THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY

Court of Common Pleas

HONORABLE BRIAN M. GIBBONS

2022-CP-42-01186

DANIEL MEANS, SCDC# 385451

APPELLANT,

vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

Daniel Means appeals the denial of his Post-Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable Brian M. Gibbons, Circuit Judge on October 17, 202 an Order issued on March 10, 2023 and filed on March 17, 2023. The Appellant received notice of the judgment on March 18, 2023.

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STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
Daniel Means, #385451, Applicant, v. State of South Carolina, Respondent.	Case No.: 2022-CP-42-01186 **ORDER OF DISMISSAL**

This matter comes before this Court by way of Applicant's post-conviction relief application filed April 1, 2022. Respondent made its return on August 8, 2022, requesting an evidentiary hearing be convened. An evidentiary hearing was held on October 17, 2022, at the Spartanburg County Courthouse. Rodney Richey, Esquire, represented Applicant. Assistant Attorney General Chelsey Marto represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Counsels Brendan Delaney and Daniel MacDonald, IV, 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 Spartanburg County Clerk of Court. During its February 2019 term, the Spartanburg County Grand Jury indicted Applicant for murder (count one) and possession of a firearm during commission of a violent crime (count two) (2019-GS-42-00917) and attempted murder (two counts) (2019-GS-42-00918). Applicant was represented by Brendan Delaney and Daniel MacDonald, IV, Esquires. Then-Deputy Solicitor Derrick Bulsa, Esquire, of

the Seventh Circuit Solicitor's Office prosecuted the case.

On May 24-25, 2021, and after jury qualifications, jury selection, and pre-trial motions, Applicant appeared before the Honorable Grace Gilchrist Knie, circuit court judge, and pled guilty to the lesser-included offenses of voluntary manslaughter and to a range of twenty to thirty years' imprisonment, to the lesser included offenses of assault and battery of a high and aggravated nature to range of zero to twenty years' imprisonment, and as indicted on the weapons possession charge. Knie sentenced Applicant to twenty-seven years' imprisonment for voluntary, twenty years' imprisonment of each ABHAN count, and five years' imprisonment on the weapons possession charge, sentences running concurrently. Applicant did not pursue a direct appeal.

Summary of Relevant Facts

Applicant entered a restaurant that was well equipped with video surveillance. (Tr. 138-39). Applicant was patted down and found to be without a weapon. (Tr. 139). He arrived with a couple other individuals claiming they had no awareness of Applicant's plan. (Tr. 139).

In June 2016, the victim attempted to rob Applicant and shot him in the process and served prison time. (Tr. 140). Sometime after being released, he went to the club with some friends. (Tr. 142). Applicant went to the club and arranged to obtain a gun. (Tr. 142). Applicant obtained the gun and shot and killed Young with it. (Tr. 142). Two other individuals were shot in this incident: one in the head and one in the side. (Tr. 142-43). Seven total shots were fired. (Tr. 143).

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 make a motion for a *Blair* hearing.

2. Involuntary and Invalid Guilty Plea.
    a. The State withheld discovery and/or records and if Counsel properly had brought the discrepancy to the Court's attention, Applicant would not have conflicted deprivations.
        i. The jury would have understood prior action between Applicant and the decedent, and fully acknowledge the facts.
3. Due Process Violation and Injury.
    a. The Due Process requires the interest of justice, with procedural requirements.
    b. Applicant suffered procedural defaults on substantial claims.

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

1. Ineffective assistance of counsel.
    a. Failure to secure mental health/competency evaluation.
    b. Failure to argue the defense of self-defense or insanity.
    c. Failure to bring up Applicant's mental health issues in mitigation.
    d. Failure to effectively communicate.
2. Invalid 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

Counsel MacDonald Testimony

Counsel MacDonald testified that he was second chair counsel in Applicant's underlying criminal matter. He stated that the allegation was rooted in night club shooting. He stated that they discussed mental health issues, but the ultimate defense chosen was that Applicant was not present. He stated that there was a video, but they could not exactly identify Applicant off the footage. He stated that the there was a mental health evaluation motion. He stated that Applicant was not making sense in the beginning of his representation, and he wanted a mental health evaluation conducted at that point. He stated that Applicant claimed to suffer from PTSD because he was shot by the victim previously. He stated that Applicant said he was not the shooter. He stated that the PTSD defense would run counter to the chosen defense, which is that he was not there. He stated that Applicant did not cooperate with the mental health evaluation.

He stated that Applicant told the doctor that he did not like Counsel and did not want to move forward with the evaluation. He stated that the evaluation was requested to determine whether Applicant was competent, not whether he suffered from PTSD. He stated that he and Counsel Delaney determined that there was no competency issue. He stated that Applicant decided to plead guilty because a deal was finally extended after a disgruntled juror was not removed by the judge. He stated that a plea to voluntary manslaughter and ABHAN was then extended.

Counsel Delaney Testimony

Counsel Delaney stated that the trial strategy was to show that Applicant was not present. He stated that he did not represent Applicant when the competency evaluation was requested and agreed with Counsel MacDonald that they determined an evaluation was not needed. He stated that Counsel MacDonald told him that Applicant would not cooperate with the evaluation. He stated that he had no doubt concerning his competency. He stated that the club had six to eight cameras. He stated that he thought any competency issue was resolved. He stated that Applicant was shown on one camera for about two minutes and on another camera for about thirty. He stated he was comfortable moving forward with the identity issue until he was shown cleaned up videos later that clearly identified Applicant.

Applicant Testimony

Applicant testified he was represented by Counsels. He stated that Andrea Price, Esquire, was his first attorney. He stated he pled. He stated he never said he was not present at the incident. He stated he told Counsel MacDonald he wanted an insanity plea or a self-defense defense to be pursued at trial. He stated the victim previously shot him. He stated he told Counsel MacDonald that the victim shot him before. He stated that the doctor stopped the competency evaluation because Applicant asked why he was getting one. He stated that an

evaluation was never conducted. He stated that Counsel MacDonald told him that determining a trial defense is his decision to make, not Applicant's. He stated he did not know the trial defense until the trial date. He stated that he rejected all plea deals prior to the State offering him a plea to voluntary manslaughter. He stated that he pled because Counsel Delaney screamed at him until he decided to plead. He stated that the trial defense was that Applicant was not there. Applicant stated he did not like this defense, and he wanted an insanity or self-defense defense. He stated that he told Counsel Delaney that a competency evaluation was not conducted. He stated he told him that they would offer his mental health issues up in mitigation at the plea. He stated that Counsel MacDonald told him that if he said he was insane, he is admitting he committed the crime. He stated he was not on the same page as Counsels at the plea. He stated that Counsels always wanted him to plead, and he wanted to proceed to trial because he thought the jury would acquit because of his PTSD. He stated that they never retried the evaluation. He stated that Counsels were against pursuing an insanity defense.

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 Applicant's Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the plea transcript, and the current PCR application. 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. S*ee 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.

Invalid Plea

In the context of a guilty plea, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Applicant's right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent solemnity and truthfulness included in the guilty plea process. *See Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to

summary dismissal, as are contentions that in the face of the record are wholly incredible."). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

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

A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." *Roddy v. State*, 339 S.C. at 34, 528 S.E.2d at 421 (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "'[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.'" *Dalton*, 376 S.C. at 138, 654 S.E.2d at 874 (quoting *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)). Further, "guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including claims of a violation of a constitutional right prior to the plea." *Whetsell v. State*, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981).

This Court finds that the plea was entered freely, knowingly, intelligently, and voluntarily. After the State called the case, Applicant was placed under oath. (Tr. 120-21).

Applicant stated that he was present to enter pleas on the charges against him. (Tr. 121). The Court ensured Counsels' understandings concerning the offenses and negotiations were in line with what the State had articulated. (Tr. 121-22). Applicant stated he wanted to plead instead of going to a jury trial. (Tr. 123-24). Applicant stated he understood he was waiving his right to remain silent, to call and confront witnesses, and to a jury trial. (Tr. 124-25). Applicant stated that no one threatened, coerced, or promised him anything to get him to plead. (Tr. 125). He stated he was not under the influence of drugs or alcohol, nor did he have a mental or physical infirmity. (Tr. 125).

Once Applicant raised the issue of mental health, Counsel Delaney informed the Court that he did not think the evaluation was needed and that Applicant seemingly understood all proceedings. (Tr. 126-28). Applicant stated he was taking his medication as prescribed and that it did not interfere with his understanding of the proceedings. (Tr. 128-30). Applicant stated that he was satisfied with Counsels and that they did everything he asked of them. (Tr. 130-31). Applicant stated he understood the charges being pled to, the potential penalties, and the violent, serious, and most serious distinctions, when applicable. (Tr. 131-33). Applicant stated he understood sentencing ranges, included the negotiated range for voluntary. (Tr. 134). Applicant then pled guilty on all charges. (Tr. 135-36). Applicant stated he understood he had ten days to appeal. (Tr. 136-37). Thus, Applicant entered his plea freely, knowingly, voluntarily, and intelligently and cannot be withdrawn now.

Failure to Communicate

Applicant alleges that Counsels were ineffective for failure to effectively communicate with Applicant. "[B]revity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation." *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012).

Applicant must show evidence indicating "how additional preparation or communication would have resulted in a different outcome." *Id. See Jackson v. State*, 329 S.C. 345. 353-54, 495 S.E.2d 768, 772 (1998) (where application failed to show ineffective assistance of counsel based on lack of preparation by neglecting to show evidence of what counsel failed to discover or what defenses counsel could have pursued had he more fully prepared for the case); *Skeen v. State*, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (where applicant failed to show ineffective assistance of counsel when he did not present evidence showing how additional preparation would have impacted the trial).

Applicant has failed to state with any specificity what Counsels did not communicate with him about or why it would have caused him to proceed to trial instead. Accordingly, Applicant has failed to meet his burden of proof concerning this allegation and relief is denied as a result.

Failure to Secure Mental Health/Competency Evaluation

Applicant claims that Counsels were ineffective for failure to secure a competency or mental health report. Counsel MacDonald credibly testified that this evaluation did not occur because Applicant refused to cooperate. Counsel is not faulted by Applicant's unwillingness to comply. Additionally, both Counsels credibly testified that they saw no issues with competence, which undercuts the need for the evaluation. Concerning mental health, Applicant's existent mental health issues were before the plea court, who could have taken them into consideration in accepting the plea. Accordingly, relief is denied on this ground.

Failure to Pursue Defense

Applicant claims Counsels were ineffective for failure to assert a defense of insanity or self-defense. The right to assert this defense was waived through entry of an otherwise valid

plea. Accordingly, relief is denied on this ground.

Mitigation

Applicant claims Counsels were ineffective for failing to mitigate the sentence by addressing Applicant's mental health issues. 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).

Counsels' mitigation strategy was reasonable. Counsel Delaney highlighted his intelligence and education and work history. (Tr. 156). He also stated that Applicant was shot by the victim before. (Tr. 156-57). He stated that Applicant did not process the prior incident well and suffers from PTSD as a result. (Tr. 157). He highlighted Applicant's lack of criminal history. (Tr. 157). He stated that Applicant is from a supportive family. (Tr. 158). He stated that Applicant was caught in a cycle of violence. (Tr. 158). He stated that Applicant was remorseful about what happened. (Tr. 158). Applicant's mother spoke on his behalf, as did his grandmother. (Tr. 159-65). This approach was reasonable and highlighted the information Applicant wanted highlighted; namely, his prior history with the victim and his mental health issues. Applicant has

failed to show anything substantively new that Counsels did not present or how that would have impacted the sentence. 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 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 _____ day of 3/10, 2023.

BRIAN M. GIBBONS
Presiding Judge
Seventh Judicial Circuit

2, South Carolina.

CLERK OF COURT
SPARTANBURG COUNTY
AMY V. [illegible]
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