THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY

Court of Common Pleas

HONORABLE G.D. MORGAN, JR.

2020-CP-42-03601

JODI STAPLETON, SCDC# 335793

APPELLANT,

vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

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**NOTICE OF APPEAL**

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Jodi Stapleton appeals the denial of his Post-Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable G.D. Morgan, Jr., Circuit Judge on April 19, 2022 an Order issued on February 27, 2023 and filed on March 6, 2023. The Appellant received notice of the judgment on March 15, 2023.

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| STATE OF SOUTH CAROLINA<br>COUNTY OF SPARTANBURG | IN THE COURT OF COMMON PLEAS<br>FOR THE SEVENTH JUDICIAL CIRCUIT |
| Jodi Stapleton, #335793,<br>Applicant,<br><br>v.<br><br>State of South Carolina,<br>Respondent. | Case No.: 2020-CP-42-03601<br><br>**ORDER OF DISMISSAL** |

This matter comes before this Court by way of Applicant's post-conviction relief application filed October 15, 2020. Respondent made its return on February 12, 2021, requesting an evidentiary hearing be convened. An evidentiary hearing was held 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 Robin File 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 Spartanburg County Clerk of Court. During its October 2018 term, the Spartanburg County Grand Jury indicted Applicant for three counts of attempted

murder (2018-GS-42-4989).[1] Applicant was represented by Robin C. File, Esquire. Jennifer E. Wells, Esquire, of the Seventh Circuit Solicitor's Office prosecuted the case. On November 21, 2019, Applicant appeared before the Honorable Alex Kinlaw, Jr., circuit court judge, and pled guilty as indicted to all offenses without any negotiations or recommendations concerning the attempted murder charges. Judge Kinlaw sentenced Applicant to twenty-two years' imprisonment on each attempted murder charges, sentences running concurrently. Applicant did not pursue a direct appeal.

**Summary of Relevant Facts**

On October 31, 2017, deputies made a controlled buy of .22 grams of cocaine. (Tr. 16). On November 6, 2017, officers made another controlled buy of .12 grams of cocaine. (Tr. 16). Both of these instances were captured on audio and video. (Tr. 16).

On November 9, 2017, deputies executed a search warrant on Applicant's residence due to reasons other than the controlled buys. (Tr. 17). Applicant shared the residence with her boyfriend, Jurrell Thompson, who was her co-defendant on the attempted murder charges. (Tr. 17). During the search, officers located marijuana, three sets of digital scales, a loaded .40 caliber handgun with an extended magazine, and an extra .40 caliber magazine. (Tr. 17). Applicant was in the home with her newborn infant, who was ultimately taken into DSS custody. (Tr. 17). Applicant made bond and failed to appear for court, causing a bench warrant for her arrest to be issued on April 3, 2018. (Tr. 17).

On July 18, 2018, deputies were made aware that both Applicant and Thompson were wanted and that the bondsman had information about their location. (Tr. 18). Originally the plan



[1] Applicant was also true bill indicted for unlawful neglect (2018-GS-42-657), distribution of cocaine, second offense (2018-GS-42-3998), and breach of trust, between $2,000 and $10,000 (2018-GS-42-5844).

was go to Walmart to get money that the Thompson's mother was supposed to wire him. (Tr. 18). Applicant and Thompson did not appear and the bondsman told deputies where they were. (Tr. 18). Based upon prior dealings with Applicant and Thompson, deputies knew that handguns would likely be involved in the interaction. (Tr. 18). Because of that knowledge, several deputies attempted a vehicle stop of a vehicle driven by Applicant with Thompson in the passenger seat. (Tr. 18). Blue lights were activated, at which Applicant pulled to the side of the road, appearing as if she was going to stop, before taking off, ensuing a chase. (Tr. 18). When she pulled over initially, Thompson reached behind him, came up through the sunroof with a rifle, and open fired at the deputies. (Tr. 18-19). As the chase continued through an area populated by businesses and residential areas, multiple regular Spartanburg citizens pulled off the side of the road as Thompson continued firing throughout the chase. (Tr. 19).

Applicant eventually pulled the vehicle over and Thompson bailed out of the vehicle and took off running. (Tr. 19). Applicant exited her vehicle, went into a residence, and hid in the residence. (Tr. 20). The officers located Applicant in the residence, who was hiding under the covers in a bedroom. (Tr. 21). 7.62 rounds and an AK-47 style rifle were recovered on the route of the chase. (Tr. 21). Thompson was shot in the leg and while being transported to the hospital told the officers he intended to "kill the pig." (Tr. 21).

There was substantial damage to the passenger side of one police cruisers. (Tr. 21). One of the bullets hit the push bar on the vehicle which, but for that, the bullet was headed directly towards where one of the deputies was sitting. (Tr. 21).

SLED became involved because officers returned fire and it was an officer involved shooting. (Tr. 22). SLED took photographs of the directory of the bullet and found there was a bullet entry into the side of the first vehicle, underneath the passenger seat, where one officer

was sitting, and into where another officer was sitting. (Tr. 22). Another bullet entered another vehicle just above and to the right of the deputy's position. (Tr. 22). Three officers were involved and put in the line of fire. (Tr. 22).

On July 24, 2018, investigators received a call from an individual stating they were renting an apartment to Applicant, whom he believed had fallen on hard times. (Tr. 22-23). This residence is separate from the residence Applicant shared with Thompson. (Tr. 23). The individual went by the residence and found it was empty to include furniture he rented for Applicant. (Tr. 22-23). After being arrested, Applicant claimed she did not know what happened to the furniture when the individual when to the jail to ask her about it. (Tr. 23). However, investigators gained access to a jail call between Applicant and Thompson's mother where she instructed Thompson's mother to take all furniture out of the residence and sell it to raise money for attorney's fees. (Tr. 23). Investigators unsuccessfully attempted to get the furniture back, which Thompson's mother stated was not sold. (Tr. 23).

**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:
    a. Failure to advise/consult with client;
    b. Failure to thoroughly investigate crime;
    c. Failure to provide trial strategy or assert defenses;
    d. Failure to provide expert witness for mental health and social behavior with diagnoses of bipolar and PTSD;
        i. "I was . . . diagnosed with PTSD from the crime."
    e. "Failure to interview witnesses (co-defendants), mother which was on the cell phone during the entire shoot out with law enforcement as well as co-defendant he failed to interview the facts upon which occur in to a vehicle during the crime";
    f. Failure to comply when I told him over and over I did not want to go to court until co-defendant (Jurrell Thompson) was tried first;
    g. Failed to file a continuance in my favor;

h. Failed to seek a lesser charge as I never did injure or attempt to hurt anyone;
i. Failed to give me all copies of any and all information in my case;
j. Failed to let me know that he did not want to be involved in my case anymore due to non-payment to him so he forced me into court.

2. Involuntary guilty plea:
   a. The guilty plea was involuntary because it was coerced by attorney with threats from prosecutor for sentence enhancement (life without parole). If jury ensued I was advised to plea guilty and to tell the judge the plea was voluntary;
   b. During signing my plea only my attorney was present with paperwork, informing me to sign the plea at the county jail with only him and I present.
3. Prejudice
   a. Prejudice was shown by my attorney due to my co-defendant's action with law enforcement. Co-defendant repeatedly opened fire with a .47 assault rifle out of the vehicles sun roof in which the car I was during my life was plea in danger during the situation as I was constantly told to drive the car and in extreme fearful. This conduct by my attorney shows error by his deficiency in performance regarding the above matter. It also caused substantial and injurious influence of the sentence enhancement. My co-defendant controlled the situation with the weapon, and I drive as I was instructed. Three (3) attempted murder charges and the accusation thereof lack evidence and particular facts, which are vital issues of the case, shows this prejudice. I also was not given a change of venue after requesting and was tried in the same county in which was a high-profile case of attempted murder x3 by law enforcement.

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

1. Ineffective assistance of counsel:
   a. Failure to review discovery.
   b. Failure to present duress defense.
   c. Failure to seek lesser charge.
2. Involuntary plea:
   a. Counsel informed Applicant if she did not plead, she would face life in prison.

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 that the facts of the case consisted of her driving a car and the passenger in the car shooting at the police. Applicant stated she felt she was under duress at the

time of the incident. She stated she wanted a jury trial. She stated she informed Counsel she wanted a trial but pled because she was under stress. She stated she should never have pled guilty. She stated she never fired any shots. She testified she believed her guilty plea was not voluntary. Applicant testified that Counsel did not fight for her, but just settled her case with the prosecutor. She stated she reviewed most of the discovery material with Counsel and that she understood the case was being brought based upon the theory of the hand of one hand of all. However, she stated that she did not conspire with her co-defendant and, accordingly, did not think she would be found guilty of attempted murder at trial.

On cross-examination, she stated that she told the judge at the plea hearing what she did. Specifically, she admitted to slowing the vehicle down. She stated the co-defendant hit the gear shift. She stated she drove off when her co-defendant exited the car. She stated she tried to get the shooter to stop firing. She stated she spoke with Counsel about the hand of one hand of all.

***Counsel Testimony***

Counsel testified he talked to Applicant several times about her options concerning pleading versus going to trial. Counsel stated that she decided to plead because she was facing the possibility of life without parole. Counsel testified that he thought if Applicant went to trial, she would have received more time. Counsel testified there was not really any favorable discovery for the defense. Counsel testified that he discussed with Applicant the duress defense. He stated this would have been a matter of believability for the jury to determine.

On cross-examination, Counsel stated that he reviewed all the discovery in the case with Applicant and discussed hand of one hand of all with her. Counsel testified that Applicant pled freely and that it was her decision.

## 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 Spartanburg 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.

***Involuntary Plea***

This Court finds the plea was entered freely, knowingly, intelligently, and voluntarily. 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 she 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).

Here, the plea was seemingly entered freely, knowingly, intelligently, and voluntarily. Applicant stated she was satisfied with Counsel's services. (Tr. 6). Concerning the attempted murder charges, Applicant stated she agreed the incidences occurred on July 18, 2018, that he was pleading guilty freely and voluntarily, and that no one threatened or coerced her into pleading guilty. (Tr. 6-9).

Counsel stated that he advised Applicant of the potential penalties involved in each of the indictments. (Tr. 9). Counsel stated that he told Applicant the attempted murder offenses carry between zero and thirty years, that it is a most serious and violent offense, that no probation or parole is afforded, and that the State did not make any recommendation in sentencing. (Tr. 9).

Applicant stated that she understood the potential penalties involved. (Tr. 10). Applicant stated she understood that there were three separate counts of attempted murder that she was pleading to, that her attorney discussed the indictments with her, and that she understood the three attempted murder charges dealt with offenses against three officers, respectively. (Tr. 10-11). Applicant stated she understood she had a right to a trial on any or all offenses, that she was waiving the right to a trial by entering the plea, and that she discussed the waiver with Counsel. (Tr. 11). Applicant stated she was waiving her rights to remain silent, to call and confront

witnesses, and to assert any defenses. (Tr. 11-12). Applicant stated that the decision to waive these rights was hers, not Counsel's, and that he had sufficient time to discuss this decision with Counsel. (Tr. 12). Applicant stated Counsel discussed all the elements of all the offenses with her and discussed whether the State had sufficient evidence to prove the matters if the case proceeded to trial. (Tr. 12). Applicant stated she understood all discussions with Counsel and that she had no questions for the Court about the questions asked at the plea hearing. (Tr. 12-13). Applicant stated she was not on medication or anything that might impact her judgment and that she was clear minded and knew what she was doing at the plea hearing. (Tr. 13). Applicant stated she understood no negotiations or recommendations were made on the attempted murder charges. (Tr. 13-14). Applicant again stated she was completely satisfied with Counsel's services, that she did not have to talk to Counsel anymore about anything, that she has told Counsel everything she knew about the cases, and that there was nothing about the cases she did not discuss with him. (Tr. 14). Applicant stated she met with Counsel enough times to cover all the facts, law, and Constitutional rights as it relates to the cases. (Tr. 14). The Solicitor stated that Applicant was on medication, but that the medication does not create any competency issues. (Tr. 14-16). Thus, based upon the above, Applicant seemingly entered the plea freely, knowingly, intelligently, and voluntarily and, thus, should not be allowed to withdraw the plea now. Accordingly, Applicant is denied relief on this ground.

***Trial Tax***

Applicant claims she was coerced into pleading because she was told if she did not plead, she would likely face life in prison. Being informed that if she went to trial, she 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.

***Failure to Assert Duress Defense***

Applicant claims Counsel was ineffective for failing to assert a defense of duress. Both Applicant and Counsel testified at the PCR hearing that this defense was discussed during their meetings. However, Applicant still decided to plead instead of going to trial. Accordingly, this right was waived by entering the plea. (Tr. 11-12). Thus, relief is denied on this ground.

***Failure to Review Discovery***

To the extent Applicant claims ineffective assistance of counsel for failure to review discovery, this claim is denied. Applicant testified she reviewed most of the discovery with Counsel. Counsel testified he reviewed all discovery with Applicant and there was no discovery that was favorable to the defense. Thus, this claim is refuted by both Applicant's and Counsel's testimonies and relief is denied on this ground as a result.

***Failure to Seek Lesser Charge***

Applicant claims Counsel was ineffective for failing to seek a lesser charge. However, this Court finds Applicant freely, knowingly, intelligently, and voluntarily pled to attempted murder, with a full awareness of the elements, potential penalties, and violent and most serious distinctions associated with the charges. (Tr. 9-11). Thus, this Court finds that Applicant's plea to attempted murder is valid and the right to pursue a lesser-included offense jury instruction was waived. Thus, 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 27th day of February, 2023.

G. B. Morgan Jr.

G.B. MORGAN
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina.

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

2023 MAR -6 PM 4:51

FILED

# State of South Carolina
# The Circuit Court of the Thirteenth Judicial Circuit

**G.D. Morgan, Jr.**
**Judge**

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February 27, 2023

Spartanburg County Clerk of Court
Civil Records
P.O. Box 3483
Spartanburg, SC 29304

RE: ***Michael Kelley, II, #361692 v. State of South Carolina, Case nos.: 2020CP4200569 and 2020CP42002664; Rayshon Smith, #336807 v. State of South Carolina, Case no.: 2020CP4203528; Jodi Stapleton, #335793 v. State of South Carolina, Case no.: 2020CP4203601***

To Whom It May Concern:

Enclosed herewith please find an order for the above referenced case, signed by Thirteenth Circuit Judge G.D. Morgan, Jr. Please file this order and if you need anything with regards to this matter please do not hesitate to contact us.

With kindest regards,

Brittany Long
Administrative Assistant to
The Honorable G.D. Morgan, Jr.