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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ON PETITION FOR A WRIT OF CERTIORARI TO UNION COUNTY
Court of Common Pleas

The Honorable Edgar W. Dickson, Post-Conviction Relief Judge
The Honorable George C. James, Jr., Plea Judge

Appellate Case No. 2021-000708

WILLIAM H. BLAKE, ...Petitioner,

v.

STATE OF SOUTH CAROLINA, ...Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI
PURSUANT TO AUSTIN V. STATE

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ISSUE PRESENTED ON PETITION FOR WRIT OF CERTIORARI

Petitioner's Statement of Issue Presented

Did the PCR judge err in finding that the *Alford* pleas were entered knowingly and voluntarily when plea counsel failed to obtain and review with Petitioner all of the discovery in the manslaughter case?

Respondent's Counterstatement of Issue Presented

The post-conviction relief court correctly found Petitioner knowingly, intelligently, and voluntarily plead pursuant to *Alford* where Petitioner had an opportunity to review all available discovery prior to entering his *Alford* plea, and where there was a substantial amount of evidence that indicated Petitioner's guilt at the time of Petitioner's plea.

STATEMENT OF THE CASE

In October of 2011, Petitioner was indicted by the Aiken County Grand Jury for armed robbery (2011-GS-02-01378). Petitioner was represented by Assistant Public Defender Barry L. Thompson, II, of the Second Circuit Public Defender's Office. Deputy Solicitor David W. Miller of the Second Circuit Solicitor's Office prosecuted the case. On October 24, 2011, Petitioner appeared before the Honorable George C. James, Jr., then-circuit court judge, where he waived presentment for his charge of voluntary manslaughter, and plead under *North Carolina v. Alford*[1] to armed robbery and voluntary manslaughter. Judge James sentenced Petitioner to confinement for a period of twenty-three years in accordance with plea negotiations between Petitioner and the State.

Counsel filed a notice of appeal on Petitioner's behalf., However, the South Carolina Court of Appeals dismissed Petitioner's appeal pursuant to Rule 203(d)(1)(B)(iv), SCACR, for failure to provide an explanation of a "good faith basis to believe that any issues are properly before the Court of Appeals," and that Petitioner "did not object to the sentence or file a motion to reconsider the sentence." The Remittitur was issued on March 2, 2012.

On February 13, 2012, Petitioner filed an initial application for post-conviction relief alleging ineffective assistance of counsel, involuntary guilty plea, and prosecutorial misconduct. An evidentiary hearing was convened before the Honorable Edgar W. Dickson, circuit court judge on September 8, 2015, at the Aiken County Courthouse. Applicant was present and represented by Aimee Zmroczek, Esquire. On February 22, 2016, Judge Dickson issued an order dismissing Petitioner's post-conviction relief application finding Petitioner had failed to establish any

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

constitutional violation or deprivations that would allow relief to be granted. Petitioner did not appeal the dismissal of his initial application.

On June 3, 2019, Petitioner filed a second application for post-conviction relief alleging his post-conviction relief counsel was deficient for failing to file a notice of appeal and for failing to seek appellate review of the denial of his initial post-conviction relief application. On June 4, 2021, an evidentiary hearing convened before the Honorable Jennifer B. McCoy, circuit court judge, in her virtual courtroom. Petitioner was present and represented by Arthur K. Aiken. Following testimony of Petitioner's prior PCR counsel Aimee J. Zmroczek, Judge McCoy issued an order granting Petitioner belated appellate review pursuant to *Austin v. State.* Judge McCoy's order was filed on June 10, 2021. This appeal follows.[2]

[2] Respondent is not challenging Judge McCoy's grant of belated appellate review pursuant to *Austin v. State*, and does not intend to submit a substantive response to Petitioner's additional Petition for Writ of Certiorari unless requested to do so by the Court. If a formal brief is required on that matter, Respondent requests the opportunity to brief the issues as requested by the Court.

STATEMENT OF THE FACTS

On May 23, 2011, officers with the Aiken County Sheriff's Department responded to a shots-fired call on Cherokee Drive at the intersection of Jefferson Davis Highway in the Clearwater area of Aiken County. App. p. 17. At that time, an officer came upon Travis Bibbs around 10:45 p.m.. App. p. 17. The officer spoke to Mr. Bibbs because he was the only person he saw in the area, Mr. Biggs indicated to him that some individuals had come by him while he was walking on the road and had yelled some profanities in his direction and then fired a gun. App. p. 17. Mr. Bibbs told officers at that time that he had run at the sound of the gunshots and he could not identify anybody in the car or did not know anything about why somebody would be shooting at him. App. p. 17. The officer asked him why he was hanging around the scene and Mr. Bibbs stated that he dropped his cell phone as he attempted to flee the scene and remained to look for his phone. App. p. 17. As more officers arrived, Mr. Bibbs located his cell phone and left the scene. App. p. 17-18. Officers continued to search the scene and located a .303 caliber shell casing in the roadway believed to be fired from the gun that shot at Mr. Bibbs. App. p. 18. Officers discovered the body of Markes Griggs on the other side of a fence in the area where Mr. Bibbs was looking for his phone. App. p. 18. Following an autopsy, it was determined that Mr. Griggs was shot through the lower area of his thigh, the bullet exited the top of the front of Mr. Griggs thigh, and entered his chest cavity before stopping inside his body. App. p. 18. The bullet was recovered and was determined to be a .303 caliber bullet. App. p. 18. Officers made contact with Mr. Bibbs and questioned him about this event. App. p. 19. Mr. Bibbs admitted that he and the victim had been walking along the road whenever this car came up, and that some words were exchanged with the people in the car and that shots were fired. App. p. 19. Mr. Bibbs indicated he ran in one direction, and Mr. Griggs ran in another direction, Mr. Bibbs indicated he did not know that Mr. Griggs had

been hurt. App. p. 19. The investigation continued for some time before police reviewed phone records and determined that Mr. Bibbs' phone called Petitioner's phone twenty minutes before the incident took place. App. p. 19. At the time of Mr. Griggs death, 12.98 grams of crack cocaine were found inside Mr. Griggs sock. App. p. 20. Petitioner was subsequently arrested for Mr. Griggs' death.

On July 11, 2011, at approximately 10: 00 p.m., officers from the Aiken County Sheriff's Officer responded to 213 Crestview Drive in North Augusta in reference to a robbery reported by the victim Joseph Holland. App. p. 20. Mr. Holland told the officers as soon as they arrived that he knew who robbed him and they had come to the incident location because they were discussing going somewhere to play pool. App. p. 20. Mr. Holland stated that Amanda Toole was driving a vehicle with Christopher Isom, Petitioner, and a fourth unnamed individual. App. p. 20. Mr. Holland stated that Christopher Isom exited the car to urinate behind the car. App. p. 20. Mr. Holland stated Petitioner exited the car holding a silver-in-color pistol and held it to Mr. Holland's head before forcing the barrel into his mouth and pinning him against the car. App. p. 21. Officers noted a small abrasion on the victim's bottom lip that was consistent with having something jammed into his mouth. App. p. 21. Mr. Holland stated that Petitioner yelled over to Christopher Isom to take Mr. Holland's pants and Christopher Isom removed his pants which contained cash, keys, and other items. App. p. 21. Christopher Isom and Petitioner jumped back into the car and left the scene. App. p. 21. Police located Amanda Toole, Christopher Isom, and Petitioner shortly after this incident for armed robbery. App. p. 21. Christopher Isom began cooperating with police, confessed to his involvement in the armed robbery, and informed police of Amanda Toole and Petitioner's involvement. App. p. 22. While cooperating with police regarding the armed robbery, Christopher Isom informed police that he was present during the May 23, 2011 shooting and killing

of Markes Griggs. App. p. 22. Christopher Isom stated he and Petitioner were at Petitioner's girlfriend's home and received a call to "get some dope." App. p. 23. Christopher Isom claimed he and Petitioner got into Petitioner's girlfriend's car with Petitioner entering the passenger side of the car, and proceeded to drive down Cherokee until they saw Mr. Bibbs and Mr. Griggs. App. p. 23. Christopher Isom indicated they stopped the car and the door partially opened while Petitioner exchanged words with Mr. Bibbs and Mr. Griggs. App. p. 23. Christopher Isom stated Petitioner produced a gun and fired two shots at Mr. Bibbs and Mr. Griggs. App. p. 23. Police obtained a search warrant on Petitioner's girlfriend's car and performed a gunshot residue test on the passenger side of the vehicle which came back positive for ground lead particles. App. p. 23. Additionally, while investigating the new information from the voluntary manslaughter, police received a call from Petitioner's girlfriend's parents who claimed to have found a silver-in-color handgun inside their house, which they did not own. App. p. 24. Petitioner's girlfriend provided police with a statement indicating that after Petitioner was arrested for armed robbery, she found the handgun underneath the mattress in their home. App. p. 25. She indicated she did not want to have it around their home because there were children in her home, so she took the handgun to her parents' house and hid the gun. App. p. 25. Petitioner's girlfriend informed police that Petitioner owned a rifle, but following the shooting of Mr. Griggs, Petitioner took the rifle to his parents' house and buried the rifle in their garden before ultimately moving the rifle to a house in Augusta, Georgia where it was dismantled and thrown into the Savannah River. App. p. 25. Applicant was subsequently arrested and indicted for armed robbery.

STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). On appellate review, courts give great deference to a post-conviction relief court's findings of fact and will uphold them if there is any evidence in the record to support them. *Id.* at 179, 810 S.E.2d at 839-40 (citing *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); *Jordan v. State*, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013); *Caprood v. State*, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000)). However, pure questions of law will be reviewed *de novo* without deference to the lower court. *Id.* Appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. *Goins v. State*, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

The post-conviction relief court correctly found Petitioner knowingly, intelligently, and voluntarily plead pursuant to *Alford* where Petitioner had an opportunity to review all available discovery prior to entering his *Alford* plea, and where there was a substantial amount of evidence that indicated Petitioner's guilt at the time of Petitioner's plea.

Petition contends the PCR court erred in finding Petitioner knowingly and voluntarily entered into an *Alford* plea when plea counsel failed to obtain and review all discovery regarding Petitioner's manslaughter charge. However, the post-conviction relief court correctly found Petitioner had an opportunity to review all available discovery at the time of his plea, including substantial evidence that indicated Petitioner's guilt, and based on this review Petitioner chose to forgo further investigation to accept a favorable plea deal. The post-conviction relief court properly denied relief.

As an initial matter, Petitioner pled guilty under *North Carolina v. Alford* and did not fully admit to his guilt before the plea court. However, *Alford* pleas carry the same penalties and punishments as a typical guilty plea. "The primary thrust of the *Alford* decision is that a defendant may voluntarily and knowingly consent to the imposition of a prison sentence even if he is unwilling or unable to admit he participated in the acts constituting the crime." *State v. Herndon*, 403 S.C. 84, 91, 742 S.E.2d 375, 379 (2013) (citing *United States v. Morrow*, 914 F.2d 608, 611 (4th Cir.1990)). "The *Alford* plea is, in essence, a guilty plea and carries with it the same penalties and punishments." "…[B]ecause a criminal defendant waives several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. *Boykin v. Alabama*, 395 U.S. 238 (1969); Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999). To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. *Brady*

v. United States, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant's choice. *Id.* at 755; *see also United States v. Smith*, 440 F.2d 521, 528–529 (7th Cir.) (Stevens, J., dissenting) (explaining that voluntariness relates to the trustworthiness of the admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. *Boykin*, 395 U.S. at 243. Additionally, the defendant "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). The 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 plea judge "usually questions the defendant about the facts surrounding the crime and punishment that could be imposed." *Dover v. State*, 304 S.C. 433, 434–35, 405 S.E.2d 391, 392 (1991). However, the plea 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 test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). It is "well established that a guilty plea is not rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment." *United States v. Cox*, 464 F.2d 937, 942 (6th Cir. 1972) (citing Brady, 397 U.S. 742). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, *Brady*, 397 U.S. at 750-753, or by increasing the risks of punishment on those who do not. *North Carolina v. Alford*, 400 U.S. 25, 37 (1970).

Nonetheless, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual . . . , a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (*citing Blackledge v. Allison*, 431 U.S. 63, 74 (1977); *see also Jamison v. State*, 410 S.C. 456, 469–71, 765 S.E.2d 123, 129–30 (2014) (observing that "guilty plea[s] must be treated as final in the vast majority of cases" and instructing that caution must be exercised so as not to "undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea"). Indeed, 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." *Dalton*, 376 S.C. at 137–38, 654 S.E.2d at 874 (internal citations and quotation marks omitted); *cf. Blackledge*, 431 U.S. at 73–74 (pointing out that representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a "formidable barrier in any subsequent collateral proceedings").

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

In evaluating an allegation on post-conviction relief that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. *Wolfe*, 326 S.C. at 165, 485 S.E.2d at 370; *cf. Rayford v. State*, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that, where the transcript of the guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant's claim his lawyer misadvised him).

Surmounting Strickland's high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." *Lee*, 582 U.S. ___, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); *cf. Hill*, 474 U.S. at 58 ("[R]equiring a 'prejudice' showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.'"). Reviewing "[c]ourts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney's deficiencies." *Lee*, 582 U.S. ___, 137 S. Ct. at 1967. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences." *Id.* Thus, in

determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the guilty plea and the evidence presented at the PCR hearing. *Harres*, 282 S.C. at 134, 318 S.E.2d at 361.

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 plead 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).

An applicant who alleges his or her defense attorney was ineffective in failing to provide a copy of the discovery materials must show how the outcome of trial would have been different had the attorney provided such a copy; the applicant must show what evidence could have been discovered or what other defense could have been 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 David 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)).

Based on the record and the testimony from Petitioner's counsel at his evidentiary hearing, Petitioner cannot show how his plea was not knowingly, intelligently, and voluntarily entered. During the week that Petitioner plead, he was on the trial list for his armed robbery charge. App. p. 111, l. 16- p. 112, l. 14. At Petitioner's evidentiary hearing, Petitioner's Counsel testified that he had an opportunity to review discovery regarding his armed robbery charge with Petitioner on

two different occasions before Petitioner entered his plea. App. p. 110, l. 16-21. Further, Counsel testified he had an opportunity to review discovery with Petitioner regarding the murder charge up until the day of his guilty plea. Counsel testified he provided Petitioner with a copy of the discovery that was obtained by Counsel before Petitioner would have entered his plea. App. p. 111, l. 5-11. Counsel went on to explain the discovery process and the timing when he received discovery in regards to Petitioner's plea. Counsel testified:

> The thing of it is, I think this whole case and some of, some of his frustration is because of a lack of context… the case that we were getting ready to try was the armed robbery case. And we had the discovery in the armed robbery case in plenty of time. We talked about the armed robbery case, I went and spoke with his alibi witnesses. I sat down for half a day with his girlfriend in my office discussing all kinds of time line data with her. And he also had, like, there was a picture of his child that we were trying to place in time to try to see if we could use that as some exculpatory alibi-type of material. But ultimately we were not going to have any type of legitimate defense to the armed robbery case. The facts in the armed robbery were the victim is Joseph Holland. There's – William was in the car. Christopher Isom was in the car and a lady named Amanda Toole was in the car and everybody in the car was going to be, except for William was going to be a witness against William to say that William arm robbed Mr. Holland. So we were about to be called for an armed robbery case for which we did not have a viable defense.
>
> At the same time Mr. Blake had also been charged with murder. And before the armed robbery case went to trial I got a plea offer on the armed robbery case. and the plea offer was if instead of going to trial, a trial which we were probably going to lose, if instead of going to trial if he were to plead guilty to the armed robbery that the State would allow him to, instead of having to be tried for murder they would allow him to plead guilty to voluntary manslaughter and that they would recommend concurrent time.
>
> So you essentially had an offer for the murder charge that would completely have taken any possible penalty that you would have paid for the murder charge off the table and everything that – and voluntary manslaughter is one to 30. Armed robbery is 10 to 30. Concurrent what you're looking at is you would not spend any second longer of your life on a concurrent voluntary manslaughter

charge than you would with just pleading to the armed robbery or being found guilty of the armed robbery charge.

Mr. Blake did not want to plead guilty in the regular style. He wanted to plead – he wanted to take the offer but he didn't want to say he was guilty. I had to go back in the back and talk to the judge about whether or not he would accept an *Alford* plea. And as you probably know and as I discussed with Mr. Blake for a long time back in lockup, an *Alford* plea you have to be offered – you have to believe that there's evidence to sustain your guilty if you were to go to trial and you have to be given a substantial benefit for making the plea.

And the plea offer that we got was a very, very substantial benefit. We were given a lot of the discovery in the murder case close to the time that we actually went to trial. And that part is true. That part of what he said is true, that we were getting discovery in the murder case very close to the time that he was going to have to either go to trial or plead guilty to the armed robbery.

But to take that out of context would be a mistake in that essentially all of the, the murder slash voluntary manslaughter is subsumed underneath the armed robbery case because if you can't beat the armed robbery case you are about to go to prison on armed robbery and you're not even going to get any credit for any time served on the murder charge.

App. p. 111, l. 12- p. 114, l. 20. (emphasis added)

Counsel testified he had not completed his investigation into Petitioner's murder charge at the time that Petitioner plead, and that more information could have been provided by the State as time went on. App. p. 114, l. 22- p. 115, l. 5. Counsel testified he told Petitioner that he had not completed his investigation into the murder charge, but based on the information that was available, there was a "substantial amount of evidence that indicated his guilt." App. p. 115, l. 6-12. Counsel testified "there was a substantial amount of evidence though even with discovery being incomplete that would have shown he was very likely to have been convicted if we were to go to trial on that [the murder charge.]" App. p. 115, l. 23- p. 116, l. 23. Counsel testified discovery

came in at a couple different times, but that the Solicitor was trying to send Counsel as much discovery as possible as soon as possible due to the plea offer that Petitioner received. App. p. 124, l. 5-14. Counsel testified that the "the solicitor also knows that in order for somebody to be able to stand in front of the Court and to legitimately make an *Alford* plea they have to be able to see the discovery to reasonably think that they would have been convicted if they went to trial." App. p. 124, l. 15-20.

At Petitioner's plea, Counsel informed the court that Petitioner believed that he was innocent of the charges. App. p. 7, l. 11-15. However Petitioner's Counsel further informed the court that "we've looked over the evidence and I'm convinced that he's convinced that if we were to go forward especially on the armed robbery charge that's subject to being called for trial this week, that if we were to go forward, that there's a substantial amount of evidence against him and that there's a high likelihood that he would be convicted. And I believe he's of the same opinion." To which Petitioner nodded his head in agreement. App. p. 7, l. 16-25. Later during Petitioner's plea, Petitioner was asked by the court whether he acknowledged that the State had enough evidence by which he could be found guilty by the juries, to which Petitioner stated "Yes, sir." App. p. 16, l. 14-17. Petitioner was informed that he would have two different jury trials for each of his charges, however Petitioner claimed that he did not want to have his case tried before a jury, but that he wanted to waive this right and plead pursuant to *Alford*. App. p. 16, l. 18-22; p. 14, l. 17- p. 15, l. 17.

Petitioner was informed of his charges, and that if he plead there would be a cap of twenty five years for his sentence, and that both sentences were to run concurrent. App. p. 3, l. 7- p. 5, l. 19. Petitioner informed the court that he was twenty-four years old, and had completed high school. App. p. 8, l. 8-12. Petitioner informed the court that he was not under the influence of any drugs

at the time of his plea, and he was thinking clearly and could understand what was happening at time of his plea. App. p. 8, l. 20- p. 10, l. 6. Petitioner stated his attorney did everything he wanted, that he was not being forced to enter his plea, and he had enough time to make up his mind regarding accepting a plea. App. p. 10, l. 7-24. Petitioner stated he had not been coerced, promised anything, or forced to plead. App. p. 11, l. 9-15. Petitioner was informed of the maximum sentences for each crime he was charged with, and that both offenses were most-serious offenses that could lead to a future sentence of life in prison without the possibility of parole. App. p. 11, l. 16, p. 13, l. 6. Petitioner was informed by the court at his plea that he had the right to a jury trial, he had the right to present his own defense, and to challenge the State's evidence, and that the State would have to prove his guilt beyond a reasonable doubt. App. p. 14, l. 17- p. 15, l. 17. Petitioner acknowledged the State had enough evidence to convict him of both charges at the time he entered his plea. App. p. 16, l. 14-17. Following Solicitor Miller's recitation of the facts, Petitioner stated understood the evidence that the State had against him, and he still wanted to plead instead of pursuing a jury trial. App. p. 17, l. 4- p. 27, l. 16.

Despite Petitioner's assertion that his plea was not knowingly and voluntarily entered, Petitioner was given a favorable plea offer which would limit his possible sentencing exposure for armed robbery and murder to twenty five years. Petitioner met with Counsel on more than one occasion to discuss discovery for both charges, and was provided a copy of all of the evidence the State had at the time of his plea. Counsel testified he had all the discovery for Petitioner's armed robbery charge, and that the Solicitor was providing him with as much discovery on the murder charge as he could leading up to Petitioner's plea. Petitioner was informed by Counsel that the State has a substantial amount of evidence against him for both charges and there was a very high likelihood that he would be convicted if he went to trial on either charge. Petitioner was aware that

more evidence could have been obtained for the murder charge if he did not plead, but that he had a high likelihood of being convicted just on the evidence that was available at the time of his plea. As Petitioner plead pursuant to *Alford* Petitioner did not have to admit his guilt to either charge, despite the large amount of evidence linking him to both crimes. Petitioner was aware he would very likely be convicted of armed robbery, and by pleading to armed robbery and involuntary manslaughter, he would be able to dispose of the murder charge without serving any additional time in prison. Petitioner informed the court at his plea that he believed the State had enough evidence to convict him, and stated he was pleading freely and voluntarily to get the benefit of the plea bargain. Petitioner failed to provide any additional evidence that could have been obtained if he did not plead on October 24, 2011, nor has Petitioner shown that he would have proceeded to trial but for the advice of his counsel. Petitioner entered his plea to avoid a possible life sentence, and obtained a substantial benefit by entering into this plea. Though Petitioner now alleges he did not knowingly and voluntarily plead to armed robbery and involuntary manslaughter, Petitioner entered his plea with a complete understanding of the evidence that had been obtained by the State at the time of his plea, with a belief that he would likely be convicted if he pursued a jury trial. Therefore, the PCR court correctly found that Petitioner knowingly, intelligently, and voluntarily entered into an *Alford* plea for these two charges after reviewing the State's evidence, and as a result of this plea, Petitioner received a substantial benefit.

CONCLUSION

For the foregoing reasons, this Court should deny this certiorari and affirm the decision of the PCR court. Should this Court grant certiorari, Respondent seeks permission to more fully brief the issues herein.

Respectfully submitted,

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