STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT
McKinley Daniels, #310775, Applicant, v. State of South Carolina, Respondent.	Case No.: 2020-CP-26-00172 **ORDER OF DISMISSAL**

This matter comes before this Court by way of Applicant's post-conviction relief application filed January 13, 2020. Respondent made its return on August 25, 2020, requesting an evidentiary hearing be convened. An evidentiary hearing was held on September 6, 2022, at the Horry County Courthouse. James K. Falk, Esquire, represented Applicant. Assistant Attorney General Chelsey F. Marto represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Counsel William McGuire and James Galmore, Esquires, 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 Horry County Clerk of Court. During its April 2015 term, the Horry County Grand Jury indicted Applicant for Armed Robbery (2015-GS-26-1772) and Murder (2015-GS-26-1745).[1] Applicant was represented by James Galmore and Bill McGuire,

[1]. Applicant was also indicted in April 2015 for Possession of a Weapon during the Commission of a Violent Crime (2015-GS-26-01749), Armed Robbery (2015-GS-26-01756), and Murder

Esquires. Solicitor Scott Hixson, Esquire, and Assistant Solicitor Jimmy Richardson, Esquire, of the Fifteenth Circuit Solicitor's Office prosecuted the case. On January 22, 2019, Applicant appeared before the Honorable Robert E. Hood, circuit court judge, and pled guilty to a negotiated sentence of forty-five years' imprisonment on the murder charge and thirty years' imprisonment on the armed robbery charge, sentences running concurrently, along with a dismissal of all other charges against Applicant. Judge Hood sentenced Applicant thirty years' imprisonment on the Armed Robbery charge and forty-five years' imprisonment on the murder charge, sentences running concurrently. Applicant did not pursue a direct appeal.

Summary of Relevant Facts

On January 2, 2015, Applicant and his co-defendants rode together to the location of the incident. (Tr. 21). Applicant, with co-defendant James Daniels, entered the location wearing masks, facial coverings, and nondescript clothing, and proceeded to rob the clerk of the convenience store, taking the cash drawer. (Tr. 21). On their way out, both individuals are seen filing multiple rounds into the clerk, killing him, and then fled. (Tr. 21).

On January 25, 2015, Applicant and his co-defendants entered the location of the incident. (Tr. 22). Applicant did not have a weapon this time. (Tr. 22). After the clerk complied with the commands and handed over the cash drawer, one of the co-defendants fired several shots into the victim. (Tr. 22).

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:

(2015-GS-26-01770). Applicant was indicted in June 2015 for Possession of a Weapon During the Commission of a Violent Crime (2015-GS-26-01913). In April 2018, Applicant was indicted for Criminal Conspiracy (2018-GS-26-02912).

1. "Trial counsel was ineffective for allowing Trial Judge to over sentence the applicant for forty-five (45) years for murder."
    a. "The Judge had sentenced the applicant to 45 years for murder. The murder sentencing statue only allows the trial judge to sentence the applicant to thirty (30) years. Trial Counsel was ineffective for allowing the trial judge to over sentence the applicant to (45) years."

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

1. Ineffective assistance of Counsel:
    a. For failure to challenge the validity of Applicant's sentence.
    b. For failure to seek out a competency evaluation.
    c. For failure to pursue an insanity defense.
2. Involuntary plea.

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 stated that he thought that the only legal sentencing options for a murder conviction are the death penalty, life imprisonment, and a thirty-year sentence. Applicant stated that he received a negotiated forty-five-year sentence. Applicant requested thirty years' imprisonment but recognized the PCR court could not grant the request. Applicant stated that he was not receiving the appropriate medicine at the time of the crime and was not mentally competent at the time he entered the guilty plea.

On cross-examination, Applicant stated that he pled because he was afraid for his brother for personal reasons. Applicant stated that his brother was a co-defendant and received a life sentence. He stated his other co-defendant received the death penalty. He recognized that out of the three defendants, Applicant received the best sentence. He stated that the Court determined he was not eligible for the death penalty because of his intellectual disability. He stated he was focused on his brother at the time, not the trajectory of his case.

Counsel McGuire Testimony

Counsel McGuire testified that he hired multiple experts to evaluate Applicant. He stated that Applicant was not insane and was competent to stand trial. However, he stated that no full competency evaluations were conducted. He testified that no plea negotiations occurred early on. He stated that negotiations began once Applicant was found to be intellectually disabled and thus not eligible for the death penalty. Counsel executed an affidavit that explained the sentence to Applicant. He stated he thought Applicant understood the sentence and plea. He stated that the statute indicating that there are only three options regarding sentencing in murder cases was rewritten in 1996; long before Applicant was charged and pled. The statute now gives the court discretion to sentence a murder defendant to 30 years to life

On cross-examination, Counsel McGuire testified that he was given no indication that Applicant was incompetent or insane. He stated that Applicant's low IQ score effectively rendered him ineligible for the death penalty.

Counsel Galmore Testimony

Counsel Galmore testified that he was second chair on this case. He stated he was not given any indication that a competency evaluation needed to be conducted. He stated that he was not concerned that he was insane or unfit to stand trial. He stated the only concern mentally were Applicant's low IQ scores. He stated that the death penalty was taken off the table because of the IQ scores. He stated that he thought the Court had discretion to sentence Applicant to forty-five years.

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 Horry 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), 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 "'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 (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, 528 S.E.2d 418 (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 freely, knowingly, intelligently, and voluntarily entered the plea. Applicant indicated he understood the charges, potential punishments, negotiations, and elements of the charges. (Plea Tr. 11, 14-15). Applicant stated that the plea was freely and voluntarily entered. (Plea Tr. 17-20). Applicant stated that he understood the consequences of charges with violent, serious, and most serious distinctions. (Plea Tr. 12). Applicant stated he understood he was waiving his rights to a jury trial, to remain silent, to call and confront witnesses, and to present a defense. (Plea Tr. 13). Applicant stated that he was happy with Counsels and did not need more time to discuss his decision with them. (Plea Tr. 18-19). Applicant stated he understood that negotiations are binding on the court. (Plea Tr. 16-17). After the,prosecutor recited the facts, Applicant agreed to them. (Plea Tr. 21-23). Applicant stated he understood he had ten days to file an appeal from the plea hearing. (Plea Tr. 20). Thus, this Court finds that the plea was entered freely, knowingly, intelligently, and voluntarily and cannot be withdrawn now.

Invalid Sentence

Applicant alleges Counsel was ineffective for failing to object to the negotiated sentence imposed. Specifically, he argues that forty-five years' imprisonment is an illegal sentence because he can only be sentenced to thirty years' imprisonment, life imprisonment, or the death penalty concerning the murder conviction. However, the statute makes clear that Applicant can be sentenced to thirty years *to* life not thirty years *or* life. S.C. Code Ann. § 16-3-20(A) (Supp.

2010). The legality of the sentence was further substantiated by both Counsels' testimonies at the PCR hearing. Accordingly, relief is denied on this ground.

Competency Evaluation

Applicant claims Counsel was ineffective for failing to request a competency hearing be convened. "Due process prohibits the conviction of an incompetent defendant, and this right may not be waived by a guilty plea." *Matthews v. State*, 358 S.C. 456, 458, 596 S.E.2d 49, 50 (2004) (citing *Jeter v. State*, 308 S.C. 230, 232, 417 S.E.2d 594, 595-96 (1992)). "In a PCR action, the petitioner must prove by a preponderance of the evidence that he was incompetent when he entered his guilty plea." *Id* at 458-59, 596 S.E.2d at 50. "In order to find that petitioner's trial counsel was ineffective for refusing to request a *Blair* hearing on petitioner's competency to stand trial, petitioner must show that counsel was deficient and that the deficiency prejudiced the outcome of petitioner's proceedings." *Id.* at 459, 596 S.E.2d 50-51. Prejudice is found when the petitioner shows a "'reasonable probability' that he was either insane at the time [the crime was committed] or incompetent at the time of the plea." *Id.* (citing *Jeter v. State*, 308 S.C. 230, 233, 417 S.E.2d 594, 596 (1992)).

Both Counsels credibly testified that they did not see any indication that Applicant had an issue with competence during their representations. This was substantiated by Counsels at the plea hearing, when Counsel stated that they communicated back and forth fine and that Applicant understood what was happening. (Tr. 10). Additionally, Applicant presented no evidence indicating that he struggled with competence at the time of the plea. Accordingly, this Court declines to find Counsels acted deficiently or that Applicant was prejudiced in anyway. Accordingly, relief is denied on this ground.

Insanity Defense

Applicant claims Counsel was ineffective for failure to pursue an insanity defense. However, Applicant waived his right to assert a defense explicitly at his plea hearing. (Plea Tr. 13). Counsels have no duty to pursue a defense when Applicant elects to enter an otherwise valid plea. 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), SCRCP 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 13th day of November, 2022.

Kristi Curtis

KRISTI F. CURTIS
Presiding Judge
Fifteenth Judicial Circuit

Sumter, South Carolina.