

**NOTICE OF APPEAL FROM A PCR DENIAL BY THE COURT OF
COMMON PLEAS**

THE STATE OF SOUTH CAROLINA
In Supreme Court of SC

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case #2022-CP-43-776

The State,

Respondent,

v.

Jerel Marquis Heriot

Appellant.

NOTICE OF APPEAL

Jerel Marquis Heriot, appeals the decision of the Court, in the order dated December 9, 2022, received by counsel on January 9, 2023, where Mr. Heriot was denied his request for Post-Conviction Relief. Mr. Heriot was represented at the hearing by Timothy L. Griffith, Attorney at Law who files this notice on behalf of the Appellant. The order herein attached and a copy of which is also forwarded to the SCCID Appellate Division.

Dated 1/10/23



Timothy L. Griffith, Esquire
2338 Mount Vernon Dr.
Sumter, SC 29154
Telephone: (803) 499-2012
Attorney for Appellant (relieved)
Will not be representing on appeal

Other Counsel of Record:
Danielle E. Dixon, Esquire
Assistant Attorney General
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P.O. Box 11549, Columbia, S.C. 29211

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT SUPREME COURT

2022 DEC 19 PH 2:02

JEREL MARQUIS HERIOT, # 356193

CLERK OF COURT
SUMTER COUNTY, S.C.
Case No.: 2022-CP-43-0776

Applicant,

v.

ORDER OF DISMISSAL

STATE OF SOUTH CAROLINA,

Respondent.

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Jerel Marquis Heriot on May 16, 2022. On November 1, 2022, an evidentiary hearing convened before the Honorable Edward W. Miller. Applicant was present and represented by Timothy L. Griffith, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. Following a thorough review of the plea transcript and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections serving a fifteen-year sentence. In November 2021, the Sumter County Grand Jury indicted Applicant for five counts of attempted murder, possession of a weapon during a violent crime, possession of a weapon by a convicted felon, and possession of a weapon on premises serving alcohol (2020-GS-430371). These charges arose after a February 2, 2020 shooting outside of the Melted Whisky bar in Sumter. Applicant was originally represented by Kenneth R. Young, Jr., Esquire, but eventually retained Ray E. Chandler, Esquire, who was substituted as counsel of record for Applicant in January of 2021. Assistant Solicitor Tyler B. Brown of the Third Circuit Solicitor's Office represented the State.

On November 15, 2021, Applicant pled guilty before the Honorable R. Kirk Griffin. Pursuant to the negotiated plea, Applicant pled guilty to two counts of attempted murder¹ and the three weapons charges for a determinate fifteen-year sentence; in exchange, the State dismissed the remaining charges. Judge Griffin sentenced Applicant concurrently to fifteen years' imprisonment for each count of attempted murder, five years' imprisonment for possession of a weapon during a violent crime, two years' imprisonment for carrying a pistol on premises serving alcohol, and five years' imprisonment for possession of a pistol by a person convicted of a crime of violence. Applicant did not file a direct appeal.

Current Application

Applicant timely commenced this PCR application on May 16, 2022. In his application Applicant alleged he was entitled to relief based on the following grounds:

- 10 (a) "Ineffective Assistance of Counsel"
 - 11(a): "Erroneous advice, lack of preparation, and coercion."
- 10 (b) "Violation of 14th Amendment"
 - 11(b): "Denial of Equal Protection of the laws."
- 10 (c) "Stand Your Ground Law and Defense of Others"
 - 11(c): "The claim of stand your ground were never asserted."

At the hearing, Applicant proceeded only on claims that he was coerced to plead guilty; counsel was ineffective for failing to investigate and/or present evidence; and he did not voluntarily waive his right to a direct appeal. Before this Court are the records of the Sumter County Clerk of Court regarding the underlying convictions, the plea transcript, and Applicant's records from the South Carolina Department of Corrections.

Testimony Presented at the Evidentiary Hearing

At the evidentiary hearing, Applicant testified he wanted to appeal but was never told he

¹ Applicant pled guilty to the two counts of attempted murder pursuant to North Carolina v. Alford, 400 U.S. 25 (1970).

could appeal. He stated he never spoke with plea counsel about an appeal. Applicant did not recall the plea judge informing him he could appeal. On cross-examination, he testified that if he had appealed, he would have raised the issue of ineffective assistance of counsel. He also averred the prosecution violated Brady.

Applicant testified he was coerced to plead guilty. He stated plea counsel kept getting angry and telling him he'd get thirty years to life if convicted of the charges. Applicant testified plea counsel spoke to the judge in chambers and then told Applicant the judge would sentence him to twenty years if he was convicted. On cross-examination, he acknowledged telling the plea court he understood the proceedings. He testified he felt like he had no choice; if given the option between fifteen and twenty years, anyone would choose fifteen. Applicant ultimately agreed it was his decision to plead guilty.

Applicant testified plea counsel never discussed a strategy because counsel was "totally against" Applicant. He likewise testified plea counsel never reviewed the case with him, although Applicant recalled watching a video. Applicant testified his prior attorney had discovered that the video—which was a compilation of surveillance footage from the Melted Whiskey on the night of the shooting—was missing surveillance video from the rear patio. He testified he wanted plea counsel to obtain the missing video because it would have supported his story, but plea counsel never found it. Applicant averred plea counsel's investigation was not thorough and did not uncover any new evidence from his prior attorney's investigation.

Plea counsel testified he investigated whether the security guards were licensed to carry weapons and explained that issue to Applicant. Additionally, plea counsel and a private investigator reviewed the surveillance videos produced by the prosecution to see if anything was left out. Plea counsel stated they did not receive any interior videos from the bar; law enforcement

did not request them and plea counsel learned the video footage was deleted every thirty days. Plea counsel acknowledged the videos from the prosecution did not contain footage from the patio where the incident started. He stated footage from the patio, had it existed, would not have been relevant to the shooting itself but may have been relevant to show the events that precipitated the shooting. Specifically, if the video existed, it may have shown why five people initially followed Applicant from the bar.² Plea counsel testified he visited the Melted Whisky to investigate the placement of cameras; as to exterior cameras, he found two cameras that were not operable and a third camera that was added after the shooting. Plea counsel testified he did not see any cameras in the patio area. He testified he initially believed the prosecution had not turned over videos from the patio, but he ultimately concluded no video existed from that area.

In addition to investigating the video and whether the security guards were licensed to carry weapons, plea counsel interviewed a police officer who had been relieved of his job due to marital misconduct. He testified defendant was aware of all his investigations. Plea counsel averred that based on the surveillance video, Applicant would likely not get an acquittal at trial. Although he believed the entire video was disturbing, plea counsel stated the second shooting incident would have been the most difficult to defend, and a stand-your-ground defense would not have worked due to the video. Plea counsel stated he showed the video to several individuals, including a retired judge, to get their input as to what a jury might think; the responses were not favorable. He stated the retired judge thought a reasonable sentence, if Applicant was convicted, would be 20, 22 years, maybe 25. Plea counsel stated Applicant previously had a twelve-year offer that he turned down.

² According to the State's recitation of facts, Applicant and his brother were ejected from the bar, and surveillance videos showed Applicant retrieve a gun from his car and attempt to re-enter the bar. At that point five individuals approached Applicant, and Applicant fired at them nine times. After the initial round of shots, one of the five men armed himself. Applicant came around a corner and began firing directly at that individual. (Tr. 15-17).

He stated the solicitor was difficult to work with in this case because Applicant had just been released from prison on a different crime. Plea counsel testified he explained to Applicant the constitutional rights he waived by pleading guilty. He stated it was ultimately Applicant's decision to plead, but plea counsel was prepared to proceed to trial.

Findings of Fact and Conclusions of Law

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

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). An applicant alleging ineffective assistance of counsel must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 813. "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." Watson v. State, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. at 441, 334 S.E.2d at 813. An applicant must overcome this presumption to received relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

To establish ineffective assistance of counsel, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Strickland, 466 U.S. at 687-88; Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. To prove prejudice following a guilty plea, the applicant "must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 59 (1985).

Coerced to plead guilty / Involuntary Plea

Applicant contends he was coerced to plead guilty when plea counsel became angry with him and told him he would get thirty years to life if convicted of the charges. Applicant testified that after plea counsel spoke to the judge in chambers, plea counsel told Applicant the judge would sentence him to twenty years if he was convicted. He testified he felt like he had no choice; if given the option between fifteen and twenty years, anyone would choose fifteen. Applicant ultimately agreed it was his decision to plead guilty.

This court finds Applicant has not shown plea counsel was ineffective in this regard. Initially, it was plea counsel's duty as Applicant's attorney to advise him of the potential sentence he would face if convicted at trial, and plea counsel was not deficient in informing Applicant of the sentence he faced. Although Applicant found himself in a situation he did not want to be in—choosing between a fifteen-year negotiated plea or choosing a trial where he risked up to 162 years' imprisonment if convicted—this Court finds the choice Applicant faced was not the result of any deficiency by plea counsel. This Court further finds it was ultimately Applicant's decision to plead guilty. Based on the testimony, Applicant chose to plead guilty because he feared a greater sentence if he was convicted at trial; thus, he has failed to prove counsel was ineffective.

Further, this Court finds Applicant's decision to plead guilty was knowing and voluntary.

Plea counsel credibly testified he explained to Applicant the constitutional rights he was waiving by pleading guilty. Additionally, because this was a negotiated plea, Applicant knew the sentence he faced. Finally, the plea court reviewed with Applicant the constitutional rights he waived and the sentence he faced. (Tr. 6-8, 11). This Court thus concludes Applicant knowingly and voluntarily pled guilty, and he failed to prove counsel coerced him into pleading guilty. Thus, this claim is denied and dismissed with prejudice.

Failure to Investigate

At the PCR hearing, Applicant testified extensively about a purported missing video. Plea counsel testified regarding his investigation of that video and his conclusion that the video did not exist. This Court finds credible plea counsel's testimony regarding his investigation of this case and his investigation of the video. This Court further finds plea counsel's investigation was reasonable and did not fall below prevailing professional norms. Thus, Applicant has not shown plea counsel was deficient. Finally, Applicant did not produce this alleged missing video at the PCR hearing and thus failed to prove prejudice. Cf. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995) (providing an applicant must produce witnesses at a PCR hearing to support a claim that counsel was ineffective for failing to interview or call potential witnesses). Thus, this claim is denied and dismissed with prejudice.

Failure to Advise of Direct Appeal

Applicant alleges he wanted to appeal but was never advised of his right to appeal. However, absent exceptional circumstances, counsel does not have a duty to inform a defendant of his right to appeal following a guilty plea. See Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008) ("Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for

appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.”). Here, Applicant did not allege he asked plea counsel to file an appeal but counsel neglected to do so; in fact, Applicant acknowledged he never discussed an appeal with plea counsel. Likewise, Applicant did not assert any viable issues for a direct appeal or any other exceptional circumstances that would require him to be advised of his right to appeal his guilty plea. *See id.* (“Without evidence of extraordinary circumstances, the PCR judge erred in finding petitioner was entitled to a belated appellate review of his guilty plea.”). Because this was a guilty plea and Applicant has not alleged exceptional circumstances, this Court finds counsel was not deficient for allegedly not informing Applicant of his right to appeal. Further, because Applicant did not allege any exceptional circumstances, he has failed to show he is entitled to a belated review of his guilty plea. Thus, this allegation is denied and dismissed with prejudice.

Conclusion

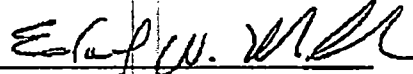
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has the right to an appellate counsel’s assistance in seeking review of the denial of PCR. Pursuant to Rule 71.1(g), SCRCP, if an applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant’s behalf. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant must be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 1 day of December, 2022.



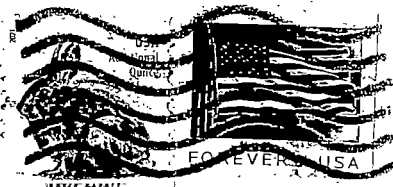
EDWARD W. MILLER
Presiding Judge
Third Judicial Circuit

Bulls, South Carolina

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COLUMBIA SC 290

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