

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

G. D. Morgan, Circuit Court Judge


2018-CP-42-03727

Tron Haney..... Appellant,
v.
The State, Respondent.

NOTICE OF APPEAL

Tron Haney appeals the Honorable G. D. Morgan's Order of Dismissal filed September 15, 2022.

This 19 day of Sept, 2022.


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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Tron Haney, #282094,)
Applicant,)

Case No.: 2018-CP-42-03727

v.)

ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)

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SOUTH CAROLINA
SEVENTH JUDICIAL CIRCUIT

This matter comes before this Court by way of Applicant's post-conviction relief application filed October 25, 2018. Respondent made its return on August 8, 2019, requesting an evidentiary hearing be convened. An evidentiary hearing was held on April 21, 2022, at the Spartanburg County Courthouse. Susannah C. Ross, Esquire, represented Applicant. Assistant Attorney General Chelsey F. Marto represented Respondent.

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

Procedural History

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the August 2017 term of the Spartanburg County Grand Jury for possession with intent to distribute heroin, second offense (2017-GS-42-04297); possession with intent to distribute cocaine, second offense (2017-GS-42-04298); trafficking in methamphetamine more than one hundred grams (2017-GS-42-04301); and driving under suspension, third or subsequent (2017-GS-42-04300). Steven D.

Epps, Esquire, represented Applicant, and Lindsey H. Overby, Esquire, of the Seventh Circuit Solicitor's Office, prosecuted the case. On January 8, 2018, Applicant pled guilty to the lesser-included offense of trafficking in methamphetamine, twenty-eight to one hundred grams, second offense (-04301), and as indicted to the other three charges. The Honorable J. Derham Cole sentenced Applicant to imprisonment for concurrent terms of twelve years for trafficking meth, ten years for PWID heroin, ten years for PWID cocaine, and ninety days for driving under suspension.

Applicant filed an untimely notice of appeal on January 22, 2018. By order filed February 2, 2018, the South Carolina Court of Appeals dismissed the appeal pursuant to Rule 203(b)(2), SCACR. The remittitur was issued on February 21, 2018.

Summary of Relevant Facts

On December 5, 2016, the Spartanburg County Sheriff's Office narcotics officers initiated a traffic stop for failure to use a turn signal. (Tr. 19). Prior to the stop, officers received a tip that an individual known as "Tee" was driving a black Dodge rental truck with a quantity of methamphetamine kept in a silver or gray metal box. (Tr. 19). After the stop, the officers approached the driver, asking for identification. (Tr. 19-20). Applicant informed the officers he was driving under suspension. (Tr. 20). He was asked to exit the car, patted down, and cuffed. (Tr. 20). Applicant was patted down and \$7,120 was recovered. (Tr. 20). In his pants pocket two bags of a white powdery substance that tested for cocaine, three bags of heroin, two brown pills, and one white pill, which was oxycodone. (Tr. 20). The two bags of cocaine weighed 2.34 grams and .24 grams respectively. (Tr. 20). The three bags of heroin combined weighed .72 grams and in a separate green bag was .5 grams. (Tr. 20). An inventory search of the truck revealed methamphetamine in the ash tray, including 20.93 grams and a set of digital scales. (Tr. 20). In a

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black bag in the back seat was a toolbox containing six plastic bags of methamphetamine with a combined weight of 169 grams and an additional set of scales. (Tr. 20) Applicant was Mirandized both prior to the inventory search and around the time he was booked. (Tr. 20-21). Applicant claimed possession of the drugs in the truck both times. (Tr. 20-21).

Current Action Before this Court

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

1. "Ineffective Assistance of Counsel"
 - a. "Counsel failed to investigate case and scene of arrest"
 - i. "If trial counsel had investigated defendant's case, he would have noted at the scene of arrest several surveillance videos were available in the area, proving the illegality of the traffic stop, detention, and illegal search."
 - b. "Counsel failed to request police-in-dash-camera video / surveillance video"
 - i. "Counsel failed defendant by not requesting videos; these videos would prove defendant was not stopped because of his failure to use his signal lights. Furthermore, defendant was not issued a blue traffic ticket to support the traffic stop. Ultimately police had no probable cause to stop or detain defendant."
 - ii. "When defendant was stopped, he pulled over in a Family Dollar parking lot. This parking lot was under video surveillance by the retail store. Trial counsel was informed of these videos by defendant, but failed to seek out this evidence in preparation of defendant's defense. These videos were available to defendant's attorney through reasonable discovery."
 - c. "Counsel failed to challenge legality of search warrant and inventory search"
 - i. "When defendant was stopped officers discovered he was Driving Under Suspension 3rd subsequent offense. Moreover, defendant was not stopped because of the moving traffic violation, but was stopped because of an anonymous call and illegal signal use. Police records indicate it was the latter, and he may have fit the description of a suspect. The anonymous call was never verified. During the stop officers were informed the rental car was borrowed by defendant from a female friend Jennifer Smith. A safe was found inside a black bag behind the passenger seat in the floor. The safe was locked and

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defendant did not have access. The officers Terry frisked the defendant to determine the presence of any weapons or drugs; no weapons or drugs were found. At this point the Terry standard had been met and defendant should have been only charged for Dus 3rd. The curiosity of the officers stop had been satisfied, according to *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). Moreover police knew the identity of the rental cars owner. Defendant submitted all the paperwork for the rental car to the police. However, police pried the safe open with a crowbar without Ms. Jennifer Smiths consent. Inside the safe police found the drugs relating to defendants PWID arrests. These charges should be vacated under the rules of Fruits of the poisonous tree. Furthermore, trial counsel undoubtedly failed to request a preliminary hearing to question the constitutionality of the search warrant stated above. For the record, the police never obtained a search warrant for Ms. Smith's rental car. Counsel seriously failed defendant because the search was done without a warrant, and a no probable cause traffic stop; no blue ticket was issued; nor was there reason to open the safe; it was not necessary to identify the owner of the car. Moreover, the safe was opened before the car was impounded.

- d. "Counsel failed to investigate witness Jennifer Smith."
 - i. "Defense counsel failed defendant by not properly investigating witness Mrs. Smith. Had counsel located and interviewed Mrs. Smith, he would have uncovered the fact that defendant was only borrowing the car with her consent; he had no knowledge of the black bag or safe; he did not have access to open the safe; neither was Mrs. Smith notified by police to grant permission to consent to search the rental car, or open any locked compartments, including safes. Therefore, any and all evidence found during the traffic stop was illegally obtained during an illegal inventory search."

By amendment dated January 31, 2022, Applicant alleged the following:

- 1. Ineffective assistance of counsel:
 - a. For failure to move to dismiss due to involvement of investigator Lorin Williams in the case.
- 2. Due process violations guaranteed in the Fifth and Fourteenth Amendments of the Constitution of the United States & Art I. Sec. 3 of the South Carolina Constitution:

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

- 1. Ineffective Assistance of Counsel:

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- a. Failure to pursue a defense that the truck was not Applicant's.
 - b. Failure to review all the evidence:
 - i. Failure to review camera footage.
 - c. Brevity of time spent in consultation.
 - d. Failure to pursue a motion to suppress hearing.
 - e. Failure to move to dismiss the case because of involvement of Investigator Lorin Williams.
 - f. Failure to present defense involving the lack of a blue ticket.
 - g. Failure to request a preliminary hearing.
2. Invalid plea:
- a. Applicant was coerced into pleading by his family and Counsel.
 - b. Failure to explain the charges against him.
 - c. Applicant felt coerced into pleading because he thought he would face life imprisonment if he did not plead.
 - d. Counsel erroneously told him that if he pled, he would receive no more than ten years' imprisonment.

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

Understanding the risks associated with pursuing a PCR action, Applicant testified he wanted to continue forward with the action. Applicant testified that Counsel was his second attorney. Concerning the incident, Applicant testified that he was pulled over in the Family Dollar parking lot. He stated that the truck he was driving was searched and that it did not belong to him. Applicant testified that he wanted Counsel to review the camera footage associated with the case. He testified that Counsel wanted him to plead guilty. He stated if he was the culpable one in the case, he would have admitted it, but that that was not the case. He testified Counsel only met with him when he had news from the Solicitor's office. He stated he wanted to fire Counsel, but that it was too late. Applicant testified he thought he could win a motion to suppress hearing and that the prosecutor told him the same. Applicant testified that he did not have a preliminary hearing. He stated Counsel had his family appear at the courthouse and coerce him into pleading guilty.

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Applicant stated he did not understand the charges against him. He stated that if Counsel did what he asked him to do, he would have had a different outcome.

On cross-examination, Applicant testified he pled guilty because Counsel told his family to return to the courthouse and coerce him into pleading. He stated that his mother wanted him to plead. He stated he met with James Check, who also told him to plead. He stated he was not aware of the drugs in the car. He claimed that Counsel wanted the State to "get a conviction off of" him, and that Counsel told him to plead so he would not receive a life sentence. He stated that Counsel told him that if he pled, he would not receive more than ten years' imprisonment.

Counsel Testimony

Counsel testified that he was appointed due to a conflict of interest. He stated he met with Applicant between twenty and twenty-five times. He stated that at their meetings they discussed how there were no cameras in the Family Dollar parking lot, about the potential suppression issues if they proceeded to trial, how driving under suspension is an arrestable offense, about the lockbox issue, the enhancement statute, and the potential plea deal. Counsel testified that Applicant was offered a fifteen-year plea deal, which he stated he wanted reduced. Counsel stated that Applicant initially wanted a trial, but ultimately decided to plead. He stated he thought that any plea would have been in Applicant's best interest because he did not believe they would have won the suppression issue in full and, accordingly, they likely would have lost at trial and Applicant's would have received life in prison. He stated he did not see any mischief on the part of Investigator Lorin Williams. He stated there was not a dash camera in this case.

Counsel stated that Applicant was the individual who initiated the plan to ultimately plead. He stated that Applicant's family was very involved, but that he did not call them back to the courthouse to talk Applicant into pleading. He stated Applicant made the decision to plead before

Applicant's family was called back to the courthouse. Counsel testified he did not coerce Applicant into pleading. Counsel testified Applicant knew what he was doing by pleading.

On cross-examination, Counsel testified that he searched for a dash camera but was told it did not exist. Counsel testified that the incident was initiated by a traffic stop. Counsel testified he did not have any information or background information on the confidential informant. Counsel testified he never saw a blue ticket but stated he did not think a blue ticket would have had an impact at trial. He stated that this would have been a possible line of attack at trial.

On re-direct, Counsel testified that Applicant's best option was pleading because the chances of suppressing all the drugs were slim to none, the case was not favorable to the defense, and Applicant likely would have been convicted at trial.

Findings of Fact and Conclusions of Law

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

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as

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having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

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

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“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.

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 (Cl. 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

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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).

Invalid Plea

This Court finds Applicant's plea was entered freely, knowingly, intelligently, and voluntarily. At the plea hearing, Applicant confirmed he understood the charges, that there was no sentencing recommendation, and that he understood some charges were being dismissed in exchange for the plea. (Tr. 3, 5). He stated He understood he was pleading to four charges in exchange for an additional five being dismissed. (Tr. 4). The Court confirmed Applicant understood the charges, elements of the offenses, fines, and potential sentences. (Tr. 5-8). He stated that he was satisfied with Counsel and that he discussed everything with Counsel prior to the plea. (Tr. 8-9). Applicant stated he understood that, by pleading, he was waiving his right to remain

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silent, to call and confront witnesses, to a jury trial, to a possible *Jackson v. Denno* hearing, and the right to challenge the search of the car at trial. (Tr. 9-15) He stated that no promises or threats beyond the negotiations were made, and that the plea was free and voluntary. (Tr. 15-17). He stated that he did not have any emotional disturbance impacting his understanding of the proceedings. (Tr. 18-19). Applicant agreed with the facts and prior record recited by the prosecutor. (Tr. 22). Concerning the PCR hearing, Applicant credibly testified that he pled because he was afraid of life imprisonment if he proceeded to trial. Additionally, this Court finds Counsel credible in his testimony that it was Applicant's decision to plead and that he thought Applicant fully understood what he was doing by pleading. Accordingly, this Court finds the plea was entered freely, knowingly, intelligently, and voluntarily and cannot be withdrawn now.

Coercion By Family

Applicant claims that his plea was not freely, knowingly, intelligently, and voluntarily entered because Counsel used Applicant's family to coerce him into pleading. However, Counsel credibly testified that Applicant was the individual who initiated the plan to ultimately plead. He also credibly testified that Applicant's family was very involved, but that he did not call them back to the courthouse to talk Applicant into pleading. Instead, Counsel credibly testified that Applicant made the decision to plead before Applicant's family was called back to the courthouse. Thus, this Court finds that Applicant reached the decision to plead on his own and his family had no coercive force on his decision to plead. Accordingly, this Court dismisses this allegation as without merit.

Trial Tax – Life Imprisonment

Applicant claims he was coerced into pleading because he was told if he did not plead, he would likely face life in prison. Being informed that if he went to trial, he would face more time in prison does not rise to the level of coercion and is not enough to render the plea invalid.

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Accordingly, relief is denied on this ground.

Failure to Explain Charges

Applicant claims the plea is invalid because he did not understand the charges. However, the plea transcript reflects that Applicant was informed by the plea court of the charges, sentencing ranges, fines, and elements of the offenses. (Tr. 5-8). Thus, this Court finds that Applicant's allegation is not credible and refuted by the record. Accordingly, relief is denied on this ground.

Ten-Year Sentence

Applicant claimed his plea was involuntary because Counsel told him he would not be sentenced to more than ten years if he pled. However, the record reflects that Applicant entered his plea without a sentencing recommendation. (Tr. 3). Additionally, Applicant confirmed at the plea hearing that he knew he could be sentenced up to thirty years for trafficking in methamphetamine and possession with intent to distribute cocaine, second offense, fifteen for possession with intent to distribute heroin, and ninety days for driving under suspension, third offense. (Tr. 5-8). Thus, Applicant seemingly understood he could be sentenced to more than ten years and his allegation to the contrary is refuted by the record. Accordingly, relief is denied on this ground.

Preliminary Hearing

Applicant also claims Counsel was ineffective for waiving the preliminary hearing. In South Carolina, there is no constitutionally protected right to a preliminary hearing. *State v. Keenan*, 278 S.C. 361, 296 S.E.2d 676 (1982). Additionally, a preliminary hearing is not held if the defendant is indicted by a grand jury or waives presentment before the preliminary hearing occurs. Rule 2(b) SCRCrimP. Further, a preliminary hearing can be waived through [p]lea negotiations and silence before the trial court regarding the desire for a preliminary hearing when

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entering a guilty plea. *O'Neil v. State*, 277 S.C. 230, 231, 285 S.E.2d 352, 353 (1981) (citing *Bonnetee v. State*, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981)).

By entering his plea, Applicant waived his right to a preliminary hearing. Thus, relief is denied on this ground.

Failure to Pursue Defense – Truck Ownership

Applicant claims Counsel was ineffective for failure to pursue a defense that Applicant did not own the truck he was operating at the time of his arrest. However, Applicant seemingly waived his right to assert this defense by entering an otherwise valid plea. Additionally, when asked about a possible line of attack at trial, Counsel credibly testified that pursuing any of the identified defenses would have been a large risk because if the matter proceeded to trial, he would be found guilty and would be sentenced to life imprisonment pursuant to an LWOP notice. Thus, Counsel's recommendation as to the plea is unchanged. Further, this Court does not find Applicant credible in his contentions that he would have proceeded to trial, but for Counsel's failure to pursue lines of defense. Accordingly, relief is denied on this ground.

Failure to Pursue Defense – Blue Ticket

Applicant claims Counsel was ineffective for failure to pursue a defense concerning the blue ticket. Counsel credibly testified that he thought that could be a possible line of attack at trial, but that he ultimately did not think it would lead to Applicant being found not guilty. Additionally, the right to assert this defense was seemingly waived with the entry of an otherwise valid plea. Thus, relief is denied on this ground.

Failure to Review All Evidence – Security Footage

Applicant claimed Counsel was ineffective for failure to review security surveillance footage. Counsel credibly testified that this footage did not exist. Counsel is not required to review

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non-existent footage, nor can this failure have any prejudicial impact. Accordingly, relief is denied on this ground.

Brevity of Time

Applicant alleges that Counsel was ineffective for brevity of time spent in consultation. “[B]revity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation.” *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Applicant must show evidence indicating “how additional preparation or communication would have resulted in a different outcome.” *Id. See Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (where application failed to show ineffective assistance of counsel based on lack of preparation by neglecting to show evidence of what counsel failed to discover or what defenses counsel could have pursued had he more fully prepared for the case); *Skeen v. State*, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (where applicant failed to show ineffective assistance of counsel when he did not present evidence showing how additional preparation would have impacted the trial).

Applicant claims that Counsel did not speak with him about the case enough. However, at the plea hearing, Applicant stated that he was satisfied with Counsel and that he had enough time to talk to Counsel and that they discussed everything concerning his case. (Tr. 8-9). Additionally, Counsel credibly testified at the PCR hearing that he met with Applicant between twenty and twenty-five times to talk about his case. Beyond that, Applicant has failed to show how this brevity of time spent in consultation impacted Counsel’s representation of Applicant. There is no indication that the results of the proceedings or the decision to plead would have been different had Counsel conferred with him more. Accordingly, Applicant has failed to establish ineffective assistance of counsel and this Court declines to grant relief.

Motion to Suppress Hearing

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Applicant claims Counsel was ineffective for failure to request a motion to suppress hearing. However, this was seemingly waived with the entry of an otherwise valid plea. Additionally, Counsel credibly testified that the plea was in Applicant's best interest and, if they proceeded to trial, the chances of all drugs being suppressed at a motion to suppress hearing were slim. Counsel credibly testified Applicant likely would have been found guilty at trial and sentenced to life imprisonment accordingly. Counsel also credibly testified that he discussed the motion to suppress with Applicant prior to the plea. Still, after this discussion, Applicant freely, knowingly, intelligently, and voluntarily entered the plea. Thus, Counsel was not ineffective for failing to pursue a strategy discussed with and subsequently waived by Applicant. Thus, relief is denied on this ground.

Lorin Williams

Applicant claims that Counsel was ineffective for failure to move to dismiss for Lorin Williams' involvement in the case. However, Counsel credibly testified he did not see any indication of misconduct on Lorin Williams' part in the case. Counsel is not deficient for failing to move to dismiss on what is seemingly a frivolous ground when no indication that the motion is proper. Additionally, because there is no indication that there was a basis for the motion, the motion would not have been granted. Thus, Applicant was not prejudiced by any alleged deficiency. Accordingly, relief is denied on this ground.

Conclusion

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

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty

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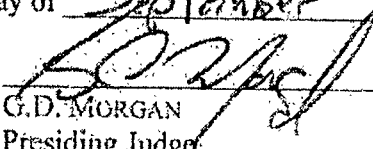
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days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel's assistance 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 8th day of September, 2022.


G.D. MORGAN
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina.

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