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STATE OF SOUTH CAROLINA )  
COUNTY OF CHEROKEE )

IN THE COURT OF COMMON PLEAS JAN 09 2023  
FOR THE SEVENTH JUDICIAL CIRCUIT  
S.C. SUPREME COURT

Elijah Thompson, #385625, )  
Applicant, )

Case No.: 2022-CP-11-0143

v. )  
State of South Carolina, )  
Respondent. )

ORDER OF DISMISSAL

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.  
2022 DEC 30 P 4:12  
BRANDY W. HOBBS

This matter comes before this Court by way of Applicant's post-conviction relief application filed February 10, 2022. Respondent made its return on April 29, 2022, requesting an evidentiary hearing be convened. An evidentiary hearing was held on August 8, 2022, at the Spartanburg County Courthouse. Rodney Richey, Esquire, represented Applicant. Assistant Attorney General Chelsey Marto represented Respondent.

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

**Procedural History**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Cherokee County Clerk of Court. During its May 2019 term, the Cherokee County Grand Jury indicted Applicant for murder (count one) possession of a weapon during the commission of a violent crime (count two) (2019-GS-11-00820), attempted murder (count one) and possession of a weapon during the commission of a violent crime (count two) (2019-GS-11-00821), armed robbery and possession of a firearm during the commission of

a violent crime (count two) (2019-GS-11-00822), and first degree burglary (2019-GS-11-00823). Applicant was represented by Steven D. Epps, Esquire. George M. Kendall, Esquire, of the Seventh Circuit Solicitor's Office prosecuted the case. On July 2, 2021, Applicant appeared before the Honorable R. Keith Kelly, circuit court judge, and pled guilty as indicted to all offenses except for attempted murder, which was dropped to the lesser-included offense of assault and battery of a high and aggravated nature. Additionally, two of the weapons possession charges were dismissed in accordance with plea negotiations as well. Judge Kelly sentenced Applicant to thirty-five years' imprisonment for murder and first-degree burglary, thirty years' imprisonment for armed robbery, twenty years' imprisonment for ABHAN, and five years' imprisonment for weapons possession, sentences running concurrently. Applicant did not pursue a direct appeal.

#### Summary of Relevant Facts

On August 9, 2018, deputies with Cherokee County Sheriff's Office responded in reference to a home invasion that involved two people being shot. (Tr. 12). The victim, Marshall Cooper, lying on what was a fold-out sofa in the living room, deceased with a single gunshot. (Tr. 12). Other victim, Kala Jacobson, was in a recliner with a single gunshot wound in her right arm. (Tr. 12). Jacobson stated that she and the deceased victim were in bed when they heard the front door being kicked in and saw three men enter the residence with firearms. (Tr. 12). The men ordered the victims to roll over on their stomachs so they could not see or identify them while they went through the residence looking through everything and asking where the money was. (Tr. 12-13). One man asked where the dog was. (Tr. 13). One of the males with a firearm touched her on the back. (Tr. 13). She told him to leave her alone because she was pregnant. (Tr. 13). The men took a game system, a cell phone, and a handgun. (Tr. 13). Upon exiting, one male

turned back and shot both victims. (Tr. 13).

One of the defendants pawned the gaming system and the system was tracked back to the defendant. (Tr. 13). This defendant gave a police statement after his arrest implicating the other two defendants. (Tr. 13). All three men gave statements implicating themselves in the crime. (Tr. 13-14). The other two co-defendants stated Applicant was the one that fired the shots at the victims, which Applicant denied. (Tr. 14). All three men entered the property and at least two were armed. (Tr. 14-15). Applicant agreed with the facts as stated at the plea hearing. (Tr. 15-16).

#### 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. "Hands of one hands of all."

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

1. Ineffective Assistance of Counsel.
  - a. Failure to review discovery.
  - b. Brevity of time in consultation.
  - c. Failure to move to reconsider the sentence.
  - d. Failure to move to suppress Applicant's self-incriminatory police statements.
2. Invalid Plea.
  - a. Applicant did not know the evidence against him.
  - b. Applicant felt coerced into pleading because Counsel erroneously told him he had no chance of success at trial.
  - c. Applicant thought he might receive more time if convicted at trial.

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

## Summary of the Testimony

### *Applicant Testimony*

Applicant testified he was represented by Counsel at his plea. He stated Counsel was not effective and he wants a new trial on that basis. He stated he did not review most of his discovery with Counsel. He stated Counsel did not talk to him about the case regularly. He stated he was unsure why he decided not to go to trial, but that he did not feel comfortable enough with Counsel to go to trial. He stated they did not talk much about the case and he did not fully understand what was happening in his case at that time. He stated he did not know the evidence against him. He stated he told Counsel this but did not remember what Counsel's response was.

Applicant stated he thought pleading was better than going to trial. He stated he thought he would receive less time at trial because he possibly would be found not guilty. He stated that this was a home invasion case where someone was ultimately shot and killed. He stated that he had co-defendants and that he discussed this with Counsel. He stated he did not remember these conversations with Counsel.

Applicant stated he asked for Counsel to do whatever he could, including filing a motion to reconsider the sentence. He stated they met for about an hour at the detention center after he pled. Applicant stated he asked Counsel to do whatever he could do, though he admitted he did not know what that consisted of. Applicant stated that after he went to prison, he learned some things could have been done, including the filing of a motion to reconsider the sentence. He stated that he thought that motion would have been successful. He stated that he thought if the Judge agreed, he could have potentially received thirty years' imprisonment. He stated he understood the Judge could have given him more time on a motion to reconsider the sentence but was willing to take that chance.

He stated that Counsel discussed his police statements with him and the impact they had on the case. He stated that Counsel discussed how the State would prove its case, but the only evidence they discussed were the police statements. When asked if he thought he could have won at trial, Applicant stated that "anything is possible" and that he thought he had a sixty percent chance of winning, because of how harmful his police statements were to his case. He stated he did not understand what PCR Counsel meant when he asked if he discussed suppressing the statements, but that Counsel never told him he could try to keep them from coming out at trial.

Applicant stated that he pled because Counsel recommended he do so when he said that there was basically no chance of winning at trial. He stated he assumed it was because of the police statements. He stated he did not ask why he could not win at trial because he trusted Counsel. Applicant stated that he accepted he did not have any chance of winning at trial but discovered over the past couple of years that this advice was faulty. Applicant stated that Counsel never showed him the pictures and warrants in the case and stated that he thought additional information was more helpful than what Counsel gave him at the time.

On cross-examination, Applicant stated he never admitted to committing the crimes in his police statements but admitted to being merely present. Applicant stated he pled straight up to all offenses. He stated that he understood murder carries a maximum of life imprisonment. He stated that he wanted Counsel to move to reconsider despite knowing he could receive life imprisonment. He stated that Counsel told him he would lose at trial. He stated he was uncomfortable with Counsel. However, he stated he felt comfortable in pleading because he would receive a lesser sentence. He stated that he pled without seeing the evidence because he trusted Counsel's advice and did not fully understand what he was doing, given his age.

### *Counsel Testimony*

Counsel testified that Applicant pled guilty. He stated provided Applicant with his discovery and reviewed it with him. He stated he had a note in his file acknowledging receipt of the discovery. He stated he provides his clients with all their discovery all at once. He stated that black and white photographs were in the discovery and provided to Applicant. He stated he received and received lineups with Applicant. Counsel testified he reviewed Applicant's two police statements with Applicant. He stated that they discussed how the statements were given after his rights were waived and that he had seen clients Applicant's age whose statements were entered at trial instead of being suppressed because of his age. Counsel stated Applicant's statements were incriminatory but were not the only pieces of evidence against him. He stated that the statements contributed to his advice to plead. Counsel testified he provided Applicant with a copy of the discovery soon after Applicant requested it.

Counsel testified that Applicant did not want to go to trial, and that Applicant wrote him asking about specific offers. Counsel testified that Applicant wanted a complete dismissal of the charges. He stated that there is a difference between wanting and reasonably expecting something. He stated that, to the best of his knowledge, he gave all the discovery to Applicant.

Counsel testified that he had a note in his file stating he met with Applicant twice after the sentence was imposed. He stated that Applicant wanted him to look into a possible motion to reconsider the sentence. He stated he researched the issue and called Applicant on July 5, 2021, to discuss the motion. He stated he told Applicant that he could receive less or more time. Counsel testified that Applicant then told him not to worry about the motion.

Counsel testified he loves going to trial and would have tried the case if requested to do so. Counsel testified he made this clear to Applicant and that the decision to plead or go to trial

was always Applicant's decision. He stated he cannot force someone to plead.

On cross-examination, Counsel testified that Applicant saw the evidence in the case prior to the plea. Counsel testified he tried hard to get a favorable plea offer. He stated this case has always haunted him because of how young Applicant was. Counsel testified that early on, he was trying to obtain as much information as possible about Applicant's background. He stated that it blew him away how many jobs Applicant held in such a short period of time. He stated Applicant had been through DSS and always been employed. He stated he tried to use this in mitigation. He stated that after reviewing the discovery and Applicant's police statements, he decided this was not a triable case. He stated that his main approach in this case was damage control. He testified that Applicant's first statement was that he did not commit the crime was falsely accused. He stated that this statement was only four lines long. Counsel testified that Applicant's second statement included enough information for Applicant to be implicated in a home invasion and armed robbery where a shot was fired, and someone was killed. Counsel stated that the only wiggle room they had regarding this statement was whether Applicant was the triggerman.

Counsel stated that Applicant could have been found guilty under hand of one hand of all and that he discussed this numerous times with Applicant. Counsel stated that they were concerned that the co-defendant would have testified that Applicant was the shooter. He stated that he was concerned that the co-defendant would have testified against Applicant at trial. Counsel testified that Applicant decided not to pursue a motion for reconsideration. Counsel testified that he thought the plea was in Applicant's best interest and that he thought Applicant would be found guilty if he went to 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 Cherokee County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the plea transcript, and this PCR action's records. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated Section 17-27-80 (2003).

#### *Ineffective Assistance of Counsel*

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. See also Rule 71.1(e), SCRPC ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.").

Reasonableness is determined by the "variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant," and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment."

*Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel's performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually "countless" ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel's deficient performance must have prejudiced the applicant so that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694.

The court makes this determination based upon the totality of the evidence. *Id.* at 695.

Realistically, this matters "only in the rarest case" because "[t]he likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

### *Invalid Plea*

In the context of a guilty plea, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Applicant's right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent solemnity and truthfulness included in the guilty plea process. See *Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

For a plea to be valid, the applicant must have been aware of the nature and crucial elements of the offense, the maximum and minimum penalties, and the rights he is waiving by accepting the plea. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Roddy v. State*, 339 S.C. 29 (2000). A plea is not knowing or voluntary if a defendant "lacks knowledge of material evidence in the prosecution's possession." *Gibson v. State*, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (1999).

A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." *Roddy v. State*, 339 S.C. at 34, 528 S.E.2d at 421 (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made

by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.” *Dalton*, 376 S.C. at 138, 654 S.E.2d at 874 (quoting *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)).

Further, “guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including claims of a violation of a constitutional right prior to the plea.”

*Whetsell v. State*, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981).

This Court finds that the plea was entered freely, knowingly, intelligently, and voluntarily. Applicant stated he did not consume any medication or substances impacting his ability to think clearly. (Tr. 6). Applicant was informed of the charges, elements, violent, serious, and most serious distinctions (when applicable), and sentencing ranges for all crimes. (Tr. 6-9). After being informed he stated he understood and wanted to plead. (Tr. 6-9). Applicant stated he understood his rights to a jury trial, to call and confront witnesses, and to remain silent. (Tr. 9-10). Thereafter, Applicant pled guilty to each crime and stated he was pleading guilty because he was, in fact, guilty. (Tr. 10). Applicant stated no one pressured him into pleading guilty and that it was his decision to do so. (Tr. 11). Applicant stated Counsel explained the elements of each offense to him, that he explained that the burden of proof is on the government to prove him guilty beyond a reasonable doubt, that Counsel shared discovery materials with him, that Counsel answered all of his questions, that he did everything to help him, and that he had no complaints about Counsel. (Tr. 11). Accordingly, Applicant understood what he was pleading to and that he was waiving his right to assert a defense at trial by pleading. His request to withdraw the plea is denied.

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

Applicant claims Counsel was ineffective for failure to review the discovery. However,

Counsel credibly testified he went over all the discovery with Applicant and provided him with a copy of the discovery. This Court finds that Counsel was credible and Applicant not credible. Accordingly, relief is denied on this ground.

#### *Trial Tax*

Applicant claims he was coerced into pleading because he was told if he did not plead, he would likely face a harsher prison sentence. 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 plead invalid. 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 Counsel explained the elements of each offense to him, that he explained that the burden of proof is on the government to prove him guilty beyond a reasonable

doubt, that Counsel shared discovery materials with him, that Counsel answered all his questions, that he did everything to help him, and that he had no complaints about Counsel. (Tr. 11). Additionally, Counsel credibly testified at the PCR hearing that he met with Applicant multiple times and discussed the discovery, the decision to plead, and a motion to reconsider the sentence. 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.

***Failure to Move to Reconsider the Sentence***

Applicant claims Counsel was ineffective for failure to move to reconsider the sentence. However, Counsel credibly testified that he researched this option, discussed it with Applicant, and Applicant elected not to pursue the motion. Counsel is not ineffective for following the requests of Applicant. Accordingly, relief is denied on this ground.

***Self-Incriminating Police Statement***

Applicant claims Counsel was ineffective for failure to move to suppress Applicant's police statement. However, Counsel credibly testified that the only potential grounds for a motion to suppress was Applicant's age, which he thought would be unsuccessful, based upon experience. He stated that this potential motion did not render a trial preferable over the plea, in terms of procuring the best result for Applicant. Counsel is not ineffective for pursuing a motion at trial that would not have been successful and likely led to a harsher sentence than what Applicant received by pleading. Accordingly, relief is denied on this ground.

**Conclusion**

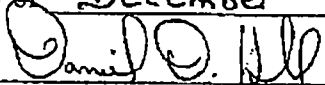
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty 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), SCRPC 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 28<sup>th</sup> day of December, 2022.



DANIEL D. HALL  
Presiding Judge  
Seventh Judicial Circuit

York, South Carolina.