THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM UNION COUNTY

Court of Common Pleas

HONORABLE R. SCOTT SPROUSE

2019-CP-44-00200

WILLIAM SHANE VANDERFORD, SCDC# 344689

APPELLANT,

vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

William Shane Vanderford appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable R. Scott Sprouse, Circuit Judge on April 11, 2022 an Order issued on July 8, 2022 and filed on July 11, 2022. The Appellant received notice of the judgment on July 15, 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:
Michael Neubauer, Esquire
Office of Attorney General State of SC
Post Office Box 11549
Columbia, SC 29211-1549

STATE OF SOUTH CAROLINA COUNTY OF UNION	IN THE COURT OF COMMON PLEAS FOR THE SIXTEENTH JUDICIAL CIRCUIT
William Shane Vanderford, SCDC#344689 Applicant, v. State of South Carolina, Respondent.	2022 JUL 11 P 12:50 Case No.: CASE NO: 2019-CP-44-00200 **ORDER OF DISMISSAL**

This matter comes before this Court by way of Applicant William Shane Vanderford's post-conviction relief application filed June 24, 2019. Respondent made its return on September 9, 2019, moving to summarily dismiss the application because the allegations were refuted by the record and did not raise a claim upon which relief could be granted and requesting a motions hearing be convened on the motion to dismiss.

A hearing on Respondent's motion to dismiss was convened December 9, 2021, before the Honorable Grace Gilchrist Knie, who denied the motion to dismiss and set the matter for an evidentiary hearing.

An evidentiary hearing was held on April 11, 2022 before this Court. Applicant was present alongside counsel Rodney Richey, Esquire. Assistant Attorney General Michael Neubauer of the South Carolina Attorney General's Office represented Respondent. Applicant testified on his own behalf at the evidentiary hearing, as did Applicant's former plea counsel, Erik D. Delaney. At the conclusion of the hearing, this Court took the matter under advisement.

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and

dismissed this action with prejudice. Specific findings of fact and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 are set forth below:

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections. In July 2018, the Union County Grand Jury indicted Applicant for possession of schedule IV controlled substance (2018-GS-44-1131), possession of schedule III controlled substance (2018-GS-44-1130), possession of methamphetamine, third or subsequent offense (2018-GS-44-1129), domestic violence, first degree (2018-GS-44-1128), and kidnapping (2018-GS-44-1127). Assistant Public Defender Erik Delaney of the Sixteenth Circuit Public Defender's Office represented Applicant. Assistant Solicitor Meghan Gilmer of the Sixteenth Circuit Solicitor's Office prosecuted the case. On February 1, 2018, Applicant pled guilty[1] before the Honorable William A. McKinnon, circuit court judge. Following a thorough plea colloquy, Judge McKinnon accepted Applicant's guilty plea and deferred sentencing upon Applicant's request and the consent of the State to allow Applicant's family to attend sentencing.

On February 11, 2018, Applicant appeared before the Honorable Benjamin H. Culbertson, circuit court judge, for a sentencing proceeding. Judge Culbertson sentenced Applicant to the following: concurrent sentences of imprisonment of ten years for kidnapping, first-degree domestic violence, and criminal possession of methamphetamine, third or subsequent; one-year with credit for time served for possession of schedule III-controlled substance; and one-year with credit for time served for possession of schedule IV-controlled substance.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals dismissed

[1] Applicant pled guilty to the kidnapping charge pursuant to North Carolina v. Alford, 400 U.S. 25 (1970).

Applicant's appeal for failing to provide a sufficient explanation as required by Rule 203(d)(1)(b)(iv) of the South Carolina Appellate Court Rules. The remittitur was issued June 4, 2019.

Summary of Relevant Facts

The factual summary was provided at Applicant's sentencing hearing as follows:

> Your Honor, this offense did occur on August 21st of 2017 here in Union County. There was an out building on property where the victim and Applicant were living. It had been converted to a residential area.
>
> A family member of the victim called 911 and reported to law enforcement that the victim came to his residence with multiple injuries, telling him her boyfriend, the [Applicant], had physically abused her and had locked her inside their residence. Responding officer made contact with the victim who was crying and appeared fearful with visible injuries. The victim was transported to Spartanburg Regional Medical center for medical treatment.
>
> Your Honor, she reported that she was in bed asleep at approximately 3:30 that morning when [Applicant] began accusing her of infidelity and striking her head. She reported he [Applicant] slammed her head into the wall and repeatedly pushed her around the residence after pulling her from the bed. The victim reported [Applicant] continued to repeatedly strike her with his hands and dragged her by her hair. The victim reported that [Applicant] also struck her legs and head with a lead water pipe and repeatedly threatened to kill her. The victim reported she was able to run out of the residence but [Applicant] dragged her back inside by her hair and dead bolted her inside the residence and also took her phone. She reported she was able to push out the air conditioning unit to escape after [Applicant] left.
>
> Your Honor, the victim did have multiple injuries. She reported loss of consciousness. She had multiple bruising to her legs, arms, chest, back and face. She also had cuts to her feet, abrasions to her stomach and mouth. CT scan did show a scalp hematoma to and a deviation of her nasal septum. She also had a large bald spot on her head. That corroborated her account that she has been dragged by her hair.

(Sent. Tr. 9-10).

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:

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(1) Ineffective Assistance of Counsel

a. Counsel was ineffective because "he should have filed [a motion to] reconsider sentence or had the Clerk of Court fix sentencing sheets."

As relief, Applicant requests "to have [his] sentencing corrected to match the Court's transcripts and the oral pronouncement of the Judge's sentence."

At his evidentiary hearing, Applicant proceeded forward on the allegations above and the following allegations:

1. Applicant was not indicted within 90 days.
2. Victim was not in the courtroom during guilty pleas.
3. Applicant did not receive credit for 540 days jail credit.

Summary of the Testimony

Applicant testified first on his own behalf. He testified that he entered into a plea agreement with the State for a negotiated aggregate ten-year sentence. However, he contends he was actually sentenced to one year. He quoted the following from the transcript "sentence of the court for kidnapping, domestic violence in the first degree, and possession of methamphetamine, is that you be confined to the State Department of Corrections for one year." Sent.Tr. p. 12 lines 3-6. "On the charges of possession of a scheduled three, controlled substance and possession of scheduled four controlled substance, sentence of the court is that you be confined to the State Department of Corrections for one year." You will receive credit for 540 days served thus far. Applicant testified that he should not have received a 10-year sentence based on the judge's oral sentencing." He testified that he requested his lawyer to have the sentencing sheet reflect what the judge ordered. Thus, Applicant alleged that his lawyer was ineffective for not having the sentencing sheets corrected.

Applicant testified that he did not receive 540 days credit for all his charges because the credit for time served was only on one of his sentencing sheets. He stated that his lawyer was

ineffective for not having the 540 days credit written on his sentencing sheets. He testified he asked his attorney to get the sentencing sheets fixed immediately after sentencing. Applicant further testified that he was not indicted within 90 days pursuant to SCRCP Rule 5. Applicant also testified that the victim was not present for the plea even though he had been told she would be present.

On cross-examination, Applicant stated that he recalled on page 4 of the sentencing transcript being informed of a negotiated ten-year sentence. He also stated that he recalled the judge informing him of a negotiated ten-year sentence on the domestic violence case. He recalled a ten-year sentence for the kidnapping charge on page 4 of the sentencing transcript.

Applicant testified that the victim was not at trial. He claimed that his lawyer should have not had him plead guilty. Once the victim did not appear at the plea, Applicant testified he believed his lawyer should have pursued a jury trial but acknowledged his attorney advised him he would likely receive a sentence of twenty-five to thirty years of imprisonment f convicted following a trial and that the victim would likely testify at trial.

Counsel testified he was appointed to represent Applicant. He testified the charges stemmed form an incident in which Applicant locked the victim, with whom he had been in and on-and-off relationship, in a shed and the drug charges were related. He testified he reviewed Applicant's version of events with him, as well as the potential sentences and the elements of the offenses. He testified that the plea agreement between Applicant and the State was for a negotiated sentence of ten-years. He testified the case was near being called for trial when the plea agreement was reached, and it was for a determinate ten-year sentence, which he explained to Applicant. He testified that Applicant appeared to understand the plea agreement would result in a ten-year term of imprisonment. However, at the sentencing, the court misspoke and said one year, which he did not catch during sentencing. He stated that had he heard it he would have corrected it. He stated

that Applicant asked him to appeal the case and he did. He testified he did not consider a motion to reconsider because it was a negotiated sentence and the court clearly misspoke.

Counsel testified that he was not concerned with victim showing up for the guilty plea. He was only concerned about the victim showing up for a jury trial. He did not make any promises that the victim would be in court. Also, counsel did not recall whether Applicant was entitled to 540 days credit on all charges.

Lastly counsel testified that he did not have any issues with the Applicant not being indicted within 90 days of his arrest. He believed that raising this issue would not have changed the outcome of the case.

Findings of Fact and Conclusions of Law

Applicant has alleged various claims of ineffective assistance of plea counsel and asserts that as a result of counsel's purported errors, he is entitled to have his guilty plea undone and proceed back to the court of general sessions for a new disposition of his case.

Standard of Review

Under the Uniform Post-Conviction Procedures Act, an applicant may seek post-conviction relief upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;

2. That the court was without jurisdiction to impose sentence;

3. That the sentence exceeds the maximum authorized by law;

4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise

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unlawfully held in custody or other restraint; or

6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); Rule 71.1(e), SCRCP.

Applicant's claims for relief as set forth in his application and as pled at the evidentiary hearing pertain to ineffective assistance of counsel. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, post-conviction relief allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in post-conviction relief actions). The allegation of denial of such representation sets forth a prima facie violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction

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or sentence. 466 U.S. at 687. First, the applicant must show that counsel's performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). 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.

Strickland, however, "does not guarantee perfect representation[—]only a 'reasonably competent attorney.'" Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is "no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities." Harrington, 562 U.S. at 110.

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 6 (2003) ("The Sixth

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Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690).

Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Id. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Reviewing courts "must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed at the time of counsel's conduct." Strickland, 466 U.S. at 690. An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment." Id. The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." Id.

The Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and

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raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. Harrington, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," **not** whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. Thus, it is not enough "to show the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to deprive the defendant of a fair trial." Id. at 687 (emphasis added).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel." Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel's performance

125

was deficient; and second, evidence that counsel's deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. Hill, 474 U.S. 52.

The analysis of counsel's performance under the first prong of Strickland remains unchanged—the applicant must show counsel's representation fell below the objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56.

The second, or "prejudice" prong, however, "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Id. at 58–59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59. This inquiry "focuses on a defendant's decisionmaking" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. ___, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

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. ___,

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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. 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 plea and the evidence presented at the PCR hearing. Harres, 282 S.C. at 134, 318 S.E.2d at 361.

The performance and prejudice standards, however, "do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." Id. at 696. Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Id. at 697. The court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

Findings as to Specific Claims Raised

Applicant has alleged twenty-two claims of ineffective assistance of plea counsel and asserts that as a result of counsel's purported errors, he is entitled to have his guilty plea undone.

This Court has had the opportunity to review the record in its entirety and has heard the

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testimony and arguments presented at the PCR hearing. Before this Court are the Union County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the trial transcript, direct appeal records, 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).

This Court finds has failed to meet his requisite burden of proof as to each allegation. Each allegation is addressed below:

Counsel should have filed a motion to reconsider the sentence

Applicant asserts that counsel was ineffective for failure to file a motion to reconsider his sentence based on Judge Culbertson stating the sentence was for a one-year term of imprisonment rather than the negotiated ten-year term of imprisonment pursuant to the plea agreement. However, this claim is refuted by the record and Applicant cannot satisfy his requisite burden of proof.

Applicant's plea hearing and sentencing hearing occurred on two different dates. On February 1, 2019, Applicant pleaded guilty before the Judge McKinnon. The guilty plea transcript indicates Applicant bargained for concurrent ten-year sentences for kidnapping (2018-GS-44-1127), possession of methamphetamine (2018-GS-44-1129), and first-degree domestic violence (2018-GS-44-1128). (GP Tr. 4, l. 1-3; GP Tr. 6, l. 18-23, GP Tr. 7, l.11). The guilty plea transcript also indicates Applicant bargained for a one-year time served sentence for possession of a schedule IV substance charge (2018-GS-44-1131), and a one-year time served sentence or possession of schedule III drug (2018-GS-44-1130). (GP Tr. 5-6). Judge McKinnon verified with Applicant that these were negotiated sentences and asked Applicant whether he wanted the plea court to accept

the negotiated plea, to which he replied, "Yes, Your Honor." (GP Tr. 7, l. 17-20). The plea court later asked Applicant, "understanding all that do you still want to go ahead and plead guilty today?" to which Applicant replied, "Yes, Your Honor." (GP Tr. 9, l. 1-3). The plea court restated on the record Plea Counsel and Assistant Solicitor Gilmer negotiated an overall ten-year active sentence. (GP Tr. 13, l. -11).

At Applicant's request, sentencing was delayed. Applicant was sentenced before Judge Culbertson on February 11, 2019. At Applicant's sentencing hearing, Assistant Solicitor Gilmer stated to the plea court that she and Plea Counsel negotiated a ten-year active sentence to run concurrently between the charges. (Sentencing Tr. 3, l. 21-23). Judge Culbertson restated Applicant's sentences later during the sentencing hearing as well, indicating that Applicant would be receiving an overall ten-year active sentence. (Sentencing Tr. 4, l. 21-25). While Applicant is correct that Judge Culbertson inadvertently stated Applicant would receive a one-year sentence for the kidnapping, domestic violence, and possession of methamphetamine charges, Judge Culbertson did so only after: (1) the correct terms had been explained to Applicant at his February 1 plea hearing; (2) Judge Culbertson correctly stated the terms of the plea to Applicant multiple times earlier during the sentencing hearing; and (3) Judge Culbertson accepted the plea, on the record, based on the correct ten-year imprisonment plea terms. (Sentencing Tr. 3, l. 21-25; Tr. 11; Tr. 12, l. 3-6).

At no point during the colloquy portion of Applicant's sentencing hearing did anyone tell Applicant he would only receive a one-year sentence for his kidnapping, possession of methamphetamine, or domestic violence charges; Judge Culbertson only misspoke as to Applicant's sentence during his final statement of the sentences Applicant would receive. (Sentencing Tr. 12, l. 3-6). It is clear by the record Applicant bargained for ten-year concurrent

sentences for his domestic violence, possession of methamphetamine, and kidnapping charges, and that is precisely what he received and what his sentencing sheets reflect.

Based on the irrefutable record, Plea Counsel was not deficient because he had no legal basis to file a motion to reconsider Applicant's sentence or make the clerk of court "fix" Applicant's sentencing sheets. There is no professional obligation to file a motion for reconsideration of a sentence absent a specific legal reason to do so. The sentence imposed on Applicant was not an illegal sentence, nor was there any allegation the trial court acted with partiality, prejudice, oppression or corrupt motive when sentencing Applicant. See Shraiar v. United States, 736 F.2d 817, 818 (1st Cir. 1984) ("No court has held that failure to file a [motion to reduce sentence] automatically constitutes ineffective assistance of counsel."). The record irrefutably shows Plea Counsel had no basis to file a motion to reconsider Applicant's sentence, and Applicant received the sentence he bargained for; an overall ten-year active sentence. Applicant's sentencing sheets correctly match the sentences Applicant bargained for; a ten-year concurrent sentence for kidnapping, first-degree domestic violence, and criminal possession of methamphetamine, third or subsequent; one-year with credit for time served for possession of schedule III controlled substance; and one-year with credit for time served for possession of schedule IV controlled substance. Accordingly, based on the irrefutable record of both proceedings, Applicant cannot show either Plea Counsel was deficient or Applicant was prejudiced by any failure to file a motion to reconsider his sentence or failure to have Applicant's sentencing sheets "fixed." Applicant was correctly advised that he would be serving an active ten-year sentence multiple times during two different hearings by two different judges. Accordingly, this Court DENIES this allegation.

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Applicant was not indicted with 90 days

Applicant next asserts that counsel was ineffective for failing to move for dismissal of his charges when he was not indicted within ninety days as required by the South Carolina Rules of Criminal Procedure (SCRCrimP).

Pursuant to Rule 3(c), SCRCrimP,

> (c) Action on Warrant. Within ninety days after receipt of an arrest warrant from the Clerk of Court, the solicitor shall take action on the warrant by (1) preparing an indictment for presentment to the grand jury, which indictment shall be filed with the Clerk of Court, assigned a criminal case number, and presented to the Grand Jury; (2) formally dismissing the warrant, noting on the face of the warrant the action taken; or (3) making other affirmative disposition in writing and filing such action with the Clerk of Court.

However, this rule is administrative and non-jurisdictional, and thus failure of solicitor to act on warrant within ninety days does not within itself invalidate warrant or prevent subsequent prosecution. See State v. Culbreath, 282 S.C. 38, 316 S.E.2d 681 (1984) (the South Carolina Supreme Court held that Rule 3, SCRCrimP, is administrative not jurisdictional and a violation of this rule does not within itself invalidate a warrant or prevent subsequent prosecution); see also State v. Edwards, 374 S.C. 543, 572, 649 S.E.2d 112, 127 (Ct. App. 2007), rev'd on other grounds, 384 S.C. 504, 682 S.E.2d 820 (2009) (reaffirming Culbreath).

This Court notes that a violation of the rule governing the disclosure of evidence in criminal cases is not reversible error unless prejudice is shown. State v. Landon, 370 S.C. 103, 634 S.E.2d 660 (S.C. 2006). Here, Applicant has utterly failed to show any prejudice for his failure to be indicted within ninety days, as counsel correctly testified his charges would not have been dismissed based on this.

The Court finds that the Applicant has not met his burden and has not shown prejudice. Accordingly, this Court DENIES this allegation.

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Victim was not in the courtroom during guilty pleas

Applicant testified that counsel was ineffective for not pursuing a jury trial when the alleged victim did not appear for the guilty pleas. However, Applicant never testified he wanted a jury trial and unequivocally testified the decision to plead guilty was his and his alone, free from any threats or coercion. Applicant was aware that the victim was not present for the plea when he entered the plea, and despite, this, still entered the plea. This Court has reviewed the record in its entirety and finds that Applicant's plea was knowing, intelligent, and voluntarily entered. The Court finds that the Applicant has not met his burden and has not shown prejudice. Accordingly, this Court DENIES this allegation.

Applicant did not receive credit for 540 days jail credit

Applicant asserts he is entitled to relief because he was not given credit for his entire time served on all of his sentencing sheets. He testified that he did not received credit for 540 days jail credit. Applicant testified that 540 days jail credit was written on some of his sentencing sheets but not all of them. He alleged that he is entitled to 540 days jail credit on all his charges.

Post-conviction relief "is a proper avenue of relief *only when the applicant mounts a collateral attack challenging the validity of his conviction or sentence.*" Al-Shabazz v. State, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000). The only non-collateral matters that are reviewable through post-conviction relief are those that are specifically enumerated in the Uniform Post-Conviction Procedure Act: (1) a claim that the applicant's sentence has expired and (2) a claim that the applicant's probation, parole, or conditional release has been unlawfully revoked. Id. Claims that affect only the duration of the sentence or quality of the inmate's confinement do not affect the validity of the conviction or sentence and therefore are considered non-collateral attacks on the conviction. Cooper v. State, 338 S.C. 202, 206, 525 S.E.2d 886, 888 (2000). Such non-

collateral or administrative matters must be reviewed through the Administrative Procedures Act. Al-Shabazz, 338 S.C. at 378–79, 527 S.E.2d at 754–55. Accordingly, this Court finds this claim must be dismissed pursuant to Rule 12(b)(6), SCRCP, as it is not a cognizable claim under the Uniform Post-Conviction Procedure Act, and instead, this claim is appropriately handled through inmate grievance procedures and the Administrative Procedure Act. (S.C. Code Ann. Sections 1-23-10-160, 1-23-310 to 400, 1-23-500 to 660). Accordingly, this Court DISMISSES this allegation.

Conclusion

Based on all the foregoing, this Court finds Applicant has not established any other constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief is denied and dismissed with prejudice.

This Court notes that if Applicant wishes to appeal this order, Applicant, though his counsel of record, must file and serve a notice of appeal within thirty days from the receipt of this Order. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and

2. Applicant shall remain remanded to the custody of the State of South Carolina.

AND IT IS SO ORDERED this 8 day of July, 2022.

R. SCOTT SPROUSE
Presiding Judge
Sixteenth Judicial Circuit

Walhalla, South Carolina.