

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
APPEAL FROM CHEROKEE COUNTY  
Court of Common Pleas  
HONORABLE G.D. MORGAN  
2020-CP-11-0038

CECIL BLACKWELL, SCDC# 218835

APPELLANT,

vs.

STATE OF SOUTH CAROLINA,

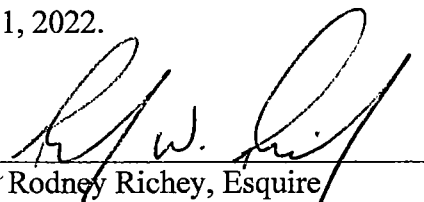
RESPONDENT.

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**NOTICE OF APPEAL**

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Cecil Blackwell appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable G.D. Morgan, Jr, Circuit Judge on April 18, 2022 an Order issued on July 14, 2022 and filed on July 18, 2022. The Appellant received notice of the judgment on July 21, 2022.



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JUL 29 2022

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA )  
 COUNTY OF CHEROKEE )  
 )  
 )  
 Cecil Blackwell, #218835, )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 Respondent. )  
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IN THE COURT OF COMMON PLEAS  
 FOR THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2020-CP-11-00038

**ORDER OF DISMISSAL**

FILED IN OFFICE OF  
 CLERK OF COURT  
 CHEROKEE COUNTY, S.C.  
 2022 JUL 18 AM 11:02  
 BRANDY W. NOBEE

This matter comes before this Court by way of Applicant’s post-conviction relief application filed January 10, 2020. Respondent made its return on June 12, 2020, requesting an evidentiary hearing be convened. An evidentiary hearing was held on April 18, 2022, at the Spartanburg County Courthouse. Rodney W. Richey, Esquire, represented Applicant. Assistant Attorney General Chelsey F. Marto, Esquire, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Counsel John G. Reckenbeil, Esquire, 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 Cherokee County Clerk of Court. During its September 2017 term, the Cherokee County Grand Jury indicted Applicant for trafficking methamphetamine, between ten and twenty-eight grams (2017-GS-11-01192) and failure to stop motor vehicle when signaled by officer (2017-GS-11-01193). Applicant was represented by John Reckenbeil, Esquire. Assistant Solicitor Kimberly L. Leskanic of the Seventh Circuit Solicitor’s Office

prosecuted the case.

On October 10, 2018, Applicant appeared before the Honorable R. Keith Kelly, circuit court judge, and pled guilty to the lesser included offense of trafficking methamphetamine ten to twenty-eight grams, second offense, to a recommended sentence of fifteen years' imprisonment on the drug charge and to a recommended sentence of five years' imprisonment of on the failure to stop for a blue light, second offense, to run concurrent with the drug charge. Judge Kelly deferred sentencing until October 17, 2018. Applicant absconded and was arrested by U.S. Marshalls in late January 2019. On February 4, 2019, Judge Kelly sentenced Applicant to twenty years' imprisonment for the drug charge and five years' imprisonment for the failure to stop charge, sentences running concurrently. Applicant did not pursue a direct appeal.

#### **Summary of Relevant Facts**

On July 11, 2017, four officers with SLED were travelling down the road when they saw Applicant at Cherokee Food Mart. (Plea Tr. 24). Three out of four of the officers recognized Applicant from prior dealings. (Plea Tr. 24). When they noticed Applicant, they began following him. (Plea Tr. 24). Applicant ran a red light, at which an officer activated the blue lights on the police vehicle. (Plea Tr. 24). Then, the officers saw Applicant reach into his waistband. (Plea Tr. 24-25). Applicant pulled out a black wallet-type pouch and threw it underneath a white parked van. (Plea Tr. 25). Applicant failed to stop his motorcycle. (Plea Tr. 25). One officer got out of the car, trying to apprehend Applicant, but Applicant took off on his motorcycle before the officer could reach him. (Plea Tr. 25). His passenger later told the police that Applicant travelled at a high rate of speed to get away from law enforcement. (Plea Tr. 25). Officers retrieved the black pouch and found 12.15 grams of methamphetamine and three empty baggies. (Plea Tr. 25). This was confirmed by SLED. (Plea Tr. 25).

### 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. Defense counsel was ineffective for:
  - a. "failing to advise me to plea[d] guilty."
  - b. "counsel failed to object or file motions that his client want[ed] [that would allow him] to withdraw his plea and proceed to trial."
2. "[The] [g]uilty plea was not knowingly and intelligently made to the court."
3. "State breached the sentence[ing] agreement."
4. Counsel was ineffective for failing to object to the twenty year sentence handed down by the Court that was contrary to the negotiated fifteen year plea agreement.

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

1. Ineffective assistance of counsel.
  - a. Failure to review discovery.
  - b. Failure to investigate chain of custody report.
2. Invalid plea.
  - a. Failure to ensure negotiated sentence was imposed.

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

### Summary of the Testimony

#### *Applicant Testimony*

Applicant testified that he did not think Counsel was effective. He stated he never saw the discovery in the case, but that he discussed some of the discovery, including the chain of custody report. He testified that there were plea negotiations with the State that were not accepted by the Court. He testified that he discovered some issues with the chain of custody report several days after he pled. He stated these included issues with individuals that signed the report and issues concerning the amount of drugs listed. He stated he did not discuss this with his attorney. Applicant claimed that he discussed the chain of custody report with Counsel generally, but that they did not specifically discuss the name of one individual who seemingly did not work

for the institution listed in the report. Applicant stated he decided to plead initially, but that his analysis on whether the plea was a good idea has changed since discovering the alleged issue with the chain of custody report. Instead, he stated he would have proceeded to trial had he discovered this issue with the report before the plea.

On cross-examination, Applicant stated he pled freely at the time. He stated that the basis for the charges revolved around him being in possession of more than ten grams of methamphetamine. He stated that when he discovered the police were following him, he fled and threw the drugs while pleading. Applicant confirmed that the plea was based on recommendations from the State, not negotiations, and the Court informed Applicant that he was not bound to recommendations. Applicant stated that he did not appear at his scheduled sentencing hearing and cut his GPS monitoring off. Applicant stated he did not know the evidence against him and was unsure why he pled even though he did not know the evidence in the case.

### *Counsel Testimony*

Counsel testified that he discussed the discovery in the case with Applicant. He stated they discussed the lack of signatures on the chain of custody report. Counsel testified that Applicant decided to plead on the day of the plea after everyone was at the courthouse. Counsel testified that any issues with the chain of custody report were present when Applicant entered the plea. Counsel stated that there was a pre-trial hearing concerning a SLED agent who did not appear on the chain of custody report, but that this hearing did not lead to a favorable outcome for the defense.

On cross-examination, Counsel testified he discussed the discovery with Applicant. He stated he gave Applicant an analysis of what the applicable law was. He stated that there was no

body camera footage in the case. He stated that there was a recommendation of fifteen years' imprisonment at the plea hearing. Counsel stated that the offer Applicant took was offered during the voir dire leading up to trial. He stated he thought that the jury would have convicted Applicant if he proceeded to trial. He stated he thought he had a shot at winning the motion to suppress hearing if the case proceeded to trial but could not state either way whether he would have been successful.

### **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 Cherokee 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), SCRPC ("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 executed 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.

### *Invalid Plea*

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).

Based upon the plea transcript and PCR hearing testimony, this Court finds that the plea was entered freely, voluntarily, knowingly, and intelligently. Applicant stated he was not on any substances that impeded his ability to think clearly, that he knew he was at court to plead, that Counsel represented him, and that the Court was not bound to the recommended sentences in the case. (Plea Tr. 20-22). Applicant stated he understood he was giving up his rights to a jury trial, to remain silent, and to call and confront witnesses. (Plea Tr. 20-22). After being told the charges, sentences, and indictments he was pleading to, Applicant pled guilty. (Plea Tr. 22-23). Applicant stated it was his decision to plead, he had sufficient time to speak with his attorney, that Counsel shared discovery materials with him, and that Counsel did everything he could to help him and to investigate the case. (Plea Tr. 23-24).

At the PCR hearing, Applicant testified that he pled freely at the time and that it was his

decision to plead, but that he has since changed his mind. A change of mind after the fact is not sufficient to undermine the plea. Thus, based upon the plea transcript and PCR hearing testimony, Applicant seemingly pled freely, voluntarily, knowingly, and intelligently and cannot withdraw it now.

#### ***Failure to Review Discovery***

Applicant's claim of ineffective assistance of counsel for failure to review discovery is without merit. Applicant testified that he never saw the discovery in the case, but that he discussed some of the discovery in the case with Counsel, including the chain of custody report. Counsel credibly testified that he discussed the discovery with Applicant. Thus, this Court finds that Applicant seemingly did review the discovery with Counsel and, accordingly, Counsel is not deficient on this ground. Additionally, this Court finds that Applicant has failed to meet his burden of proof in establishing prejudice because he has failed to show with any specificity what discovery was not shared with him or why that would have caused him to go to trial. Thus, relief is denied on this ground.

#### ***Failure to Investigate Chain of Custody***

Applicant claims Counsel was ineffective for failing to investigate the chain of custody report. Specifically, he claims that one of the individuals on the report did not work at the institution listed on the report. *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 claims Counsel was ineffective for failure to investigate the chain of custody report. He stated that had Counsel investigated the chain of custody, he would have noticed that one of the individuals on the chain did not work at the institution reflected on the report. However, Counsel credibly testified that he did not see anything incorrect on the chain and that he believed that Applicant sought out this individual's records from the wrong institution. Thus, Counsel acted reasonably in reviewing the report and finding nothing incorrect on it and is not deficient as a result. Additionally, even if this was not investigated, there is seemingly no change in Counsel's recommendation as to the plea and prejudice has not been established as a result. Accordingly, relief is denied on this ground.

#### *Negotiated Sentence*

Applicant alleges that the plea should be vacated because the negotiated sentence was not imposed. This Court finds this allegation to be without merit. Applicant pled to a recommended sentence, not a negotiated sentence. (Plea Tr. 19-20). Applicant stated that he understood the Court was not bound to the recommendation. (Plea Tr. 26). Further, the sentence imposed that was higher than the recommended was only imposed after Applicant absconded, cut off his ankle monitor, and was on the run for a couple months before being apprehended by U.S. Marshalls; something that almost certainly factored into the Judge's decision when sentencing Applicant five years over the recommended sentence. (Sentencing Tr. 4, 7). Applicant was never offered a

negotiated plea offer and, accordingly, never accepted one. Thus, this allegation is without merit and this Court denies relief on this ground as a result.

**Conclusion**

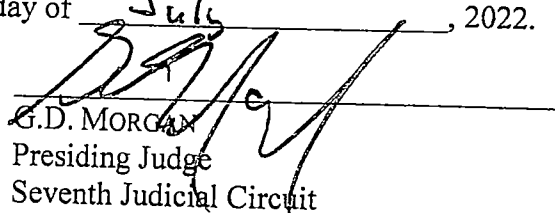
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

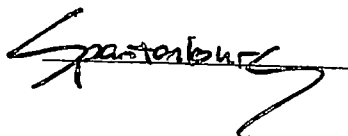
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR provides that if the Applicant wishes to seek appellate review, 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 14<sup>th</sup> day of July, 2022.

  
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G.D. MORGAN  
Presiding Judge  
Seventh Judicial Circuit

 \_\_\_\_\_, South Carolina.

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**JUL 29 2022**  
**S.C. SUPREME COURT**