor said he was not going to offer a lower deal to another attorney, and he did not interject because he did not want to escalate the situation (PCR Tr. 38). Once the solicitor left, Plea Counsel indicated he told Applicant that interaction was representative of the solicitor's attitude toward the case since the case began, which made it difficult to negotiate. Plea Counsel testified he was not initially hired to handle the Fairfield charges; however, during the course of his the negotiations for the Kershaw charges, the solicitor expressed an intent to tie the counties together (PCR Tr. 39). Ultimately, Plea Counsel resolved both cases and represented Applicant in Fairfield County.

Plea Counsel testified that, in his opinion, after reviewing the evidence in the case, Applicant did not have any viable third-party at whom to the defense could point the finger, and Applicant would be facing a mandatory twenty-five years at trial (PCR Tr. 40). Plea Counsel

stated he was prepared to proceed with a trial, but he ultimately advised Applicant to accept the fifteen-year offer instead of risking a twenty-five year sentence given the evidence in this case (PCR Tr. 40). Plea Counsel testified the solicitors' office never offered anything less than fifteen years, and the solicitors from Kershaw and Fairfield agreed that if he accepted a plea for fifteen years in one county, the other county would agree to run any sentences concurrently (PCR Tr. 41). Plea Counsel testified that after the plea in Kershaw County, Plea Counsel met with Applicant in Fairfield County and reviewed the appeal and PCR processes with Applicant. (PCR Tr. 42). Plea Counsel testified he told Applicant how to obtain the paperwork to file a PCR, and Applicant asked about an appeal.

Plea Counsel testified Applicant wanted five to ten years on his charges in Kershaw County, and then to go to trial on the Fairfield case, but the solicitor never offered anything in that range. (PCR Tr. 43). Plea Counsel stated he felt there were issues with the charges in Fairfield that could have been brought to trial, but the charges were ultimately included in the negotiated plea along with the Kershaw County charges. Plea Counsel testified that based on his experience, the information officers gave him about how they learned the Applicant was staying at the hotel and found his room raised no Fourth Amendment privacy violations that could be successfully challenged at trial (PCR Tr. 47-48). Because of the great weight of evidence against the Applicant in Kershaw County, Plea Counsel advised Applicant it was in his best interest to plead guilty. (PCR Tr. 50-51).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court further had the opportunity to observe the witnesses at the evidentiary hearing and evaluate their credibility, and the Court has weighed their testimony

accordingly in its discussion below. This Court finds the combined record of the plea transcript and the testimony and evidence presented at the evidentiary hearing establishes Applicant received effective assistance of counsel, and this application should be denied. Set forth below are the relevant findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code.

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant raises several allegations arguing Plea Counsel was ineffective in his representation. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 344 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland.* First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise

of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109-10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable."). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.*, 300 S.C. at 117-18, 386 S.E.2d at 625. "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." *United States v. Basham*, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted

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

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

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

plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. *See Harris v. Leeke*, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

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

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

Failure to review and discuss all discovery information and evidence

Applicant alleges Plea Counsel was ineffective for failing to discuss all discovery information and evidence with him. This Court finds Applicant failed to meet his burden. *Hill* makes clear that the prejudice prong ordinarily requires "something more" than simply a defendant's assertion that but for counsel's deficient performance he would not have pled but would have gone to trial. *Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009) (*citing Hill*, 474 U.S. at 58–59).

In order to prevail upon a claim that counsel did not adequately prepare a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. *Harris v. State*, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. *Id.* (citing *Davis v. State*, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); *Skeen v. State*, 325 S.C 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.*, 377 S.C. at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

This Court finds Plea Counsel credibly testified he brought over the discovery for the case to Applicant's grandmothers home and reviewed the file with Applicant on at least one occasion. Plea Counsel indicated Applicant did not keep his copy of the discovery. Plea Counsel also credibly testified that the issues of the evidence and facts surrounding Applicant's case were discussed frequently and repeatedly in order to determine the best course of representation, particularly due to the challenge in developing a viable trial strategy or defense. Applicant's own testimony corroborates that he and Plea Counsel engaged in discussion of the evidence, his case, and the reality of pursuing a jury trial when he received the initial plea offer.

This Court finds Plea Counsel was not deficient because he adequately reviewed discovery in Applicant's case both independently and with Applicant. As such, Applicant has failed to meet his burden of proving either prong of *Hill.* Applicant failed to present any testimony establishing that *but for* Counsel's alleged failure to review discovery, he would not

have pled guilty and instead would have insisted upon going to trial. *Roscoe*, 345 S.C. at 20, 546 S.E.2d at 419. Accordingly, this allegation is denied and dismissed with prejudice.

Failure to investigate

Applicant alleges Plea Counsel was ineffective for failing to investigate his case and uncover what Applicant believes was an illegal search. This Court finds this allegation is without merit and relief should be denied as to this issue.

"[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." *Walker v. State*, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. *Porter v. State*, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." *Wiggins v. Smith*, 539 U.S. 510, 521-22 (2003). An attorney need not pursue an investigation that would be fruitless, much less one that might be harmful to the defense. *Harrington*, 562 U.S. 86 (2011).

This Court finds Applicant has failed to meet his burden of proving Plea Counsel failed to investigate any issue that could have affected the outcome of the case. Plea Counsel credibly testified he spoke to investigators and officers about the details of the case numerous times, and that ultimately, the evidentiary support for the charges was an obstacle that could not be overcome. Plea Counsel testified numerous pieces of evidence tied Applicant to the hotel room containing the drugs, with no other individual to hold responsible as pointing the finger at

outside of the Applicant's girlfriend or young son, which was not a reasonable trial strategy. As stated above, Applicant also made post-*Miranda* admissions connecting him to the room.

This Court finds Plea Counsel was not deficient in determining further investigation of the search issue would be futile and would not result in the development of a viable defense for trial. Plea Counsel credibly testified that based on the facts of the investigation, none of the actions taken by law enforcement, including the initial warrantless entry of the hotel room, appeared to be sufficient to raise a meritorious Fourth Amendment challenge. As discussed during the plea hearing, Fairfield County had an active arrest warrant for Applicant at the time officers located Applicant at the Econo Lodge hotel. (Plea Tr. 14-15). Officers spoke to the clerk, learned Applicant and a woman had rented a room, and viewed video footage of the transaction. When officers found Applicant in the breezeway of the hotel, he was arrested and searched pursuant to the active warrant, and officers found a quantity of marijuana and a hotel room key on Applicant's person. (Plea Tr. 15). Officers then obtained consent from the owner of the motel to walk a K-9 around the common areas and the entire second floor of the facility. (Plea Tr. 15-16). The K-9 alerted officers to the presence of narcotics in room 202, which belonged to Applicant (Plea Tr. 16). Officers secured the room, and upon entry, saw marijuana in plain view (Plea Tr. 16). Officers then backed out of the room and obtained a search warrant, which they subsequently executed, locating the remaining narcotics in the kitchen sink of the room (Plea Tr. 17).

This Court finds Plea Counsel credibly testified that after Applicant was arrested pursuant to a valid warrant, marijuana was located on his person and a K-9 indicated the presence of narcotics in Applicant's room after being walked around common areas and the entire second floor of the motel. The Court additionally finds credible Plea Counsel's testimony that after entry

to the room, officers then observed contraband in plain sight and did not need a warrant to conduct a search, but instead combined this observation with the lawful arrest, marijuana resulting from the search of Applicant's person, and positive alert from the K-9, to support the search warrant ultimately obtained.

Based on these facts, this Court finds Counsel's strategic decision not to pursue a challenge to the search was reasonable[1]. Moreover, Applicant failed to present any evidence or testimony to establish he had a meritorious defense to the search that Counsel failed to present. Petitioner must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. *See Palacio v. State*, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (finding trial counsel not ineffective for failing to timely request discovery because the contents of the documents were not presented at the PCR hearing); *Moorehead*, 329 S.C. at 334, 496 S.E.2d at 417 (holding trial counsel's failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); *Davis v. State*, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing applicant would have had a defense with additional time to prepare for trial); *Skeen v. State*, 325 S.C. 210, 217, 481 S.E.2d 129, 133 (1997) (finding applicant was not entitled to relief where no evidence was presented at the PCR hearing to show how additional preparation would have had any possible effect on the result at trial).Further, Plea Counsel testified that despite the weight of the evidence, he was prepared to proceed to trial, but he advised Applicant that agreeing to the plea offer was in Applicant's best interest. Therefore,

[1] "[T]here is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011).

because Applicant has failed to prove deficiency or prejudice, relief is denied and this allegation is dismissed with prejudice.

Plea Counsel was ineffective for unfairly pressuring Applicant to accept plea

Applicant alleges he did not plead guilty freely and voluntarily because Plea Counsel allegedly "improperly pressured and coerced" him to plead guilty and give up his right to a trial. After review of the record and testimony, this Court finds this allegation meritless. Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. *Boykin*, 395 U.S. at 243. Additionally, in order to knowingly and voluntarily plead guilty, the defendant must have a full understanding of the consequences of the plea, including the nature and crucial elements of the offense(s); the maximum and any mandatory minimum penalty; and the nature of the constitutional rights being waived. *Pittman v. State*, 337 S.C. 597, 524 S.E.2d 623 (1999).

A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993); *See also Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997) (guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge). To ensure the defendant understands the consequences of his guilty plea, the trial judge "usually questions the defendant about the facts surrounding the crime and punishment that could be imposed." *Dover*, 304 S.C. at 434–35, 405 S.E.2d at 392. However, the trial judge "does not have to direct the defendant's attention to every consequence of his plea

provided the record reveals affirmative awareness of the consequences of a guilty plea." *Carter v. State*, 329 S.C. 355, 362, 495 S.E.2d 773, 776 (1998). The voluntariness of a guilty plea, however, "is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984).

An applicant who enters a plea with the advice of counsel may "only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the [applicant] would not have pled guilty, but would have insisted on going to trial." *Roscoe v. State*, 345 S.C. at 20, 546 S.E.2d at 419. Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and will be treated as such.

While Applicant now alleges he did not plead guilty freely and voluntarily, Applicant's testimony regarding his plea was inconsistent and conflicting. He first alleged he did not want to plead, but did so because the solicitor told him appointing new counsel and pursuing a trial would not help him. On cross-examination Applicant then testified he answered the plea colloquy in the manner he felt was most likely to secure the plea, and, at the time, it was what he wanted. The Court finds the plea colloquy is dispositive as to this conflicting testimony. The plea court expressly asked Applicant whether he was threatened or coerced to plead guilty, to which he responded "No, sir" (Plea Tr. 11-12).

Additionally, the Court finds Applicant failed to present any valid reason why he should be able to depart from the truth of his statements made during his guilty plea. *See Dalton*, 376

S.C. at 137–38, 654 S.E.2d at 874. The plea court asked Applicant several times if his plea was entered voluntarily and whether he had been coerced in any way (Plea Tr. 11-14). The plea court also inquired with Applicant as to whether he was satisfied with the work of his attorney, and whether they had discussed with the elements of the crimes in which he was indicted and any defenses he may have. Applicant indicated to the plea court that he was entering his plea freely and voluntarily, and he was completely and totally satisfied with Plea Counsel's performance (Plea Tr. 13). Applicant further told the plea court that he had no complaints to make about Plea Counsel, the solicitor, or any of the officers in his case (Plea Tr. 13). At the PCR hearing, Applicant did not allege any facts that would have prevented him from informing the plea court his attorney coerced him into pleading guilty or that he needed more time to explore the possibility of going to trial.

The Court finds Applicant knew the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty pursuant to the requirements of *Boykin* and *Pittman.* The plea transcript reflects Applicant entered his plea knowingly and voluntarily, engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the court's questions. Therefore, the Court finds the combined record from the plea hearing and the evidentiary hearing clearly establishes Applicant plead guilty freely and voluntarily. Accordingly, this allegation must be denied and dismissed with prejudice.

Plea Counsel was ineffective for promising a lower sentence, thus rendering Applicant's plea unknowing and involuntary

Applicant alleges Plea Counsel was ineffective for making promises regarding the case outcome and failing to uphold those promises, resulting in Applicant entering his guilty plea involuntarily. This Court finds this allegation meritless.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. *Bovkin v. Alabama*, 395 U.S. 238 (1969). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." *Roddy v. State*, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. *Dalton*, 376 S.C. at 137-38, 654 S.E.2d at 874 (citing *Blackledge v. Allison*, 431 U.S. 63 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. *Crawford v. United States*, 519 F.2d 347 (4th Cir. 1975).

"[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced." *Reed v. Becka*, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). Accordingly, because a criminal defendant waives several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. *Boykin*, 395 U.S. at 241; *Pittman*, 337 S.C. at 599, 524 S.E.2d at 624. To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. *Brady v. United States*, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant's choice. *Id.* at 755. The standard for determining the validity of a guilty plea is "whether the plea represents a voluntary and

intelligent choice among the alternative courses of action open to the defendant." *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). Where a defendant is represented by counsel during the plea process and enters his plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel's advice "was within the range of competence demanded of attorneys in criminal cases." *Hill*, 474 U.S. at 56.

This Court finds credible Plea Counsel's testimony that he never made promises regarding possible outcomes or negotiations of the case. Plea Counsel testified he asked Applicant if Applicant would agree to a three-year sentence specifically because Plea Counsel knew that to be the minimum offer the Solicitor's Office would make for a first trafficking offense in the county (PCR Tr. 32). Plea Counsel testified he did not promise he would be able to obtain that deal for Applicant or be able to reduce the charges to that degree. Further, Applicant acknowledged Plea Counsel's inquiry during their first meeting did not constitute a promise to achieve that outcome (PCR Tr. 30). A review of the transcripts from the guilty plea hearing and PCR hearing demonstrates Applicant knowingly and voluntarily entered a guilty plea, and understood the possible sentencing range for his charges. During the plea colloquy Applicant was asked whether he understood that the potential penalty for pleading to the trafficking offense was no less than five but no more than thirty years (Plea Tr. 8-9). Applicant responded, "Yes sir." (Plea Tr. 9). Shortly after, the solicitor informed the court that Applicant was pleading guilty to a negotiated fifteen years to run concurrent with Applicant's pending charges in Fairfield County (Plea Tr. 10-11). The court asked Applicant if he understood the plea agreement and negotiated sentence of fifteen years which Applicant indicated "Yes, sir." (Plea Tr. 14). Applicant was again asked if he understood that if the court accepted the plea, Applicant would be sentenced to fifteen years. (Plea Tr. 14). Applicant responded that he understood (Plea Tr. 14).

As such, any alleged deficiency on behalf of Plea Counsel in discussing the possible sentence was cured by the plea colloquy where the court explained and asked Applicant whether he understood he was getting a fifteen-year sentence three separate times. This Court finds Applicant has failed to meet his burden of proving Plea Counsel made any promises regarding the case outcome that lead Applicant to enter his plea unintelligently and involuntarily. Therefore, relief is denied and this allegation is dismissed with prejudice.

Failure to negotiate a better plea

Applicant alleges Plea Counsel was ineffective for failing to negotiate a better plea on his behalf. This Court finds this allegation is without merit and accordingly denies relief.

"Prosecutors have broad powers in the plea bargain process[.]" *Reed*, 333 S.C. at 684, 511 S.E.2d at 400. "Under the separation of powers doctrine, which is the basis for our form of government, the Executive Branch is vested with the power to decide when and how to prosecute a case." *Id.* (quoting *State v. Thrift*, 312 S.C. 282, 291-92, 400 S.E.2d 341, 346-47 (1994)). Prosecutors may pursue a case to trial, plea bargain it down to a lesser offense, or they can simply decide not to prosecute the offense in its entirety. *Id.* at 684, 511 S.E.2d at 400-01. "[A] defendant has no constitutional right to plea bargain." *Id.* (citing *State v. Easler*, 322 S.C. 333, 471 S.E.2d 745 (Ct. App. 1996), *aff'd as modified*, 327 S.C. 121, 489 S.E.2d 617 (1997)). Further, a trial judge is not required to accept a plea. *Id.* (citing *Santobello v. New York*, 404 U.S. 257 (1971)).

Plea Counsel testified he conveyed all plea offers to Applicant from the State, including the final offer of fifteen years (PCR Tr. 40). Additionally, Applicant testified Plea Counsel tried to negotiate a five- or six-year plea agreement, but he told Applicant the solicitor refused to offer anything other than fifteen years. This Court finds credible Plea Counsel's testimony that the

solicitor never extended a plea offer to less than fifteen years, and Applicant's desired five-to-ten-year range was never an option due to the State's extensive evidence against him (PCR Tr. 43). Counsel could not force the State to make a more generous plea offer, and Applicant presented no evidence to show that Counsel could have done anything further to prompt the prosecution to extend a more favorable plea offer. To the contrary, a fifteen-year negotiated plea to run concurrent with Applicant's Fairfield charges was the best offer available when the Kershaw charges as indicted held a mandatory minimum of twenty-five years. This Court finds Counsel capably negotiated to obtain a favorable plea offer to a lower sentence and to run the Kershaw and Fairfield charges concurrently; he could do no more. Accordingly, this Court finds Applicant cannot meet his burden of proof as to deficiency or prejudice on this allegation, and his request for relief is denied and dismissed with prejudice.

Failure to explain the plea negotiations

Applicant alleges that prior to the plea hearing, he was not aware of the terms of Plea Counsel's negotiated agreement with the solicitor resulting in the fifteen-year sentence. However, this Court finds Applicant has failed to meet his burden of proving his allegation Plea Counsel was ineffective for inaccurately explaining the plea negotiation prior to entering the plea. Rather, this Court finds Plea Counsel credibly testified he conveyed the plea offer to Applicant from the State, including the negotiated agreement of fifteen years to run concurrent with Applicant's charges in Fairfield County, which Applicant ultimately accepted. This Court finds credible Plea Counsel's testimony that anything lower than fifteen years was never in contention due to the strength of the State's evidence. Accordingly, this Court finds relief should be denied and this allegation shall be dismissed.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. *Boykin*, 395 at 243. A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." *Ray*, 310 S.C. at 437, 427 S.E.2d at 174; *see also Wolfe*, 326 S.C. at 164, 485 S.E.2d at 370 (guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge). To ensure the defendant understands the consequences of his guilty plea, the trial judge "usually questions the defendant about the facts surrounding the crime and punishment that could be imposed." *Dover*, 304 S.C. at 434–35, 405 S.E.2d at 392. However, the trial judge "does not have to direct the defendant's attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea." *Carter*, 329 S.C. at 362, 495 S.E.2d at 776.

This Court finds Plea Counsel's advice to Applicant regarding the plea negotiations and risks and benefits of going to trial versus entering a guilty plea was within the range of reasonableness under professional norms, and none of Plea Counsel's actions in this regard were deficient. Moreover, during the plea colloquy the judge asked Applicant if he understood the terms of the plea deal including the negotiated concurrent sentence with the Fairfield charges, and the nature of transport to that county after his plea, to which Applicant responded "Yes, sir." (Plea Tr. 11). Applicant additionally answered in the affirmative when the judge asked if he had enough time to make up his mind as to whether to accept the plea offer, and if Applicant had talked with his lawyer as often and for as long as necessary for proper representation (Plea Tr.

12). Applicant further responded "Yes, sir" when asked whether he understood his talks with his attorney (Plea. Tr. 12). Applicant also answered in the affirmative when the judge asked if he understood the negotiated plea agreement would result in a fifteen-year sentence, and again when asked a final time if he still wished to plead guilty (Plea Tr. 14).

The Court finds Applicant knew the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty pursuant to the requirements of *Boykin* and *Pittman.* Any alleged deficiency regarding Counsel not fully explaining the nature of the negotiated sentence was cured by the plea colloquy. *See Wolfe*, 326 S.C. at 164, 485 S.E.2d at 370 (stating any possible misconceptions due to counsel's alleged deficiencies can be cured by the plea court's colloquy). The plea transcript reflects Applicant entered his plea knowingly and voluntarily, engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the court's questions. Therefore, the Court finds the combined record from the plea hearing and the evidentiary hearing clearly establishes that Plea Counsel effectively communicated the details of the plea agreement, and Applicant pled guilty freely and voluntarily. Accordingly, this allegation must be denied and dismissed with prejudice.

Failure to alert Court of time served to be credited to sentence

Applicant alleges Plea Counsel was ineffective for failing to alert the plea court of time Applicant had served for the charges in Kershaw County, and time spent on house arrest for charges in Fairfield County to be credited toward his sentence.

This Court finds Applicant has failed to meet his burden in proving counsel was ineffective and any resulting prejudice. The South Carolina Supreme Court has defined "time served," as it is used in section 24-13-40, as "the time during which a defendant is in pre-trial confinement and charged with the offense for which he is sentenced (so long as he is not serving

time for a prior conviction)." *State v. Higgins*, 357 S.C. 382, 384, 593 S.E.2d 180, 181 (Ct. App. 2004) (citing *Blakeney v. State*, 339 S.C. 86, 88, 529 S.E.2d 9, 10-11 (2000)). Further, the Court found it would be illogical to credit a defendant for time served while released on bond, as the statute intended to award sentencing credit only for time spent in a penal institution. *Id.* In June of 2017, the South Carolina Legislature amended section 24-13-40 to give judges discretion to award credit for time served when a defendant is on monitored house arrest, stating: "In every case in computing the time served by a prisoner, full credit against the sentence *must* be given for time served prior to trial and sentencing, and *may* be given for any time spent under monitored house arrest." (emphasis added).

While Applicant alleges Plea Counsel did not alert the court to time served while in jail to be credited toward his sentence, this Court finds a review of the record, as well as transcript from Applicant's plea hearing in Fairfield County conclusively refutes this claim. During Applicant's second plea hearing, Plea Counsel addressed the court regarding time served and stated Applicant had served approximately thirty-two days, and Applicant agreed (Fairfield Plea Tr. 4). Applicant's testimony at the evidentiary hearing was that he spent twenty days in jail in Fairfield County, and a week in jail in Kershaw County, which equals approximately the same amount of time served that Plea Counsel reported to the court. The court then confirmed thirty-two days were being recorded as time served to be credited towards Applicant's sentence (Fairfield Plea Tr. 5, 14). Moreover, Applicant's sentencing sheets for both Kershaw and Fairfield have the relevant box giving credit for time served checked. Accordingly, Applicant has failed to establish that Plea Counsel was deficient in any way, relief is denied, and this allegation is dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. The Court finds Plea Counsel's representation was neither deficient nor prejudicial. The Court finds Applicant knew the meaning and consequences of pleading guilty to the charge against him and was fully aware of the meaning of the negotiated sentence. The Court further finds Applicant voluntarily pleaded guilty. His voluntariness is evinced by the plea transcript and testimony given at the PCR hearing.

The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

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

AND IT IS SO ORDERED this 7 day of Oct., 2021.

DIANE S. GOODSTEIN
Presiding Judge
Fifth Judicial Circuit