

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

The Hon. George M. McFaddin, Jr., Circuit Court Judge

Case No. 2020-CP-21-01967

The State,.....Respondent,

Jason R. Jones,.....Appellant,

Notice of Appeal

Jason R. Jones appeals the order of the Honorable George M. McFaddin, Jr., dated August 9, 2022, which denied his application for Post-Conviction Relief with prejudice. Appellant received written notice of the order on August 12, 2022.



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STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

) IN THE COURT OF COMMON PLEAS
) FOR THE TWELFTH JUDICIAL CIRCUIT

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Jason R. Jones,

DORIS POULOS O'HARA

) CASE NO. 2020-CP-21-1967

Applicant,)
FLORENCE COUNTY, SC.)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

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S.C. SUPREME COURT

This matter comes before the Court by way of Applicant Jason R. Jones's application for post-conviction relief (PCR) filed August 27, 2020. The State filed its return on December 17, 2020, requesting an evidentiary hearing. Applicant filed an Amended Application on June 2, 2022. On June 16, 2022, an evidentiary hearing convened before the Honorable George M. McFaddin, Jr. at the Florence County Courthouse. Applicant was present in the courtroom and represented by Ola Johnson, Esquire. Assistant Attorney General Danielle Dixon represented the State. Applicant testified on his own behalf, and the State presented testimony from Scott Floyd, Esquire.

Following a thorough review of the plea transcript and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to meet his burden of proof. Accordingly, this Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a ten-year sentence. In August 2018, the Florence County Grand Jury indicted him for possession with intent to distribute (PWID) cocaine base, PWID marijuana and PWID heroin (2018-GS-21-1677); possession of heroin; trafficking methamphetamine, and possession of cocaine base (2018-GS-21-1679); and distribution of cocaine base (2018-GS-21-1680). Scott Floyd, Esquire,

represented Applicant on these charges, and Solicitor Todd Tucker represented the State. Pursuant to a negotiated ten-year plea, Applicant pled guilty to trafficking methamphetamine (2018-GS-21-1679) and distribution of cocaine base, third offense (2018-GS-21-1680) before the Honorable Edgar Dickson on October 3, 2019. In exchange, the State dismissed the remaining charges. Judge Dickson accepted the plea, finding it was entered freely and voluntarily, and imposed concurrent sentences of ten years' imprisonment for each offense. Applicant did not appeal.

STATEMENT OF FACTS

On April 11, 2018, narcotics officers with the Florence County Narcotics division utilized a confidential informant (CI), who contacted Applicant to negotiate the purchase of cocaine base. Officers provided the CI \$40 and outfitted him with audio and video recording devices. The CI went to a hotel room and purchased .28 grams of cocaine base, which he later turned over to the officers. Thereafter, the narcotics officers procured a search warrant for the location and executed it on April 18, 2018. During their search, they found cocaine base and almost 14 grams of methamphetamine. Applicant was inside the residence. During the investigation, officers had received allegations that Applicant was selling out of that location.¹

CURRENT APPLICATION

In his application for PCR, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. "I told my lawyer [my co-defendant took ownership of some of the drugs in the room] and he still informed me it was best if I pled to the 10 years but I really didn't want to."

In his Amended Application, Applicant raised the following additional grounds:

¹ The remaining set of charges, which were nolle prossed, arose from an incident that occurred April 2, 2018.

Ineffective assistance of counsel:

1. Applicant was not advised of his constitutional rights to include his right to confrontation, to a jury trial, or his right to remain silent, and as a result he was unable to voluntarily waive these rights and enter a plea.
2. Applicant's counsel Scott Floyd failed to meet with Applicant a sufficient number of times to properly review the evidence and discuss this case with applicant.
3. Applicant's counsel failed to properly advise him regarding the potential sentence he was facing.
4. Applicant's counsel Scott Floyd failed to advise Applicant regarding his right to appeal.
5. Applicant's counsel Scott Floyd coerced Applicant into entering a guilty plea with statements he made to Applicant.
6. Applicant's counsel Scott Floyd failed to review the State's evidence with Applicant and failed to properly investigate the facts of this case.

At the evidentiary hearing, Applicant proceeded on the allegations in the amended application.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant testified he met with counsel twice but they did not review discovery and counsel did not investigate or interview any witnesses. Applicant did not recall being advised of his constitutional rights. When asked whether he voluntarily pled guilty, he replied, "I would not say so." Applicant testified he was confused about the potential sentence range because once he was in the courtroom, the plea court indicated the range was zero to thirty years. He testified he was not advised of his right to appeal but would have wanted to appeal. Applicant maintained he "was never guilty," and he told the solicitor he was not guilty of the trafficking charge. Applicant testified he told plea counsel he wanted a jury trial, but the plea offer was ten years and he did not want to serve thirty years for a crime he did not commit.

On cross-examination, Applicant agreed his biggest concern was he believed he was not guilty of the trafficking charge. However, he acknowledged the State had enough evidence to



convict him. He also acknowledged telling the plea court he understood the constitutional rights he was waiving. Applicant admitted plea counsel reviewed discovery with him the Thursday before he pled guilty and told him he could plead guilty on Friday or the trial would start that Monday. Applicant acknowledged he pled to a negotiated 10-year sentence, and he knew what the sentence would be when he pled guilty. He maintained he wanted a jury trial for the trafficking charge and would have appealed that charge. When asked whether he recalled telling the plea court he did not want a jury trial, he responded, "He coerced me into believing I would not win."

Plea counsel testified he had been practicing law since 1988 and exclusively practiced criminal law. He was appointed to represent Applicant a day or two after Applicant's arrest and represented him about 18 months before the plea. Plea counsel stated Applicant was initially out on bond and they spoke at the August 2018 docket appearance. He testified Applicant was detained in Tennessee at one point during counsel's representation. Counsel stated he attempted to call Applicant in December 2018 but the number did not work. He also sent Applicant a letter but did not get a response. In July 2019, Applicant returned to the detention center in South Carolina. Plea counsel thought he met with Applicant in July 2019 and recalled meeting with him in September and October of 2019.

Plea counsel testified the State had a video of the controlled buy and it looked like Applicant in the video. He stated he explained to Applicant the State's burden of proof and the elements the State needed to prove. Plea counsel was not aware of any defenses and Applicant did not raise any. Likewise, Applicant did not ask plea counsel to investigate anything.

Plea counsel testified he engaged in plea negotiations and discussed all offers with Applicant. He testified the State agreed to dismiss a set of charges for PWID cocaine, marijuana, and heroin, as well as another set of charges for failure to stop and possession of a controlled



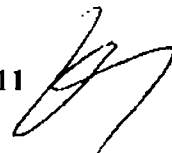
substance, and Applicant walked away with a clean slate.

Plea counsel testified Applicant was not interested in trial. Plea counsel testified he advised Applicant of the constitutional rights Applicant would waive by pleading guilty, including the right to a jury trial, the right to confront witnesses, and the right to remain silent. Plea counsel averred Applicant understood his rights. He also advised Applicant of the right to appeal. He testified Applicant never requested an appeal, but if he had counsel would have filed the notice of appeal and sent it to the Commission for Indigent Defense. Plea counsel testified they also discussed the sentencing ranges and the fact it was a negotiated plea. Plea counsel stated he never threatened or coerced Applicant to plead guilty, and it was Applicant's decision.

On cross-examination, plea counsel reviewed the plea transcript and acknowledged the plea court erroneously told Applicant the distribution of cocaine base charge carried zero to thirty years. However, counsel stated he had advised Applicant it carried ten to thirty years. Plea counsel recalled taking discovery to Applicant when they met on September 27. Plea counsel stated his office employed a private investigator; when asked whether the investigator could have talked to others involved, counsel replied, "Sure, but he said he wanted to plead."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the plea transcript in its entirety and has heard the testimony at the PCR hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Applicant's allegations were, at best, conclusory, and Applicant failed to support his allegations. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).



Ineffective Assistance of Counsel

In a PCR action, an Applicant bears the burden of proving the allegations. Rule 71.1(c), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). An applicant alleging ineffective assistance of counsel must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 813.

The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. at 441, 334 S.E.2d at 813. An applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland). Second, an applicant must prove 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. To prove prejudice following a guilty plea, an applicant "must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 59 (1985).

Involuntary Guilty Plea

Applicant alleges he was never advised of the constitutional rights he was waiving, thus rendering his plea involuntary. Applicant has not proved this allegation. Plea counsel credibly



testified he explained to Applicant the constitutional rights he was waiving, including his right to a jury trial, his right to remain silent, and his right to challenge the State's evidence and confront witnesses. Plea counsel further credibly testified Applicant appeared to understand the rights he was waiving. Finally, plea counsel credibly testified he explained the sentencing ranges for each offense to Applicant, as well as the fact it was a negotiated ten-year plea. This Court finds counsel was not deficient in this regard, Applicant has not shown prejudice, and Applicant entered his plea knowingly and voluntarily. See Holland v. State, 322 S.C. 111, 113, 470 S.E.2d 378, 379 (1996) ("To be knowing and voluntary, a plea must be entered with an awareness of its consequences."). Thus, this allegation is denied and dismissed with prejudice.

Alleged failure to meet with Applicant and review evidence

Applicant next contends plea counsel failed to meet with him a sufficient number of times to properly review the evidence and discuss this case. Applicant has not proved this allegation. Plea counsel testified Applicant was initially out on bond, and he spoke with Applicant at the August 2018 docket appearance. Plea counsel later learned Applicant was incarcerated in Tennessee at one point. He attempted to call Applicant in December 2018 but his number did not work. He also sent a letter to Applicant but did not get a response. In July 2019, Applicant returned to the detention center in South Carolina, and plea counsel believed he met with him in July and recalled meeting with him in September and October. Plea counsel testified he reviewed the State's evidence with Applicant. This Court finds the foregoing testimony by plea counsel is credible. This Court further finds any failure on plea counsel's part to meet with Applicant more was caused by Applicant becoming detained or incarcerated in Tennessee and failing to keep plea counsel apprised of his contact information. Additionally, this court finds plea counsel met with Applicant a sufficient number of times to review the evidence and charges and prepare for the



case. Applicant has not shown plea counsel was deficient in this regard, nor has Applicant demonstrated any resulting prejudice. Thus, this allegation is denied and dismissed with prejudice.

Alleged failure to properly advise Applicant of the sentence he faced

Applicant asserts plea counsel was ineffective for not properly advising him of the potential sentence he was facing. Applicant has failed to prove this allegation. Notably, the plea transcript reflects this was a negotiated plea of ten years' imprisonment for each charge; thus, Applicant knew exactly what sentence he faced when he entered the plea. Further, plea counsel credibly testified he advised Applicant of the ranges he faced for each offense as well as the negotiated sentence and what that meant. Although the plea transcript indicates the *solicitor* stated the distribution charge carried zero to thirty years, plea counsel credibly testified at the PCR hearing that he had advised Applicant of the proper sentencing range of ten to thirty years. See S.C. Code Ann. § 44-53-375(B)(3) (providing a person guilty of distributing cocaine base, third offense, "must be imprisoned for not less than ten years nor more than thirty years"). Based on the foregoing, this Court finds Applicant has not shown counsel was deficient in this regard nor demonstrated any resulting prejudice. Thus, this allegation is denied and dismissed with prejudice.

Alleged failure to advise Applicant regarding his right to appeal

Applicant next contends counsel was ineffective for failing to advise Applicant of his right to appeal. Applicant has failed to prove this allegation. Initially, this Court notes that absent extraordinary circumstances—which are not present here—there is no constitutional requirement that a defendant be informed of his right to appeal a guilty plea. See Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008) ("Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in

appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.”). Nonetheless, plea counsel credibly testified he advised Applicant of his right to appeal but Applicant did not request an appeal. Plea counsel further credibly testified that if Applicant had requested an appeal, plea counsel would have filed the notice of appeal and notified the Commission of Indigent Defense. Based on the foregoing, Applicant has not shown counsel was deficient, nor has Applicant demonstrated any resulting prejudice. Thus, this allegation is denied and dismissed with prejudice.

Alleged coercion

Applicant asserts counsel was ineffective for coercing him to plead guilty with statements he made to Applicant. Applicant has failed to prove this allegation. Initially, Applicant has not explained what statements counsel made to him that purportedly coerced him to plead guilty. To the extent Applicant may have been facing a decision he did not like, that was due to his own actions and not the result of any deficiency by counsel. This Court finds credible counsel’s testimony that he did not coerce or threaten Applicant to plead guilty, and it was Applicant’s decision to plead guilty. This Court further notes Applicant told the plea court that no one had threatened or coerced him to plead guilty. Applicant has not shown counsel was deficient, nor has he demonstrated any prejudice. Thus, this allegation is denied and dismissed with prejudice.

Alleged failure to review evidence and properly investigate

Finally, Applicant asserts counsel was ineffective for failing to review evidence and investigate. Applicant has not proved this allegation. At the PCR hearing, plea counsel testified the State had a video of the controlled buy and it looked like Applicant in the video. Plea counsel recalled taking discovery to Applicant. He testified Applicant was not interested in trial and did not ask plea counsel to investigate anything. Plea counsel stated his office employed a private



investigator; when asked whether the investigator could have talked to others involved, counsel replied, "Sure, but he said he wanted to plead." This Court finds counsel's foregoing testimony is credible. Thus, Applicant has not shown counsel was deficient. Applicant has likewise failed to show *what* evidence counsel neglected to review with him that would have affected his decision to plead guilty. Finally, Applicant has not shown what evidence counsel would have discovered upon a further investigation and has thus not shown prejudice based on counsel's alleged failure to investigate. Cf. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) ("A PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial."). Thus, this allegation is denied and dismissed with prejudice.

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.


Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCARC. Pursuant to Austin v. State, 305 S.C. 453, S.E.2d (1991), an applicant has the right to an appellate counsel's assistance is seeking review of the denial of PCR. Pursuant to Rule 71.1(g), SCRCR, if an applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on the applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

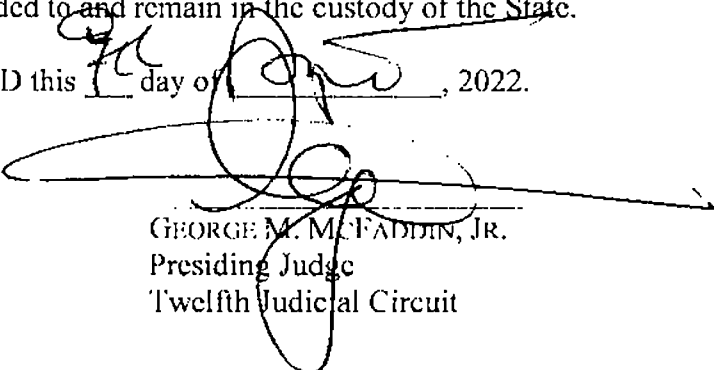
IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and

2. Applicant must be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED this 7th day of June, 2022.


_____, South Carolina



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

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CCCP & GS
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

FILED

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2020CP2101967

Jason R Jones

2022 AUG 12 3:17 PM South Carolina State Of

DORIS POULOS O'HARA
CCCP & DEFENDANT(S)
FLORENCE COUNTY

PLAINTIFF(S)

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

Submitted by:

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC: Rule 41(a), SCRPC (Vol. Nonsuit):
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC: Bankruptcy:
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other:
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

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S.C. SUPREME COURT

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order: (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

8/12/2022

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on **August 12, 2022**, and a copy mailed first class or placed in the appropriate attorney's box on **August 15, 2022**, to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Doris Poulos O'Hara

Court Reporter

Doris Poulos O'Hara - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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