THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2020-CP-39-82

Richard Andrew Hagins, #252152

Appellant,

v.

State of South Carolina,

Respondent.

NOTICE OF APPEAL

Richard Andrew Hagins appeals the order of the Honorable Eugene C. Griffith, Jr., dated August 29, 2022. Appellant received written notice of entry of this order on September 9, 2022.

September 14, 2022

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STATE OF SOUTH CAROLINA COUNTY OF PICKENS	)	IN THE COURT OF COMMON PLEAS FOR THE THIRTEENHTH JUDICIAL CIRCUIT
Richard Andrew Hagins, #252152, Applicant,	)	Case No. 2020-CP-39-82
v.	)	**ORDER OF DISMISSAL**
State of South Carolina, Respondent.	)	

This matter comes before this Court by way of a *pro se* application for post-conviction relief filed by Richard Andrew Hagins ("Applicant") on January 22, 2020. The State's ("Respondent") return to the application, which was filed on June 17, 2020, included a motion to dismiss all but one of Applicant's claims. An evidentiary hearing in this matter was held before the undersigned via the WebEx virtual platform on March 22, 2022. Everyone who participated did so remotely via WebEx. Applicant was present and was represented by Don A. Thompson. Taylor Zane Smith of the South Carolina Attorney General's Office represented Respondent. Following a thorough review of the record in its entirety and the evidence presented at the evidentiary hearing, this Court finds that Applicant has failed to prove that he is entitled to post-conviction relief, and denies the application with prejudice.

PROCEDURAL HISTORY

Applicant is presently imprisoned in the South Carolina Department of Corrections. During its January of 2018 term, the Pickens County Grand Jury indicted Applicant for murder (2018-GS-39-9) and the possession of a weapon during the commission of a violent crime (2018-GS-39-10). On December 19, 2018, Applicant appeared before the Honorable Letitia H. Verdin ("the plea court") and pleaded guilty to voluntary manslaughter, a lesser-included offense

of murder. John W. DeJong ("plea counsel") represented Applicant at that guilty plea hearing. Assistant Solicitor Shannon Swords Odom ("the solicitor") of the Thirteenth Circuit Solicitor's Office prosecuted the case. At the plea hearing, the solicitor presented the following recitations of facts:

> [T]his occurred back on August the 26th of 2016 here in Pickens County. The victim in the case was 54 year old Jeff Chandler. Mr. Chandler was renting a room from [Applicant].
>
> On this day [Applicant] had confronted Mr. Chandler about being behind on the rent. He was a hundred and ninety dollars . . . behind. They kind of went back and forth all day arguing, discussing, disagreeing about this, but ultimately the victim refused to pay. And [Applicant] told him he was going to have to leave the home.
>
> As the victim was preparing to leave, [Applicant] continued to argue with him. The victim's girlfriend also lived in the home as well as another male. So all four people were at the home when this arguing was going on.
>
> The victim's girlfriend was kind of used to the dynamic. She didn't want to hear the argument. She went into a bedroom and shut the door. She continued to hear arguing and then scuffling.
>
> The victim opened the door to speak with his girlfriend and told her not to worry about [Applicant]. At that time she saw [Applicant] jump on the victim's back and the two began to fight. The fight started inside and moved outside onto the porch. The girlfriend and the other man in the home, you know, they could hear everything, but they didn't get up, they didn't see anything.
>
> When the front door opened again, the victim came back inside the home bleeding and was asking that 911 be called. At this time the victim's girlfriend saw [Applicant] stab the victim repeatedly. In all there were ten stab wounds.
>
> When [Applicant] finished, he actually placed a knife in the victim's hand. At that point [Applicant] called 911, and law enforcement responded. When they got there the victim was lying dead in the floor and his girlfriend was holding his head in her lap.
>
> [Applicant] tried to tell law enforcement that it was self-defense, however, he was unable to keep his story straight, and it changed several times. Ultimately the victim had four stab wounds in his back and six in his front. A stab wound had punctured his heart. And that proved to be the fatal blow.

Plea Tran. 7-8. In accordance with the solicitor's recommendation, the plea court sentenced

Applicant to imprisonment for twenty-five years, with credit for time served. On that same day, the solicitor dismissed the indictment for possession of a weapon.

Applicant did not appeal his conviction or sentence.

CURRENT PROCEEDING

In his *pro se* application for post-conviction relief, filed on January 22, 2020, Applicant raised multiple claims, which this Court interprets as follows: (1) Applicant did not knowingly and voluntarily waive his right to direct appellate review; (2) plea counsel was constitutionally ineffective for not preparing for trial adequately; (3) plea counsel was constitutionally ineffective for not advising Applicant of his rights, especially his rights under the Sixth Amendment; (4) plea counsel was constitutionally ineffective for not following up with the solicitor after moving for discovery; and (5) plea counsel was constitutionally ineffective for not doing more in plea negotiations. At the start of the March 22, 2022, hearing before this Court, Applicant clarified that he had no other claims to put before the Court other than these. This Court finds that Applicant has abandoned and waived all claims but these, and will address only these in this order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety. Before this Court are: the records of the Pickens County Clerk of Court for Applicant's conviction and sentence; Applicant's records from the Department of Corrections; the transcript from Applicant's guilty plea hearing; and all filings in this matter. Set forth below are the relevant findings of facts and conclusions of law with regards to the claims that Applicant advanced at the evidentiary hearing, as required by S.C. Code Ann. §17-27-80 (1985).

Applicant's claim that he did not knowingly and voluntarily waive his right to direct appellate review.

Applicant raises a claim that he did not knowingly and voluntarily waive his right to direct appellate review of his conviction and sentence. Applicant testified before this Court that plea counsel told him that he could appeal if the sentence imposed was greater than fifteen years in length, and that plea counsel told him that about that fact fifteen minutes before the plea hearing began. He testified that he filed his application after the one-year statute of limitations had already expired because he believed at the time that his direct appeal was pending. He testified that he could not remember everything that happened at his plea hearing because he has mental health problems that were affecting his memory. He affirmed that the plea court told him that he had the right to appeal, and testified that plea counsel told him that he would appeal on Applicant's behalf. He testified that he did not remember if the plea court said that the notice of appeal had to be filed within ten days of the plea hearing.

Plea counsel testified before this Court that he had been appointed to represent Applicant. He testified that Applicant told him that he did not want to risk getting a life sentence, so he worked out a plea deal with the solicitor. He testified that he could not say definitively that he discussed with Applicant that Applicant had the right to appeal. He testified that he did not routinely discuss the right to appeal with clients who pleaded guilty. He testified that he most likely did not discuss the right to appeal with Applicant. He testified that he did not remember Applicant's ever asking him to appeal. He testified that he had not recollection of telling Applicant that he would file a notice of appeal if Applicant's sentence was greater than fifteen years' imprisonment. He testified that he did not make such promises to his clients because he did not make an appeal contingent upon the time that the client received. He testified that he would have appealed if Applicant had asked him to do so. He testified that he had no reason to believe that a rational defendant in

Applicant's position would have wanted to appeal. He testified that he would have filed a notice of appeal or discussed doing so with Applicant had he seen an appealable issue come up during the plea hearing. He testified that he had no letters or notes in his file indicating that Applicant ever asked him to appeal. He testified that he never told Applicant that he either would or would not appeal. He testified that it was his routine to appeal if asked to do so by a client, and that he had no reason to believe that he deviated from that practice with respect to Applicant.

In *White v. State*, 263 S.C. 110, 119, 108 S.E.2d 35, 39 (1974), the South Carolina Supreme Court held that a post-conviction relief court does not have jurisdiction to grant a belated appeal. However, when an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected. *Id.* at 119, 108 S.E.2d at 39-40; *Davis v. State*, 288 S.C. 290, 342 S.E.2d 60 (1986) (providing the procedure for appeals in post-conviction relief cases where there is an issue concerning an applicant's knowing and voluntary waiver of the right to direct appellate review); Rule 243, SCACR (the appellate court rule that applies specifically to appeals in post-conviction relief matters).

Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either: (1) that a rational defendant would want to appeal or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. *Roe v. Flores-Ortega*, 528 U.S. 470 (2000). When counsel has consulted with the defendant regarding the right to appeal, "[c]ounsel performs in a professionally unreasonable manner only by failing to follow the defendant's express instructions with respect to an appeal." *Id.* at 478. In

order to establish that he was prejudiced by counsel's failure to file an appeal, an applicant must show he would have appealed absent counsel's deficient performance. *See Id.* at 484.

This Court finds that Applicant has failed to prove that plea counsel informed him of his right to appeal. Applicant's testimony that plea counsel told him of the right to appeal and promised to appeal depending on the length of the sentence that the plea court imposed is not credible. Plea counsel's testimony that he did not discuss the right to appeal with Applicant, and that he did not routinely do so with clients who were pleading guilty, is credible. Applicant's testimony that plea counsel told him that he was appealing on Applicant's behalf is not credible. Plea counsel's testimony that he did not tell Applicant that he was appealing, and that he had no notes or letters in his file indicating that he did so, is credible. Applicant's testimony that he filed his application late because he thought that his direct appeal was pending is not credible.

This Court finds that Applicant has failed to prove that plea counsel had a duty to inform Applicant of the right to appeal because Applicant has not proven that he "reasonably demonstrated to counsel that he was interested in appealing." Id. at 480. Applicant provided this Court with no credible evidence that he informed plea counsel that he would like to appeal. Plea counsel credibly testified that he had no memory of Applicant's ever asking him to appeal, that he had no note or letter in his file indicating that Applicant ever told him to appeal, and that he routinely appealed for clients who asked him to do so and had no reason to think that he deviated from that routine with respect to Applicant. Additionally, Applicant has not proven that plea counsel had a reason to think "that a rational defendant" in this situation would have wanted to appeal. *Id.* Applicant's sentence was lower than the maximum sentence that he could have received, and he was avoiding, by taking the plea deal, a potential life sentence, the fear of which

plea counsel credibly testified had motivated Applicant's engaging in plea negotiations in the first place.

This Court finds that Applicant has failed to prove that he did not knowingly and voluntarily waive his right to direct appellate review because he has failed to prove that plea counsel was required to inform him of his right to appeal, because he has failed to prove that plea counsel actually informed him of his right, and because he has failed to prove that he gave any indication to plea counsel that he wanted to appeal. This claim is denied and dismissed with prejudice.[1]

Applicant's claim that plea counsel was constitutionally ineffective for not preparing for trial adequately.

Applicant testified before this Court that plea counsel met with him only on a few occasions. He testified that plea counsel met him at the detention center once. He testified that plea counsel told him not to discuss anything because there were listening devices installed in the detention center, which prevented plea counsel and Applicant from discussing the case. He testified that, on his second visit to plea counsel's office, plea counsel did not more than play a video for Applicant of Applicant sitting in the back of a police car for two hours. He testified that

[1] At the evidentiary hearing, this Court initially denied Respondent's motion to dismiss all claims, except the claim that Applicant did not knowingly and voluntarily waive his right to direct appellate review, as barred by the statute of limitations. In light of the testimony presented following that ruling, and this Court's factual findings, which are presented in this order, all claims except the direct appellate review claim are, in addition to those reasons presented in the remainder of this order, barred as a matter of law because they were not presented in a timely application. An application must be filed within one year of the entry of judgment or the issuance of a remittitur, whichever is later. S.C. Code Ann. § 17-27-45(A). The application was filed about six months too late. Applicant's non-credible testimony that his application was late due to his belief that his direct appeal was pending does not serve to save his application from its untimeliness. *See Wilson v. State*, 348 S.C. 215, 559 S.E.2d 581 (2002) (reversing the PCR court's dismissal of the application due to its untimeliness because the policy of previous opinions would be frustrated if the applicant was denied his right to a direct appeal due to his lawyer's ineffectiveness and then, as a result, was denied his right to put forth post-conviction relief claims).

plea counsel did not discuss with him anything about the witnesses or the evidence against him. He testified that he told plea counsel to get his mental health records, but that plea counsel did not do so. He testified that plea counsel never interviewed witnesses, and that he wanted plea counsel to interview the two witnesses who gave statements to law enforcement officers.

On cross-examination, Applicant testified that he could not remember what plea counsel told him about voluntary manslaughter and that plea counsel knew that he could not read. He testified that he did not remember telling the plea court that he was happy with plea counsel's representation of him, and denied that he would have done so because he had been in jail for two years by that point. When asked if he informed the plea court that he wanted to plead guilty after hearing the solicitor's recitation of facts, he testified that the solicitor did not go into the evidence. He testified that he could not remember what the plea court went over with him at the plea hearing due to his mental health issues.

Plea counsel testified before this Court that he had no record of the number of his meetings with Applicant, but he knew that he had Applicant taken to his office on two occasions to watch video recordings. He testified that he met with Applicant on more than those two occasions because he also met with Applicant at the detention center. He testified that there were more than three meetings, but he was not sure about the number. He testified that he did not tell Applicant when they met at the jail that they could not discuss the case, but explained that he told Applicant not to discuss certain things on the jail phone or with others at the jail, lest those communications be used against Applicant. He testified that he told Applicant that he would meet him at the jail if Applicant called him (by a free phone call) to set up the meeting. He testified that their meetings lasted anywhere from twenty minutes to two hours. He testified that he gave to Applicant a copy of the discovery and that he reviewed all of it with him. He testified that he got Applicant's health and

mental records and reviewed them. He testified that he discussed the facts of the case with Applicant. He testified that he was not sure that he discussed potential defenses with Applicant because he did not see any that applied, and that he felt that Applicant would not have prevailed on a self-defense argument. He testified that he did not need to interview witnesses because he already had their statements. He testified that he would have done more to prepare for a trial if Applicant had not told him that he wanted to plead guilty. He could not recall Applicant's ever having asked him to do any specific acts of investigation.

All defendants have a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. *Strickland v. Washington*, 466 U.S. 668 (1984); *Lomax v. State*, 379 S.C. 93, 665 S.E.2d 164 (2008). A post-conviction relief applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that his lawyer was constitutionally ineffective, he must prove that the conduct of his lawyer "so undermined the proper functioning of the adversarial process that [that conduct] cannot be relied upon as having produced a just result." *Strickland*, 466 U.S. at 686. In evaluating allegations of ineffective assistance of counsel, the post-conviction relief court applies the two-pronged test outlined in *Strickland*. First, the applicant must prove that the performance of his lawyer was deficient. *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (quoting *Strickland*). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). In order for a post-conviction relief applicant to successfully prove that his defense attorney's performance was deficient, the applicant must prove "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed by the Sixth Amendment." *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quotation omitted). "The proper measure of

counsel's performance remains whether he has provided representation within the range of competence required of attorneys in criminal cases." *Id.* (citations omitted). The "preeminent authority for all" courts when they are considering an applicant's claim of constitutional ineffectiveness requires that the courts be highly deferential to a defense lawyer's performance because:

> [I]t is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable . . . . A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.

Id. at 444-45, 334 S.E.2d at 815-16 (quoting *Strickland*). An applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. "The burden of rebutting this presumption rests squarely on the defendant, and it should go without saying that the absence of evidence cannot overcome it. In fact, even if there is reason to think that counsel's conduct was far from exemplary, a court still may not grant relief if the record does not reveal that counsel took an approach that no competent lawyer would have chosen." *Dunn v. Reeves*, 141 S. Ct. 2405, 2410 (2021) (quotation omitted).

Second, the deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for [the lawyer'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. "Representation is an art, and an act or omission that is unprofessional in one case may be sound of even brilliant in another. Even if a defendant shows that particular errors of counsel were unreasonable, therefore, the defendant must show that they actually had an adverse effect on the defense." *Hill v. Lockhart*, 474 U.S. 52, 58 (1985) (quotation omitted). With respect to a guilty

plea counsel, an applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. *Hill*, 474 U.S. at 59. A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing: (1) that counsel was deficient and (2) that there is a reasonable probability that but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial. *Roscoe v. State*, 345 S.C. 16, 546 S.E.2d 417 (2001). The "prejudice prong ordinarily requires more than simply a defendant's assertion that but for counsel's deficient performance he would not have pled but would have gone to trial." *Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009).

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. A court need not first determine whether a lawyer'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. *Strickland*, 466 U.S. at 697. Moreover, *Strickland* does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, *Strickland* requires the post-conviction relief applicant to prove that "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* at 697. Therefore, the function of the post-conviction relief court is to determine if "in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance" required of a criminal defense attorney. *Id.* at 690.

"A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not

invariably, foreclosed." *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977)). "Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea." *Garren v. State*, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); *see Jamison v. State*, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014) (observing that "guilty plea[s] must be treated as final in the vast majority of cases" and instructing that caution must be exercised so as not to "undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea"). The South Carolina Supreme Court has instructed that:

> The longstanding test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him.

State v. Inman, 395 S.C. 539, 556, 720 S.E.2d 31, 40 (2011) (internal quotations and citations omitted). "[A] guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." *Jamison*, at 468, 765 S.E.2d at 129 (citations omitted).

This Court finds that Applicant has failed to prove that there was any deficiency in plea counsel's performance with respect to his pre-trial preparation. Plea counsel's credible testimony establishes that he reviewed all of the discovery with Applicant. Applicant's testimony that plea counsel did not discuss the evidence with him is not credible. Applicant complained that he felt that plea counsel did not meet with him a sufficient number of times, but he did not supply any evidence that the number of meetings was inadequate as a constitutional matter or that there was any need for plea counsel to meet with him on more occasions. Plea counsel credibly testified that Applicant had the ability to contact him to set up additional meetings, so the fact that Applicant did not do so is an indication that he was satisfied at the time with the frequency of the meetings. Applicant's testimony that plea counsel would not discuss the case with him at the detention center

is not credible, and plea counsel's testimony that he merely told Applicant—soundly, in this Court's view—not to discuss his case over the phone or with others at the detention center is credible. Applicant articulated two things that he wanted plea counsel do so as part of his pre-trial preparation. The first was for plea counsel to get his mental health records, and plea counsel credibly testified that he did so. The second was for plea counsel to interview two witnesses; although plea counsel did not do so, he did review those witnesses' statements to law enforcement officers, which was sufficient under the circumstances. Plea counsel credibly testified that he would have done more pre-trial preparation had Applicant not decided to plead guilty. Applicant's testimony that he did not tell the plea court that he was satisfied with Applicant's representation of him is not credible. In summary, plea counsel did everything that Applicant asked him to do or either had a justifiable reason for not doing it.

This Court finds that Applicant has failed to prove that there is a reasonable likelihood that he would have proceeded to trial instead of pleading guilty but for the alleged deficiency in plea counsel's performance. A defense attorney's "[f]ailure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (citing *Kibler v. State*, 267 S.C. 250, 227 S.E.2d 199 (1976)). An applicant alleging that his attorney failed to prepare for the case must show how additional preparation would have resulted in a different outcome. *Skeen v. State*, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997). An "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." *Bannister*, at 303, 509 S.E.2d at 809; *see also Dempsey*, at 370, 610 S.E.2d at 815 (holding that the PCR court's finding that Dempsey was prejudiced by trial

counsel's failure to call an expert at trial to rebut the State's expert was merely speculative when Dempsey failed to have an expert testify at his PCR hearing). An applicant's "mere speculation" what a witness's testimony at trial would have been "cannot, by itself, satisfy the applicant's burden of showing prejudice." *Glover*, at 499, 458 S.E.2d at 540. Applicant has presented this Court with no evidence whatsoever that plea counsel's allegedly inadequate investigation affected the outcome of the case or Applicant's decision to plead guilty. On the contrary, plea counsel's credible testimony proves that Applicant pleaded guilty because he wanted to avoid the risk of receiving a life sentence.

This Court finds that Applicant has failed to prove that plea counsel was constitutionally ineffective for not preparing for trial adequately because he has failed to prove that there was any deficiency in plea counsel's performance and has failed to prove that there was any resulting prejudice. This claim is denied and dismissed with prejudice.

Applicant's claim that plea counsel was constitutionally ineffective for not advising Applicant of his rights, especially his rights under the Sixth Amendment.

Applicant testified before this Court that he could not remember the basis for his raising this claim; he did, however, testify that plea counsel failed to inform him that he had the right to a trial. This Court finds that Applicant has failed to provide any evidence and argument in support of the claim as raised in the application, and denies and dismisses it with prejudice, and will not address it further. This Court will address Applicant's allegation that plea counsel did not inform him of his right to a trial.

Applicant testified before this Court that plea counsel did not inform him of his right to a trial. He testified that plea counsel first discussed the plea deal with him about fifteen minutes before the plea hearing began. He testified that he had been about to go to trial when he entered his guilty plea. He testified that he decided to take the plea deal based upon plea counsel's

recommendation, but agreed that the decision had been his own. He testified that he did not remember going over his rights with the plea court due to his mental health issues.

Plea counsel testified before this Court that he reviewed with Applicant the right to a trial, that Applicant told him that he understood that right, and that he believed that Applicant understood it. He testified that he explained to Applicant that Applicant had the right to a jury trial, that twelve jurors could decide Applicant's guilt based on the evidence admitted, that Applicant had the right to remain silent, which could not be used against him, and that the prosecution had to prove guilt beyond a reasonable doubt. He testified that Applicant gave him no reason to believe that he did not understand his explanation of those rights. He testified that Applicant told him that he did not want to risk a trial and a resulting life sentence, at which point he had plea counsel engage with the solicitor in plea negotiations. He testified that Applicant repeated to him later that he did not want to risk a trial and a life sentence.

The Due Process Clause requires that a defendant enter a guilty plea voluntarily, knowingly, and intelligently. *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citing *Boykin v. Alabama*, 395 U.S. 238 (1969). The defendant must be aware of, among other things, the right to be tried by a jury. *Id.* (citations omitted). This Court finds that Applicant has failed to prove that plea counsel did not inform him of his right to a jury trial. Applicant's testimony to that effect is not credible, while plea counsel's testimony that he did inform Applicant of the right is credible. Applicant's testimony that he did not know of the right to a trial is thoroughly contradicted by his testimony that he was proceeding to a trial but accepted the plea deal at the last minute. Even if plea counsel had failed to inform him of the right, that deficiency would have been cured by the plea court's colloquy with Applicant. *See Holden v. State*, 393 S.C. 565, 575, 713 S.E.2d 611, 616 (2011) (citations omitted) (concluding that any alleged deficiency in plea

counsel's advice to Holden was cured by the plea court's colloquy), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). The plea court advised Applicant of the rights that he would give up by pleading guilty, and Applicant affirmed that he understood those rights, and told the plea court that he still wanted to plead guilty. Plea Tran. 5-6.

This Court finds that Applicant has failed to prove that plea counsel was constitutionally ineffective for not informing him that he had the right to a trial because he has failed to prove that there was any deficiency in plea counsel's performance and because the plea court's colloquy with Applicant would have cured any such deficiency. This claim is denied and dismissed with prejudice.

Applicant's claim that plea counsel was constitutionally ineffective for not following up with the solicitor after moving for discovery.

Applicant presented no evidence or argument at the hearing before this Court in support of his claim that plea counsel was ineffective for not following up with the solicitor after moving for discovery. Applicant's complete failure to support his claim is fatal to it. This claim is denied and dismissed with prejudice.

Applicant's claim that plea counsel was constitutionally ineffective for not doing more in plea negotiations.

Applicant testified before this Court that he had two drug charges pending in Greenville County, that plea counsel told him that the solicitor would use those charges against him in this case if he did not plead guilty to voluntary manslaughter, and that plea counsel did not tell him that those drug charges had been dismissed already. He testified that he first discussed the plea deal with plea counsel about fifteen minutes before his plea hearing began. He testified that he did not remember telling the plea court that he had been satisfied with plea counsel's representation of him.

Plea counsel testified before this Court that he began engaging with the solicitor in plea negotiations at Applicant's request. He testified that he exchanged emails with the solicitor until they finally settled on the plea deal that Applicant accepted. He testified that he also arranged it so that Applicant could plead guilty before the plea court. He testified that he informed Applicant when the solicitor rejected Applicant's counter-offer. He testified that he was not sure whether or not he was aware of any pending charges in Greenville County; but, he said, he would have told Applicant, if they discussed any, that he did not represent Applicant on those charges. He testified that he would not have told Applicant to plead guilty to voluntary manslaughter in order to avoid some penalty with respect to those other alleged charges.

The solicitor testified before this Court that Applicant's case had been assigned to her at the Solicitor's Office after her predecessor in the case left the Office. She summarized her plea negotiations with plea counsel, testifying, among other things, that she and plea counsel agreed, against the common practice in the Circuit, that the solicitor would make a sentencing recommendation and that plea counsel would argue for less time.

This Court finds that Applicant has failed to prove that there was any deficiency in plea counsel's performance with respect to plea negotiations. "[A] defendant has the right to effective assistance of counsel during the plea bargaining process." *Bell v. State*, 410 S.C. 436, 440-41, 765 S.E.2d 4, 6 (Ct. App. 2014) (quoting *Davie v. State*, 381 S.C. 601, 675 S.E.2d 416 (2009), *abrogated on other grounds by Smalls*. Applicant has not proven that there was anything that plea counsel should have done in negotiations that he did not do or that Applicant asked plea counsel to do anything that he did not do. Plea counsel and the solicitor credibly testified about the plea negotiations, and their testimony establishes that the negotiations were involved, extensive, and ultimately achieved a result that Applicant accepted. Plea counsel's credible testimony proves that

he communicated all plea offers to Applicant and that he communicated Applicant's counter-offer to the solicitor. Applicant's affirmation to the plea court that he was satisfied with plea counsel's representation of him discredits any allegation from him now that he was unsatisfied with plea counsel's negotiations on his behalf. Applicant's testimony that plea counsel convinced him to plead guilty in order to avoid some penalty with respect to charges that allegedly were pending in another county is not credible. Plea counsel's testimony that he would not have discussed the matter with Applicant or told Applicant that he should plead guilty to voluntary manslaughter due to the alleged pending charges elsewhere is credible.

This Court finds that Applicant has failed to prove that there is a reasonable likelihood that he would have proceeded to trial but for the alleged deficiency in plea counsel's performance. Plea counsel's credible testimony proves that Applicant was interested in pleading guilty once he learned that he would be facing a potential life sentence if he were to be found guilty at trial.

This Court finds that Applicant has failed to prove that plea counsel was constitutionally ineffective for not doing more in plea negotiations because he has failed to prove that there was any deficiency in plea counsel's performance and because he has failed to prove that there was any resulting prejudice. This claim is denied and dismissed with prejudice.

CONCLUSION

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

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 29th day of August, 2022.

Eugene C. Griffith, Jr.
Presiding Judge

Newberry, South Carolina

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CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA