NOTICE OF APPEAL FROM COMMON PLEAS REGARDING A

POST CONVICTION RELIEF

THE STATE OF SOUTH CAROLINA

In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM FLORENCE COUNTY

Court of Common Pleas

George M. McFaddin, Jr., Circuit Court Judge

Case No. 2020-CP-21-0701

The State,.....Respondent,

John D. Lane,.....Appellant,

Notice of Appeal

John D. Lane appeals the order of the Honorable George M. McFaddin, Jr., dated May 31st, 2022, which denied his application for Post-Conviction Relief with prejudice. Appellant received written notice of the order on July 9,2022.

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STATE OF SOUTH CAROLINA COUNTY OF FLORENCE	)	IN THE COURT OF COMMON PLEAS TWELFTH JUDICIAL CIRCUIT
John D. Lane, #293885 Applicant, v. State of South Carolina, Respondent.	)	CASE NO. 2020–CP–21–0701 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Applicant John D. Lane on March 2, 2020. Respondent made its Return on August 21, 2020. An evidentiary hearing into the matter was convened on April 20, 2022, at the Florence County Courthouse before the Honorable George M. McFaddin, Jr. Applicant was present at the hearing and represented by Ola A. Johnson, Esquire. D. Russell Barlow, II, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the hearing, and testimony was additionally provided by his former plea counsel Elizabeth Neyle, Esquire. Following a thorough review of the record in its entirety and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to meet his requisite burden of proof, denies relief, and dismisses this application with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections (SCDC). Applicant was indicted at the April 2018 term of the Florence County Grand Jury for trafficking in heroin—twenty-eight grams or more and possession of a weapon during the commission of a violent crime (2018-GS-21-566). Applicant

was represented by Assistant Public Defender Elizabeth Neyle of thr Twelfth Circuit Public Defender's Office. Deputy Solicitor John Jepertinger of the Twelfth Circuit Solcitor's Office prosecuted the case.

On August 27, 2019, Applicant appeared before the Honorable D. Craig Brown, circuit court judge, and pleaded guilty to the lesser-included offense of trafficking in heroin—more than four grams but less than fourteen grams pursuant to plea negotiations entered into between Applicant and the State.[1] Judge Brown accepted the Applicant's guilty plea and sentenced Applicant to serve the negotiated ten-year sentence per the plea agreement. Applicant did not appeal.

FACTS

On October 11, 2017, officers of the Florence Police Department responded to 1254 Cemetery Street in the City of Florence in response to the report of a person passed out in the driver seat of a car. (Plea Tr. p. 8). Once on scene, Patrol Officer Bozeman and Patrol Officer Seman observed the Applicant sitting in the driver seat, passed out with a load .22 caliber rifle lying in plain view in the passenger seat. (Plea Tr. p. 9). Officers were able to wake up the defendant and remove him from the vehicle. (Plea Tr. p. 9). Officer Seman found 6.9 grams of heroin in the pockets of Applicant. (Plea Tr. p. 9).

ISSUES RAISED

Applicant *timely* commenced this post-conviction relief action on March 2, 2020. In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:

[1] The State dropped the weapons charge.

a. Attorney failed to investigate case properly. Had Counsel read the arrest report issued by Officer Boseman, she would have discovered I had been found overdose from drugs in my car, and medical attention was required. I was hospitalized for seven days as a result of the drug overdose. As per 44-53-1935 44-53-1930 I was immune from prosecution as a result.
b. Attorney forced me to plea[d] guilty.
c. Counsel was ineffective when she failed to move pursuant to S.C. Code of Laws § 44-53-1930 which provides that a defendant is entitled to immunity based on a drug overdose, applied even if evidence would have been inevitably discovered. See 2019 WL 3852758. Based on the foregoing, Counsel should have moved to dismiss the charges
d. Counsel was therefore ineffective for failure to move for dismissal.

On April 8, 2022, Applicant's counsel filed amendments to his PCR application with the following allegations:

1. Ineffective Assistance of Counsel
   a. Prior to the guilty plea. Applicant's counsel Elizabeth Neyle failed to review all of the evidence prior to the plea.
   b. Applicant's counsel Elizabeth Neyle failed to provide a copy of the states evidence to the Applicant.
   c. Applicant's plea counsel Elizabeth Neyle, failed to discuss a defense strategy with applicant or to properly review evidence with Applicant.
   d. Applicant's counsel Elizabeth Neyle failed to meet with the Applicant a sufficient number of times to review the evidence.
   e. Elizabeth Neyle failed to inform Applicant that die charge he entered a plea to was violent and a "no parole" offense requiring Applicant to serve 85 % of his sentence.
   f. Applicant was coerced into entering his plea and plea counsel Elizabeth Neyle failed to use as a defense or to explain to Applicant the possible defense of immunity under South Carolina Code Sec. 44-53-1920 and 44-53-1930 as the City of Florence incident report (dated 10-11-17) related to this case reflects that the Applicant was taken to Ute hospital due to a drug overdose and received treatment for this following his arrest.

At the evidentiary hearing, PCR counsel for Applicant proceeded on the following allegations:

1. Ineffective Assistance of Counsel
   a. Prior to the guilty plea. Applicant's counsel Elizabeth Neyle failed to review all of the evidence prior to the plea.
   b. Applicant's counsel Elizabeth Neyle failed to provide a copy of the states evidence to the Applicant.
   c. Applicant's plea counsel Elizabeth Neyle, failed to discuss a defense strategy with applicant or to properly review evidence with Applicant.
   d. Applicant's counsel Elizabeth Neyle failed to meet with the Applicant a sufficient number of times to review the evidence.

e. Elizabeth Neyle failed to inform Applicant that the charge he entered a plea to was violent and a "no parole" offense requiring Applicant to serve 85 % of his sentence.
f. Applicant was coerced into entering his plea and plea counsel Elizabeth Neyle failed to use as a defense or to explain to Applicant the possible defense of immunity under South Carolina Code Sec. 44-53-1920 and 44-53-1930 as the City of Florence incident report (dated 10-11-17) related to this case reflects dial the Applicant was taken to Ute hospital due to a drug overdose and received treatment for this following his arrest.

MOTION TO DISMISS ALLEGATION 1(F)

At the outset of the PCR evidentiary hearing, the State motioned this Court to dismiss Applicant's allegation 1(f) as a matter of law. Specifically, the State maintained that S.C. Code Ann. § 44-53-1920 and § 44-53-1930 do not apply to trafficking offenses. Applicant averred that Plea Counsel was ineffective for failing to move for a dismissal based on the statute because Plea Counsel could have asked the State to reduce the charges to a lesser-included offense that would have provided immunity to Applicant from prosecution. This Court granted the motion to dismiss allegation 1(f) as a matter of law based on the plain language of the statute.

SUMMARY OF RELEVANT TESTIMONY

APPLICANT'S TESTIMONY

On direct examination, Applicant testified that his plea was forced because Plea Counsel Elizabeth Neyle said he would be tried the following week if he did not plead that day, so he took this as a threat. Applicant testified that Plea Counsel only spoke to him once at the county jail and then once on the day of the plea. Applicant testified that Plea Counsel never reviewed the evidence, then corrected himself and said she reviewed his charges but never mentioned anything else about the case. Applicant testified that Plea Counsel did not do any work and never gave him a copy of the discovery.

Applicant testified that Plea Counsel should have made clear he was found overdosed and just had a drug problem, so she should have moved to dismiss the case. Applicant testified that he had not had any drug charges in 3 years and that the drugs they found on him were for his personal use. Applicant testified that Plea Counsel explained to him that based on the weight of the drugs, it is a trafficking charge. Applicant testified that Plea Counsel explained the sentence of 10 years would be 85%, but she did not ever say it would be violent. Applicant testified that Plea Counsel did not hire a private investigator.

When Applicant was asked whether there was anything else Plea Counsel should have done, Applicant testified Plea Counsel should have at least tried to investigate, been a little more convincing, negotiated a better deal based on his age, and not made him feel rushed.

On cross-examination, Applicant testified that he understood that if PCR relief were granted today, Applicant would be retried for all indicted matters, even those that were dismissed. Applicant testified that Plea Counsel was not his first attorney; it was Kevin Etheridge. Applicant testified that Etheridge was counsel for 16-18 months. When Applicant was asked if he wanted to go to trial, Applicant testified that he wanted to come out better than the deal he got. Applicant testified that he understood he could get significantly more time if PCR were granted.

Applicant testified that Plea Counsel only met with him once at the county jail, then once at the courthouse with paperwork in front of him. Applicant testified that Plea Counsel never reviewed discovery with him. Applicant testified that Plea Counsel did review the elements of the offense with him and possible defenses, but then she failed to investigate them. Applicant testified that he did not give Plea Counsel any leads or witnesses to investigate, but she had the paperwork. Applicant testified that he agreed with the facts from the night of his arrest that were read into the record at his plea hearing. Applicant testified that they did not discuss his overdose or being

hospitalized for seven days at the plea hearing. Applicant testified that Plea Counsel should have presented these facts to the court.

Applicant testified that he pled guilty because of what Plea Counsel said about the trial the next week and he felt threatened by her saying he would be tried the next week. Applicant testified that he told the plea court he was satisfied with Plea Counsel and talked to her enough but felt there was no other choice. Applicant testified that he told the plea court he "kind of" understood conversations with Plea Counsel, but there was nothing else he could do. Applicant testified that he understood he was entering a plea. Applicant testified that he did not recall telling the judge he knew it was a violent and serious offense but does remember the 85% and 3-strike discussion.

Applicant testified that he felt coerced to plead based on Plea Counsel telling him the State would try the case the next week. Applicant testified that it put a little fear in him. Applicant testified that he told Plea Counsel that he would rather take it to trial because he was not trafficking, he was an addict, and all the drugs were for personal use. Applicant testified that he wanted the charges reduced. Applicant testified that he was found with seventy grams, and it was packaged to sell as grams. Applicant testified that the judge discussed the right to a jury trial and that he understood and wanted to plead guilty. Applicant testified that it was his decision to plead.

On redirect examination, Applicant testified that he "kind of" understood conversations with Plea Counsel because she was only conveying what the state told her and he felt coerced based on trial the next week.

PLEA COUNSEL ELIZABETH NEYLE'S TESTIMONY

On direct examination, Plea Counsel testified that she met Applicant twice at the jail, once in July when she was appointed, in August 2019, and then on the day of the plea hearing. Plea Counsel testified that Florence City Police were alerted to a car with a man passed out, and when

law enforcement approached, there was a gun in plain view; they searched the car and found lots of drugs. Plea Counsel testified that Applicant always said he wanted to plead from their first meeting. Plea Counsel testified that Applicant reviewed discovery, and she gave him a copy of his discovery at their second meeting. Plea Counsel testified that she reviewed the offense, elements, and sentences and discussed possible defenses at trial. Plea Counsel testified that she discussed with Applicant his right to a jury trial.

Plea Counsel testified that Applicant was frustrated with certain issues in his case but never wanted to go to trial. Plea Counsel testified that Applicant said he didn't understand certain issues, but then they would discuss them, and he appeared to understand. Plea Counsel testified that they never discussed hiring an investigator because there was nothing to investigate, and he repeatedly said he wanted to plea, so it was not necessary. Plea Counsel testified that the State made the offer of ten years to Plea Counsel, and she discussed it with Applicant; however, Applicant wanted an offer for non-violent time. Plea Counsel testified that the State rejected that counter based on Applicant's extensive prior record. Plea Counsel testified that she told Applicant of the State's reply, and Applicant understood. Plea Counsel testified that she would have been prepared to go to trial if needed, but Applicant always maintained he wanted to plead. Plea Counsel testified that she felt the plea was in Applicant's best interest because he was originally facing a mandatory minimum twenty-fiveyear sentence.

On cross-examination, Plea Counsel testified that she had drug analysis results and gave them to Applicant with the rest of his Rule 5, SCRCrimP, discovery materials. Plea Counsel testified that she had the complete chain of custody and that was given to Applicant. Plea Counsel testified that Applicant always maintained that he wanted to plead, so there was no need to use a private investigator or do any further investigation. Plea Counsel testified that she felt Applicant

understood what was happening during the plea. Plea Counsel testified that she met with Applicant on Aug 14 and 23rd and then met at the courthouse before plea on Aug. 27th. Plea Counsel testified that she discussed Applicant's background to present as mitigation. Plea Counsel testified that Applicant asked her to get dash cam videos maybe.

On redirect examination, Plea Counsel testified that she did not challenge the chain of custody because she did not see any issue with it, and Applicant wanted to plead. Plea Counsel testified that she gave mitigation to the court, including drug addiction as the reason for his criminal record.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court further had the opportunity to observe the witnesses at the evidentiary hearing and evaluate their credibility, and the Court has weighed their testimony accordingly in its discussion below. This Court finds the combined record of the plea transcript, and the testimony and evidence presented at the evidentiary hearing establishes Applicant received effective assistance of counsel. Accordingly, this Court denies relief and dismisses this application with prejudice. Set forth below are the relevant findings of facts and conclusions of law as required by § 17-27-80 of the South Carolina Code.

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "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.

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

"Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109-10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." Yarborough, 540 U.S. at 6; see also Murphy v. Davis, 901 F.3d 578,

592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable."). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

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

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 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 decision making" 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. 386, 388, 517 S.E.2d 442, 444 (1999).

Surmounting the high bar of Strickland 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. 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. Harris, 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.

This Court finds Applicant cannot meet his burden as to his claims of ineffective assistance of trial counsel. The specific claim is addressed below:

1(a)(b)(c)(d): Plea Counsel Failed to Meet a Sufficient Number of Times to Review Evidence and Discuss Defenses

Applicant alleges Plea Counsel was ineffective for failing to provide a copy of the State's evidence to Applicant, failing to review the available evidence with Applicant, and failing to discuss defense strategy with him. This Court finds these allegations to be without merit.

At the PCR hearing, Applicant testified that Plea Counsel never reviewed the evidence against him, then corrected himself and said she reviewed the charges but never mentioned

anything else about the case with him. Applicant testified that Plea Counsel never gave him a copy of the discovery. However, on cross-examination, Applicant testified that Plea Counsel reviewed the elements of the offense with him and possible defenses, but then she failed to investigate them. Then Applicant testified that he did not provide her with a list of witnesses or things he would like investigated, but she had some paperwork.

This Court finds that Plea Counsel reviewed discovery with Applicant, provided him with a complete copy of the State's evidence, set up meetings within the short time she represented Applicant to discuss the evidence, and pursued a valid defense strategy as an alternative to pleading guilty. Therefore, the Court finds Applicant has not proven his allegations that Plea Counsel's performance in preparing for trial was deficient.

In addition, the Court finds Applicant has not met his burden of establishing prejudice from any of Plea Counsel's alleged failures. To establish prejudice, Applicant must show that, but for Plea Counsel's alleged errors, he likely would not have pleaded guilty and would have insisted on going to trial. Hill, 474 U.S. at 59. However, Applicant testified at sentencing that the choice to plead guilty was his, and he was satisfied with Plea Counsel.

Also, Applicant has not explained how receiving or reviewing additional evidence or discussing additional defense strategies would have changed his mind about pleading guilty. An applicant who alleges his or her defense attorney was ineffective in failing to spend more time preparing or to provide a copy of the discovery materials must demonstrate prejudice by showing what evidence could have been discovered or what other defenses could have been pursued. 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)), abrogated on other grounds by Smalls, 422 S.C. 174, 810 S.E.2d 836.

Furthermore, an applicant must also show how the new evidence 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)). Because Applicant has not established a reasonable probability that, but for Counsel's allegedly deficient performance, he would not have pleaded guilty, this Court finds Applicant has failed to establish prejudice as to these allegations. Hill, 474 U.S. at 59; Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Accordingly, these allegations are **denied and dismissed with prejudice.**

Plea Counsel Failed to Explain the Offense was Violent, Affected Parole Eligibility, and Required 85% of the Time to be Served

Applicant alleges Plea Counsel was ineffective for failing to explain that he was pleading to a violent no-parole offense that requires 85% of the time to be served. This Court finds this allegation is without merit.

At the PCR hearing on direct examination, Applicant testified that Plea Counsel only explained that he was pleading to ten years imprisonment but did not explain it was violent and required 85% of the time to be served. However, Applicant also testified that he fully understood his guilty plea.

On cross-examination, Applicant testified that he did not remember telling the sentencing judge that he understood it was a violent and serious offense. However, Applicant also testified that he remembered the sentencing judge informing him that the offense affected his parole eligibility, required 85% of the time to be served, and explained South Carolina's three-strike rule.

Plea Counsel testified that Applicant asked her to go to the Solicitor and ask for a non-violent offense, but the Solicitor rejected Applicant's request. Plea Counsel testified that she relayed the Solicitor's rejection to Applicant, and he was fully aware that it would be a violent offense.

This Court finds that Applicant has failed to prove deficiency on the part of Plea Counsel and any prejudice therefrom. The plea transcript is replete with Applicant stating that he was pleading guilty. Applicant did raise concerns about the violent nature of the offense but was asked by the court and told the court he understood it was violent, and he was satisfied with his lawyer and had talked to her enough. Then Judge Brown asked Applicant if he needed more time, and Applicant told the court he did not need more time. Furthermore, Judge Brown explained that this offense counts as a strike under the three-strike rule. Notably, much, if not all, of the claims are refuted directly by the plea transcript.

Therefore, for the reasons stated above, the Court **denies relief and dismisses the allegations with prejudice.**

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. The Court finds Plea Counsel's representation was neither deficient nor prejudicial. Therefore, this application for post-conviction relief **must be denied and dismissed with prejudice.**

The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule

71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

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

AND IT IS SO ORDERED this 31 day of May, 2022.

GEORGE M. MCFADDIN, JR.
Presiding Judge
Twelfth Judicial Circuit