

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Post Conviction Relief

H. Steven DeBerry, IV, Circuit Court Judge

Case No.: 2020-CP-26-05900

Mitchell Cheatham #375694,..... Petitioner,

vs.

State of South Carolina,Respondent.

NOTICE OF APPEAL

Mitchell Cheatham #375694 appeals the order of the Honorable H. Steven DeBerry, IV dated December 22, 2022 and filed on December 28, 2022. Appellant received written notice of entry of this order on January 6, 2023.



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Irmo, South Carolina
January 23, 2023

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Mitchell Cheatham, #375694,)
Applicant,)

Case No.: 2020-CP-26-05900

v.)

ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)

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This matter comes before this Court by way of Applicant's post-conviction relief application filed October 15, 2020. Respondent made its return on December 30, 2020, and an amended return and motion to dismiss was filed on May 10, 2022. A hearing on the State's motion to dismiss and an evidentiary hearing was held on May 31, 2022, at Horry County Courthouse. Tommy Thomas, Esquire, represented Applicant. Assistant Attorney General Chelsey Marto represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Dr. Donna Maddox and Counsel Sharde Crawford 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 of the Horry County Clerk of Court. In April 2016, the Horry County Grand Jury indicted Applicant for murder (2016-GS-26-01720). The factual basis of the charge consisted of Applicant and co-defendant Tommy Benton entering the victim's home, beating him to a point, and setting the house on fire on April 29, 2014. (Tr. 7-8). The victim died inside as a

result. (Tr. 8). Sharde D. Crawford, Esquire represented Applicant. Assistant Solicitor Lauree Richardson Ortiz, Esquire prosecuted the case. On March 15, 2018, Applicant pleaded guilty to a negotiated thirty-year sentence for murder before the Honorable Steven H. John, circuit court judge. In accordance with the negotiations, Judge John sentenced Applicant to thirty years' imprisonment for murder. Applicant did not appeal his conviction or sentence.

Current Action Before this Court

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

1. Ineffective Assistance of Counsel.
2. Involuntary guilty plea.

Attached with Applicant's application is an affidavit stating the following:

I, Mitchell Cheatham, am currently being housed at Lieber Correctional Institution. I have a sentence out of Horry County General Sessions. I was sentenced for Murder (2016-GS-26-01720) on March 15, 2018 after entering a guilty plea. I received a thirty (30) year sentence. I did not file an Appeal and I am now filing a Post Conviction Relief Application.

In consultation with my Attorney, I realize that I am outside of the statute of limitations. However, I believe that this failure to file within the one year period of time is excusable and that I should be granted an evidentiary hearing.

I am currently suffering from a mental illness. I have been diagnosed with PTSD and Bi-Polar disorder. On the date of my plea I was taking three different mental health medications under psychiatric supervision. I am now taking Lithium and Elavil.

My plea attorney requested that I be evaluated for competency. However, once the guilty plea offer was made, my defense attorney recommended that I not be evaluated. During the period of time that this incident occurred, I was friends with my Co-Defendant Tommy Benton. I was easily manipulated by Tommy and I quickly became terrified of him. I was afraid that he was going to hurt me. I feel that I was manipulated by Tommy and that he took advantage of the fact that I was suffering from a mental illness.

After this incident I was told by my family that the only way that I could have a pathway to redemption was to admit to a crime that I felt I was not guilty of. In addition, my family told me that I had to accept the consequences of what happened. Therefore, I did not file an appeal.

Now, I wish to file a Post-Conviction Relief Action and ask for an evidentiary hearing. During extended periods of time, I feel that I have been unable

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to think clearly and make rational decisions. After receiving treatment at the Department of Corrections, I am finally able to think through these issues more clearly. I think my family was wrong for forcing me to accept responsibility for something that I did not do and that they manipulated me into believing that the only way that I could receive redemption was to admit to this crime and not seek any methods to challenge my conviction.

Based upon the above, I would ask the Court to consider my request for an evidentiary hearing. I have never had an opportunity to present my side of what happened and I believe that my plea was not freely and voluntarily, nor knowingly and intelligently given.

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

1. Ineffective assistance of counsel.
 - a. Failure to mitigate the sentence.
 - b. Failure to secure a plea offer to the lesser-included offense.
 - c. Failure to seek out a competency evaluation.
 - d. Failure to ensure Applicant had a full understanding of the proffer agreement.
2. Involuntary guilty plea.
 - a. Applicant's neurodivergence rendered the plea unknowing, involuntary, and unintelligent.

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 Proceedings

Dr. Maddox Testimony

Dr. Maddox testified that she knew Applicant and that she met with and evaluated him. She stated that Applicant's symptoms are consistent with someone on the autism spectrum, but she would need to conduct additional testing to confirm. She testified that Applicant showed signs of social impairment, struggled to adjust to incarceration, and does not realize when something is dangerous. She also stated Applicant struggled with tactile defensiveness and is easily bothered by noises. She testified that he rocks to soothe himself and that he struggles with eye contact. She testified that people on the spectrum tend to think more concretely and to take things literally. She stated Applicant seemingly struggled with attention deficit disorder. She

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stated he is being given a couple medications in SCDC for his conditions.

Dr. Maddox testified that she was familiar with Applicant's convictions and plea. Dr. Maddox testified that people on the spectrum do not have the capacity for remorse, but once they have a friend, they tend to show loyalty no matter what. She testified that Applicant would have a hard time saying no to his co-defendant, whom he considered his friend. She stated this was because of his autism.

She testified that Applicant did not file his application within the year. She stated she was aware that Applicant's family told him to take responsibility for what he did. She stated that because of Applicant's autism, he would listen to his support system and generally be compliant. She stated that she could see Applicant being swayed by his family's opinions on whether to file a PCR application, especially because Applicant knows what he did was wrong and continues to be sad about it. She testified that he would have pled if Counsel told him to plead. She testified that Applicant understood what he was doing by pleading but is likely to be compliant when others tell him what to do and he agrees with them.

Dr. Maddox testified that she did not think Applicant had an evaluation conducted prior to the plea. She stated she thought an evaluation prior to the plea would have been helpful in sentencing and in prison accommodations early on, including ensuring he had mental health treatment upon arrival in S.C.D.C..

On cross-examination, Dr. Maddox testified that she saw no red flags in the plea transcript indicating Applicant was incompetent. She stated that he could have potentially been found guilty but mentally ill. She stated she would have screened for this if retained at the time of the plea, but that he was receiving necessary mental health treatment now. She stated his autism diagnosis is life-long and, though individuals on the spectrum can have moments of

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attenuated psychosis affecting competency, she did not think that was the case at the plea. She stated that these moments of increased psychosis are not long-term. Dr. Maddox testified that the main difference in impacting his decision to file the application was that Applicant went from taking advice from family to taking advice from his girlfriend. She stated Applicant is compliant with what those around him are telling him to do. Dr. Maddox testified that he was loyal to his co-defendant because he was his best and only friend. Dr Maddox testified that Applicant testified against his co-defendant but was unsure whether he saw it was testifying against him as much as he was just telling the truth. He stated he had a full understanding of the crime. Dr. Maddox testified she thought Applicant had an impaired ability to understand the PCR process upon first arriving at Lieber Correctional Institution because he was not receiving proper mental health treatment initially. Dr Maddox testified that Applicant was treated at J. Reuben Long and treatment continued in SCDC. She stated Applicant was not receiving treatment when he was walking the streets and that she did not see any mental health records concerning Applicant prior to incarceration.

Applicant Testimony

Applicant stated that he wanted to move forward with his post-conviction relief application. He stated he did not timely file an application because his family told him not to. He stated that they told him he needed to take responsibility for his actions. Applicant stated he changed his mind when he stopped talking to his family as much as he once was, and he got a girlfriend that told him to file the application. Applicant stated that he was evaluated prior to trial and that no mental health information was presented to the judge at the plea. He stated he thought this would be beneficial and would show mitigating circumstances that paint him as less of a malicious person. He stated he understood he received the mandatory minimum sentence. He stated his co-

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defendant received a twenty-year sentence because he was not present, even though he is just as culpable in the eyes of the law. He stated he knew he was pleading at the time and that he remembered pleading. He stated he did not take the process seriously enough and did not properly weigh the long-term consequences resulting from pleading. He stated this was because of his mental illness.

On cross-examination, he stated that he did not change his mind based upon who he was talking to at the time, but that he opened his eyes at some point and realized what he gave up by pleading. He stated that he would have made a different decision knowing what he knows now. He stated he received a negotiated sentence to the mandatory minimum. He stated his co-defendant was able to plead to a lesser charge and receive a lesser sentence because he was not present while the entire crime was committed. He stated his other co-defendant remained in the home and he was sentenced to life imprisonment. He stated he now wants to go to trial because he believes that a jury could find him less culpable than his co-defendant. He stated he testified at his co-defendant's trial. He stated he knew he was pleading, but that thirty years did not mean anything to him at the time. He stated he pled because that is what he was told to do. He stated that leading up to the plea, people told him to plead. He stated they told him this not because it was in his best interest, but because it was the right thing to do in terms of justice being done.

Counsel Testimony

Counsel testified she took on the case in December 2016. She stated she met with Applicant many times. She stated they discussed the proffer agreement in detail. Counsel testified that they discussed discovery in detail, including his North Carolina robbery charge, the incident itself, and his background. Counsel testified that Applicant seemingly understood their conversations, that he is one of her favorite clients of all time, and she visited regularly just to

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see him and how he was doing. She stated she was not worried about Applicant's competency, but stated she inherited notes from a former attorney on the case stating that he had depression, anxiety, and was autistic. She stated she discussed this with Applicant and that they talked about evaluations at that time. She stated that another public defender, James Galmore, assessed him.

Counsel testified that Applicant had a full understanding of the plea proceedings. She stated Applicant called her and asked if he could cooperate with the State after he heard the other co-defendant was given the opportunity to testify. Counsel testified that the prosecutor was willing to let him testify because Applicant was the only other person in the home at the time of the robbery. She stated that Applicant understood the impact his testimony would have and he expressed concerns about being labeled a snitch. However, Counsel testified Applicant ultimately decided testifying was in his best interest.

Counsel testified she did not see any red flags at the plea hearing. Specifically, she testified that Applicant participated in plea negotiations, that he asked to plead to voluntary manslaughter, and that he knew the difference between murder and voluntary manslaughter. She testified they talked to the prosecutor's boss and asked Applicant be able to plead to voluntary, but this was rejected by the State because at the trial Applicant testified that he was told to light the house and the co-defendant poured gasoline on the house. She stated Applicant still decided to plead. She testified that the State would not allow Applicant to plead to a lesser-included offense, but that he got a negotiated mandatory minimum sentence to murder.

On cross-examination, Counsel testified that Applicant's co-defendant told him to light to fire. Counsel testified that she knew Applicant had autism but that she was not able to use this as mitigation in getting a better plea deal. She stated that the only mitigation presented during plea negotiations was his childhood and education. Counsel testified that she spoke to Applicant's

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mother about the plea. She stated she reviewed the matter and determined that Applicant was competent. She testified that Applicant decided to commit the crime to help a girl in foster care and was about the age out and would be sent back to live with her abusive father if she did not have money to live elsewhere. She stated Applicant was never evaluated.

On re-direct, she testified that she wanted Applicant to receive the least amount of time possible. She stated they discussed Applicant's autism with the State and the remorse he felt over the crime with the State during negotiations. She testified Applicant was permitted to testify because he was the only other person in the home when it happened. She testified that Applicant's co-defendant Benton was the ringleader. She stated Applicant was more culpable than co-defendant Thomas because he was in the home when Thomas was not.

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).

State's Motion to Dismiss

As a preliminary matter, this Court finds that this application must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the act requires as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the

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sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. *McDonnell v. Consolidated School District of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, South Carolina Code Annotated Section 17-27-70(c) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”

Applicant pled guilty to all charges on March 15, 2018. The application was therefore due on March 16, 2019. This application was filed on October 13, 2020, over a year beyond the statutory filing period. Applicant has failed to establish he is entitled to equitable tolling of the statute. Therefore, the application should be summarily dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

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.*

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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)

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(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.

Involuntary 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).

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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 freely, knowingly, intelligently, and voluntarily entered. Applicant stated that he understood he was pleading guilty to murder. (Tr. 3). He stated he understood the sentencing range for murder was thirty years to life and that he had to serve that time day for day. (Tr. 3). He stated he understood that he understood murder is a violent and most serious crime. (Tr. 3). Applicant stated that he understood he was pleading to a negotiated thirty-year sentence. (Tr. 4). He stated that he understood that negotiations are binding upon the court. (Tr. 4). He told the Court he does not have a mental, emotional, or physical issue impacting his understanding of the plea proceedings. (Tr. 4). He stated he was waiving his right to a jury trial, to remain silent, the presumption of innocence, to assert a defense, and to present evidence. (Tr. 5). He stated that the plea was free and voluntary, that no promises or threats were

made inducing the plea, and that he was pleading guilty because he was guilty. (Tr. 5-6). He stated he told his attorney everything, that they had enough time to talk, that he was satisfied with her services, and that he did not have any complaints about her performance. (Tr. 6). The Court adapted Applicant's testimony at his co-defendants trial and confirmed that Applicant knew the facts were true. (Tr. 7-8). He stated that all his answers to the questions were truthful and was never told how to answer the questions. (Tr. 8). He acknowledged he had ten days to appeal from the plea. (Tr. 8-9). Thus, this Court finds that the plea was freely and knowingly, intelligently, and voluntarily entered and cannot be withdrawn now.

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Failure to Mitigate the Sentence

Applicant claims Counsel was ineffective for failing to mitigate the sentence. Counsel may be found deficient for failing to sufficiently investigate and present mitigating evidence. See *Council v. State*, 380 S.C. 159, 172, 670 S.E.2d 356, 363 (2008) (finding it unreasonable for counsel not to further investigate the defendant's background and present even minimal mitigating evidence obtained); *Wiggins v. Smith*, 539 U.S. 510, 521 (2003) (finding it unreasonable when Counsel failed to investigate mitigating evidence beyond a couple retained records, including the presentence investigation report and social service records); *Williams v. Taylor*, 529 U.S. 362, 398 (2000) (finding that Counsel was unreasonable for failing to evaluate the totality of available mitigation evidence). An applicant is prejudiced by this deficiency if there is a reasonable probability that a different sentence would have been imposed but for Counsel's failure to investigate and present mitigating evidence. *Council v. State*, 380 S.C. 159, 171, 670 S.E.2d 356, 362 (2008).

Counsel's mitigation strategy at the plea hearing was reasonable. Specifically, Counsel testified that Applicant has been remorseful throughout the course of her representation, that he

never wanted to go to trial, and that he was willing to admit responsibility to the police and cooperate with the State against his co-defendant. (Tr. 9-10).

Additionally, Applicant has failed to show that addressing Applicant's mental health would have impacted his sentence. Applicant entered a negotiated plea to the mandatory minimum sentence for murder. Counsel credibly testified that the State, knowing that Applicant had mental health issues and delays, refused to offer a plea to a lesser-included offense. Accordingly, because Applicant has failed to meet his burden of proof in showing prejudice, relief is denied on this ground.

Failure to Secure More Favorable Plea Offer

Applicant's allegation that Counsel was ineffective for failure to obtain a more favorable plea offer is without merit. "[A] defendant has no constitutional right to plea bargain." *Reed v. Becka*, 333 S.C. 676, 684, 511 S.E.2d 396, 400-01 (Ct. App. 1999). (citing *State v. Easter*, 322 S.C. 333, 471 S.E.2d 745 (Ct. App. 1996), *aff'd as modified*, 327 S.C. 121, 489 S.E.2d 617 (1997)). "Prosecutors have broad powers in the plea bargain process[.]" *Id.* Prosecutors may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they can simply decide not to prosecute the offense in its entirety." *Id.*, 333 S.C. at 684, 511 S.E.2d at 400-01. "The Judicial Branch is not empowered to infringe on the exercise of this prosecutorial discretion; however, on occasion, it is necessary to review and interpret the results of the prosecutor's actions." *Id.* Yet, plea offers must be analyzed within the bounds of judicial restraint. *Id.*

Applicant is not entitled to a more favorable plea offer as a matter of law. Counsel credibly testified that the State was unwilling to let Applicant plead to a lesser-included offense and that he pled to a negotiated sentence that was the mandatory minimum. Applicant was not

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entitled to a better deal and Counsel was not deficient for failing to force the prosecutor to change their mind. Accordingly, relief is denied on this ground.

Failure to Seek out a 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)).

Though Applicant claims a competency evaluation was needed, both Doctor Maddox and Counsel credibly testified that they did not see any issues concerning competency. Applicant has failed to meet his burden of proof in showing that he was incompetent at the time of the plea. Counsel is not required to pursue a competency evaluation when there is no indication one is appropriate. Additionally, Applicant did not establish he was insane at the time of the plea and, accordingly, he has not met his burden of proof concerning prejudice. Thus, relief is denied.

Failure to Ensure that Applicant Understood the Proffer Agreement

Applicant claims Counsel was ineffective for failure to ensure Applicant understood the

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proffer agreement. However, based upon his testimony, he seemingly understood the proffer agreement, but now regrets his decision to enter it. Additionally, Counsel credibly testified that she discussed the proffer agreement with Applicant in detail. Thus, this Court finds this allegation not credible and denies relief accordingly.

Conclusion

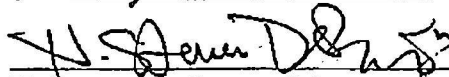
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

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 22 day of December, 2022.


H. STEVEN DEBERRY, IV
Presiding Judge
Fifteenth Judicial Circuit

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Mitchell Cheatham,

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Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Order of Dismissal has been served upon the applicant by mailing one copy in the United States mail, postage prepaid, addressed to:

Mr. Tommy Arthur Thomas
PO Box 88
Irmo, SC 29063

This 4th day of January, 2023.



Erik Marcusson
Legal Assistant for Respondent