THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY

Court of Common Pleas

HONORABLE G.D. MORGAN

2020-CP-42-01439

Andrew Murphy, SCDC# 354829

APPELLANT,

vs.

State of South Carolina,

RESPONDENT.

NOTICE OF APPEAL

Andrew Murphy appeals the denial of his Post-Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable G.D. Morgan, Circuit Judge on April 19, 202 an Order issued on June 29, 2022, and filed on July 6, 2022. The Appellant received notice of the judgment on July 6, 2022.

Rodney Richey, Esquire
Attorney for the Appellant
33 Market Point Drive
Post Office Box 10916
Greenville, SC 29603
(864) 467-0503
(864) 467-0646 fax

Other Counsel of Record:
Chelsey Marto, Esquire
Office of Attorney General State of SC
Post Office Box 11549
Columbia, SC 29211-1549

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
Andrew Murphy, #354829, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2020-CP-42-01439 **ORDER OF DISMISSAL**

This matter comes before this Court by way of Applicant's post-conviction relief application filed April 28, 2020. Respondent made its return on July 1, 2020, requesting an evidentiary hearing be convened. An evidentiary hearing was held on April 19, 2022, at the Spartanburg County Courthouse. Rodney Richey, Esquire, represented Applicant. Assistant Attorney General Chelsey Marto represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Counsel Andrew Johnston also testified. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. During its May 2018 term, the Spartanburg County Grand Jury indicted Applicant for Murder (Count one) and Possession of Weapon during a Violent Crime (Count two) (2018-GS-42-2363). Applicant was represented by Andrew Johnston, Esquire. Assistant Solicitor Jennifer Jordan of the Seventh Circuit Solicitor's Office prosecuted the case. On June 3, 2019, Applicant appeared before the Honorable J. Derham Cole, circuit court judge, and pled guilty as indicted to all offenses without

any negotiations or recommendations. Judge Cole sentenced Applicant to fifty years' imprisonment for murder and five years' for possession of a weapon during a violent crime, sentences running concurrently. Applicant did not pursue a direct appeal.

Summary of Relevant Facts

Applicant shot the victim, Daeshawn Brown, in the eyelid, on February 18, 2018. (Plea Tr. 15). The victim was Applicant's ex-girlfriend's current boyfriend. (Plea Tr. 15). Several hours before the murder and while speaking with the victim's girlfriend, Applicant indicated an intent to harm the victim, which partially involved stating that he did not want to kill the victim in her mother's yard. (Plea Tr. 15-16).

The victim went to his girlfriend's and her mother's house that morning and hung out in her mother's yard until Applicant went to the store. (Plea Tr. 16). The girlfriend entered the house and then heard a gunshot. (Plea Tr. 16). She looked outside and saw the victim on the ground motionless and Applicant running away. (Plea Tr. 16). The victim was killed across the street from her mother's yard. (Plea Tr. 16).

The girlfriend identified Applicant in the 911 call her mother made, as well as in a written statement and when talking to responding officers. (Plea Tr. 16). The girlfriend gave the officers Applicant's phone number, vehicle information, and tag number. (Plea Tr. 16).

The shooting was captured on a surveillance video. (Plea Tr. 16-17). The victim was seen walking down the street when Applicant approached the victim. (Plea Tr. 16-17). The victim tried to run away, and Applicant shot him and then took off running. (Plea Tr. 17). Applicant was seen shooting the victim with his left hand because he has a deformity in his right. (Plea Tr. 17).

Applicant's car was found nearby, registered to the girlfriend, and was missing two hubcaps on the passenger side and with Applicant's keys, work ID, a Walmart receipt, [illegible]

17-18). The vehicle was seen without hubcaps on the video footage. (Plea Tr. 18). Applicant told the officers twice that the car would not start after he parked it that day. (Plea Tr. 18). Applicant stated he parked the car down the street from the girlfriend's house because her mother did not let her have boyfriends in the house. (Plea Tr. 18). Walmart footage showed Applicant wearing the same outfit he was wearing on the other video. (Plea Tr. 18-19).

After Applicant was indicted and waived his *Miranda* rights, he denied involvement in the murder. (Plea Tr. 20). He admitted sending threatening texts to the girlfriend but said that was a coincidence. (Plea Tr. 20). Applicant stated he was drinking and smoking marijuana the night before and that day, but he appeared sober and coherent. (Plea Tr. 20-21).

Three days later he gave another interview, maintaining that he did not know about the murder. (Plea Tr. 21). He maintained possession of his cell phone at the time of the incident and his phone was hitting between two towers that that time that was within the coverage range of the murder location. (Plea Tr. 21).

Current Action Before this Court

In his current PCR application, Applicant alleges he is being held in custody unlawfully because of ineffective assistance of counsel in that:

1. "Violation of 6th Amend. right to effective assistance of counsel."
   a. "Counsel performed deficiently by failing to investigate and present evidence that defendant had been suffering major mental illness and severe chronic depression at the time of the crime."
   b. "Counsel failed to obtain . . . testimony."
   c. "Counsel failed to obtain crucial medical records and related info that would have allowed accurate diagnosis and explanation of depression."
   d. "Counsel failed to adequately investigate and present evidence during penalty phase."
   e. "Counsel fail[ed] to collect evidence of defendant's neuropsychological deficiencies, defendant's brain damage and impairments of the frontal lobe."
   f. "At minimum, Counsel has the duty to interview potential witnesses and to make an[] independent investigation of the facts and circumstances of the case."

g. "Counsel should have investigated [and] presented mitigating social history during defendant's mental deficiencies."
h. "Denial of right to appeal."
    i. "Counsel failed to inform Applicant of his right to appeal and how to appeal."
    ii. "Defendant has right to be informed of appeal and manner and method for taking appeal."
i. "Counsel's failure to request competency hearing to determine defendant's fitness to stand trial constitutes ineffective assistance."
    i. "Defendant has history of neuropsychological disorder."

2. "Violation of 14th Amend. right to due process/equal protection."

At the PCR hearing, Applicant proceeded forward on the following allegations:

1. Ineffective assistance of counsel:
    a. Failure to prepare for trial.
    b. Failure to investigate facts and circumstances surrounding the case.
    c. Failure to request competency evaluation.
    d. Failure to mitigate sentence down to voluntary manslaughter.
    e. Failure to properly mitigate the sentence based upon Applicant's mental health issues.
2. Involuntary plea
    a. Applicant's mental health issues caused him to not understand the plea proceedings.
    b. Counsel told Applicant he would receive a thirty-year sentence if he pled.

All other allegations raised in his initial application are deemed waived and abandoned and, accordingly, will not be addressed in this order.

Summary of the Testimony

Applicant Testimony

Applicant testified that he met with Counsel three times. Applicant testified that Counsel brought evidence with him on the second visit and on the third visit Counsel told Applicant that he did not have a defense. Applicant stated he thought that he could have received a voluntary manslaughter conviction instead of murder. Applicant testified that he talked to Counsel about these issues and Counsel never did anything for him.

He stated that he did not think Counsel investigated anything in his case. He stated he thought he might have received a lesser-included instruction had Counsel properly investigated

the case. Applicant stated he had neurological and mental health issues. Applicant stated that he suffered lead poisoning as a child, and it gave Applicant brain damage. Applicant stated that he told Counsel about his mental health issues and that Counsel did not seem to care. Applicant stated he understood what was happening at the PCR hearing because he was keeping up with his medications. Applicant testified that he was nervous and struggled with compulsive disorder. Applicant stated he thought he should have received a competency evaluation.

Applicant stated that he went to see his girlfriend when the incident occurred. Applicant stated that Counsel told him that if he pled, he would receive a thirty-year sentence. Applicant stated that Counsel never discussed the elements of the offenses with him. Applicant stated Counsel was not prepared for trial.

On cross-examination, Applicant stated that he was caught shooting the deceased on video surveillance in broad daylight. Applicant stated that he did not think Counsel brought up his mental and neurological issues up at all at trial. Applicant stated he thought that Counsel did not think he had any mental impairments or dysfunctions. Applicant stated he remembered telling the Court about his mental health issues. Applicant stated he was not treated for mental health issues throughout his adulthood before prison. Applicant stated he wanted his attorney to look at his mental health issues and circumstances surrounding the crime.

Counsel Testimony

Counsel recalled certain mental health reports entered as exhibits at the PCR hearing, but not others. Counsel testified that he did not think Applicant needed a mental health evaluation based off his interactions with Applicant and the discovery materials. Counsel testified that he discussed the elements of murder with Applicant and that he would not have been eligible for manslaughter instruction because of the lack of provocation. When asked if there was a defense

in this kill, Counsel stated "absolutely not." Counsel stated that they discussed having a jury trial but stated that Applicant wanted to plead. Counsel testified that he believed the plea was in Applicant's best interest at the time, and still believed that was the case at the PCR hearing.

On cross-examination, Counsel testified that he has been practicing law since 1984 and, based upon that experience, he did not think a mental health evaluation was needed. Counsel testified that any PTSD Applicant had was not of such a nature that it permitted him to avoid criminal liability. Counsel testified that he never saw psychosis or delusions coming from Applicant during their interactions. Counsel testified that Applicant's love interest would have refuted any claims against adequate legal provocation necessary for a manslaughter instruction. Counsel testified that text messages from Applicant to the victim's girlfriend showed his intent to kill the victim. Counsel testified that Applicant's car, hat, and DNA were found at the scene of the killing and video surveillance captured the shooting from across the street. Counsel testified that there was "zero" chance of success at trial.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. Before this Court are the Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the plea transcript, and this PCR action's records. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated Section 17-27-80 (2003).

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the

application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. *See also* Rule 71.1(e), SCRCP ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."). Reasonableness is determined by the "variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant," and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel's performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be exercised in virtually "countless" ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel's deficient performance must have prejudiced the applicant so that

"there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters "'only in the rarest case'" because "[t]he likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

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.

Involuntary Plea

This Court finds the plea was entered freely, knowingly, intelligently, and voluntarily. In the context of a guilty plea, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Applicant's right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent solemnity and truthfulness included in the guilty plea process. *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.

Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. *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)).

For a plea to be valid, the applicant must have been aware of the nature and crucial elements of the offense the maximum and minimum penalties, and the rights he is waiving by accepting the plea. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Roddy v. State*, 339 S.C. 29 (2000). A plea is not knowing or voluntary if a defendant "lacks knowledge of material evidence in the prosecution's possession." *Gibson v. State*, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (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 the court and defendant, between the court and defendant's counsel, or both." *Roddy v. State*, 339 S.C. at 34, 528 S.E.2d at 421 (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "'[T]he voluntariness of a guilty plea 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.'" *Dalton*, 376 S.C. at 138, 654 S.E.2d at 874 (quoting *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)). Further, "guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including claims of a violation of a constitutional right prior to the plea." *Whetsell v. State*, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981).

The plea hearing transcript reflects that the plea was entered freely, knowingly, voluntarily, and intelligently. Applicant stated he understood the charges, sentencing ranges, and the elements of the crimes charged. (Plea Tr. 3-4). Applicant stated he had enough time

consult with Counsel and that Counsel explained the sentencing ranges and adequately explained the charges and indictments. (Plea Tr. 4). Applicant stated he did not have any defenses regarding the charges pled to. (Plea Tr. 5). Applicant stated he wanted to waive his right to have the matter heard in Spartanburg. (Plea Tr. 6). Applicant stated he understood he was waiving his right to remain silent, to testify or not testify at trial, the right to call and cross-examine witnesses, the right to a jury trial, and stated no one promised or threatened him into pleading. (Plea Tr. 6-11). When asked if a history of alcoholism affected his ability to understand the plea, Applicant stated it did not and he quit drinking over a year before the plea hearing. (Plea Tr. 12-13). Applicant stated he continues to struggle with anger issues, but those issues did not affect his ability to understanding the decision to plead. (Plea Tr. 13-14).

Additionally, at the PCR hearing, Counsel stated that they discussed having a jury trial but stated that Applicant wanted to plead and that he believes the plea was in Applicant's best interest. Thus, the record reflects the plea was entered freely, knowingly, voluntarily, and intelligently and this right cannot be withdrawn now.

Thirty-Year Sentence

Applicant's claim that he thought if he pled, he would receive a thirty-year sentence is refuted by the record. Specifically, when asked if he understood he could be sentenced between thirty years and life imprisonment, Applicant answered affirmatively. (Tr. 3-4). Thus, even if Counsel had misinformed Applicant concerning the sentence he would receive when pleading, this issue was cured through course of the plea colloquy. *See Burnett v. State*, 352 S.C. 589, 592, 576 S.E.2d 144, 145 (2003) (citing *Moorehead v. State*, 329 S.C. 329, 496 S.E.2d 415 (1998)) (stating that the guilty plea transcript will be considered in determining whether statements made by the plea judge cured any possible misadvise given by Counsel.). Accordingly, relief is denied

on this ground.

Mental Health Issues Impacting Voluntariness of Plea

Applicant claims his mental health issues rendered his plea involuntary, unknowing, and unintelligent. However, as outlined above, the plea transcript indicates that, despite his mental health issues, Applicant had a full understanding of what he was doing by pleading guilty. Additionally, Counsel credibly testified that he did not think a mental health evaluation was needed and that any PTSD Applicant had was not of such a nature that it permitted him to avoid criminal liability. Counsel also credibly testified that he never saw psychosis or delusions coming from Applicant during their interactions. Counsel further testified that it was Applicant's decision to plead and that the plea was in Applicant's best interest. Thus, this Court finds that Applicant's mental health issues were not of such a manner that it undermined the knowingness or voluntariness of the plea. Accordingly, relief is denied on this ground.

Failure to Prepare for Trial

Applicant claims Counsel was ineffective for failing to prepare for trial. However, Counsel credibly testified that after talking to Applicant about the options of pleading versus going to trial, Applicant decided to go to trial. Counsel is not required to prepare for trial when Applicant has elected to plead and, in doing so, has waived his right to a trial. Thus, this claim is without merit and this Court declines to grant relief as a result.

Failure to Investigate

Applicant's claim that Counsel was ineffective for failure to investigate is without merit. *Strickland* makes clear that defense counsel "has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." 466 U.S. at 691. When highlighting failure to investigate as a ground for a larger ineffective assistance of counsel

claim, judicial determination of this claim's validity is evaluated for "reasonableness [under] all the circumstances" with "a heavy measure of deference to counsel's judgments" applied. *Id.* At the PCR hearing, Applicant is required to present evidence or witnesses he alleges Counsel did not properly investigate. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Additionally, whether Applicant was prejudiced by Counsel's failure to investigate is contingent on whether the evidence presented would have led Counsel to change his recommendation regarding the plea. *Stalk v. State*, 383 S.C. 559, 562, 681 S.E.2d 592, 594 (2009).

Applicant has failed to show any new evidence or witnesses that Counsel did not investigate fully, let alone anything that would have changed Counsel's recommendation as to the plea. Thus, relief is denied on this ground.

Competency Evaluation

Applicant claims Counsel was ineffective for failing to ensure a competency evaluation took place. "Due process prohibits the conviction of an incompetent defendant, and this right may not be waived by a guilty plea." *Matthews v. State*, 358 S.C. 456, 458, 596 S.E.2d 49, 50 (2004) (citing *Jeter v. State*, 308 S.C. 230, 232, 417 S.E.2d 594, 595-96 (1992)). "In a PCR action, the petitioner must prove by a preponderance of the evidence that he was incompetent when he entered his guilty plea." *Id* at 458-59, 596 S.E.2d at 50-51. Prejudice is found when the petitioner shows a "'reasonable probability' that he was either insane at the time [the crime was committed] or incompetent at the time of the plea." *Id.* (citing *Jeter v. State*, 308 S.C. 230, 233, 417 S.E.2d 594, 596 (1992)).

This Court finds Counsel was not ineffective on this ground. Counsel testified that he has been practicing law since 1984 and, based upon that experience, he did not think a mental health evaluation was needed. Counsel testified that any PTSD Applicant had was not of such a nature

that it permitted him to avoid criminal liability. Counsel testified that he never saw psychosis or delusions coming from Applicant during their interactions. Further, given the clarity with which Applicant spoke at the PCR hearing, as well as the clarity with which he seemingly spoke at the plea hearing, this Court finds that there has been no showing of incompetency on the part of Applicant. Thus, Applicant has not established by a preponderance of the evidence that he was incompetent at the time of the plea. Instead, he by and large just reiterated the mental health concerns Counsel initially addressed in mitigation at the original plea hearing, where the plea was first found free, voluntary, knowing, and intelligent. Thus, Counsel was not required to request a mental health evaluation; largely because there was no need to request one. Accordingly, no deficiency is found, and no prejudice has been established. Thus, relief is denied on this ground.

Failure to Properly Mitigate Sentence

Applicant alleges Counsel was ineffective for failure to mitigate the sentence. Counsel may be found deficient for failing to sufficiently investigate and present mitigating evidence. *See Council v. State*, 380 S.C. 159, 172, 670 S.E.2d 356, 363 (2008) (finding it unreasonable for counsel not to further investigate the defendant's background and present even minimal mitigating evidence obtained); *Wiggins v. Smith*, 539 U.S. 510, 521 (2003) (finding it unreasonable when Counsel failed to investigate mitigating evidence beyond a couple retained records, including the presentence investigation report and social service records); *Williams v. Taylor*, 529 U.S. 362, 398 (2000) (finding that Counsel was unreasonable for failing to evaluate the totality of available mitigation evidence). An applicant is prejudiced by this deficiency if there is a reasonable probability that a different sentence would have been imposed but for Counsel's failure to investigate and present mitigating evidence. *Council v. State*, 380 S.C. 159,

171, 670 S.E.2d 356, 362 (2008).

Counsel did use a reasonable mitigation strategy during sentencing that, in large part, encompassed the information Applicant wanted included: his mental health issues. Specifically, Counsel stated the murder was entirely unplanned and that it was a poor decision made by someone who was awake for five days straight, using stimulants of different kinds and heavy amounts of alcohol. (Plea Tr. 22-23). He also stated that Applicant made the decision out of an "obsessive love" of his ex-girlfriend, which led to poor decision-making. (Plea Tr. 23). Counsel also stated that Applicant was more prone to poor decision-making because of pre-existing issues he did not seek out professional help regarding. (Plea Tr. 24). Counsel stated that he found Applicant's mental health issues significant and mitigating, though not severe enough to rise to the level of not guilty by reason of insanity or guilty but mentally ill. (Plea Tr. 9). Counsel stated that Applicant suffered lead poisoning as a child and provided substantiating documentation regarding this matter. (Plea Tr. 25). Counsel stated that in the psycho diagnostic evaluation provided to the court, there was a sentence indicating that Applicant may have a neuropsychological dysfunction, but Counsel stated he had no reason to believe that is the case. (Plea Tr. 25). Counsel stated Applicant lived a normal life, discussions between he and Applicant were crystal clear, that he had normal romantic and familial relationships. (Plea Tr. 25). Applicant also was molested as a child, which continued to impact him. (Plea Tr. 25). He was also physically abused by his father, who was seldom involved in his life. (Plea Tr. 26). Counsel stated he thought Applicant's issues with substance abuse and probably had issues with PTSD from being shot five times at one point in his life. (Plea Tr. 27).

Counsel brought Applicant's mental health issues to the Court's attention when requesting the mental health concerns be a mitigating factor in sentencing and was not deficient.

on this ground. Further, there has been no showing that a different sentence would have been imposed had Counsel used a different mitigation strategy. Accordingly, prejudice is not found. Thus, this Court denies relief on this ground.

Failure to Mitigate Down to Voluntary Manslaughter

Applicant's claim that Counsel should have mitigated the sentence down to voluntary manslaughter is without merit. Counsel credibly testified that he thought there was no basis for a voluntary manslaughter charge because he did not think adequate provocation existed, given the timeline of events leading up to the murder. *See Reed v. Becka*, 333 S.C. 676, 684, 511 S.E.2d 396, 400-01 (Ct. App. 1999) (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)) ("[A] defendant has no constitutional right to plea bargain."). Additionally, there is no showing Applicant was entitled to a plea to voluntary manslaughter. Applicant also waived his right to a jury instruction to voluntary manslaughter. (Plea Tr. 3-4). Thus, the Court finds this claim is without merit and denies relief on this ground.

Conclusion

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

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

counsel must serve and file a notice of appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 24th day of June, 2022.

G.D. MORGAN
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina.