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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

2022-CP-42-00785

William Tommie Smith..... Appellant,
v.
The State, ... Respondent.

NOTICE OF APPEAL

William Tommie Smith appeals the Honorable Daniel D. Hall's Order of Dismissal filed on or about March 15, 2023.

This 31 day of March 2023.

Susannah Ross, Attorney at Law
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STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
William Tommie Smith, #249438, Applicant,	)	Case No.: 2022-CP-42-00785
v.	)	**ORDER OF DISMISSAL**
State of South Carolina, Respondent.	)	

This matter comes before this Court by way of Applicant's post-conviction relief application filed March 8, 2022. Respondent made its return on May 9, 2022, requesting an evidentiary hearing be convened. An evidentiary hearing was held on August 9, 2022, at the Spartanburg County Courthouse. Susannah C. Ross, Esquire, represented Applicant. Assistant Attorney General Chelsey F. Marto represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Counsel Charles W. Snyder, III, and Solicitor Barry J. Barnette, 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 January 2019 term, the Spartanburg County Grand Jury indicted Applicant for murder (2019-GS-42-0113). Applicant was represented by Charles W. Snyder, III, Esquire. Solicitor Barry J. Barnette of the Seventh Circuit Solicitor's Office prosecuted the case. On July 27, 2021, Applicant appeared before the Honorable J. Derham Cole, circuit court judge, and pled guilty as indicted without any

negotiations or recommendations. Judge Cole sentenced Applicant to forty years' imprisonment for murder. Applicant did not pursue a direct appeal.

Summary of Relevant Facts

On December 2, 2018, the victim was living with Applicant when Applicant called 911, admitting to beating the victim to death with a baseball bat and tying her up with a cord and leaving her dead in the bathroom. (Tr. 104-05). After he called 911, he admitted to smoking crack cocaine. (Tr. 105). Applicant went to Watson Brannon's home, hid the victim's car, and took Brannon's car. (Tr. 105). Applicant went to the jail and admitted to killing the victim. (Tr. 105). At the time of the incident, the victim was seemingly asleep in bed, where she was found bludgeoned to death. (Tr. 105-06). All the blood was found in the bed, except for the blood splatter on the surrounding walls. (Tr. 106). The cord was cut off the victim, and Dr. Wren saw at least ten wounds to her head and signs of strangulation. (Tr. 106). After recitation of the facts, Applicant stated he agreed with what was stated. (Tr. 108).

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. "He was ineffective in that he did not object to a recorded testimony in which the witness was told what to say."

By amendment filed August 5, 2022, Applicant, through Counsel, alleged:

1. Ineffective assistance of counsel:
    a. Failure to communicate with Applicant to discuss legal provocation.
    b. Failure to prepare for trial as evidence by lack of opening statement.
    c. Failure to cross video witness Brannon about Applicant's suicidal state.
    d. Allowing the State to make improper opening and referenced pardoned charge; and
    e. Advising Applicant he could not testify to what victim said that triggered violence, which would go to his state of mind and to plead guilty to murder.

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

1. Ineffective Assistance of Counsel
    a. Failure to effectively communicate with Applicant.
    b. Failure to secure a competency evaluation addressing his mental health issues and his ability to conform.
    c. Failure to discuss charges.
    d. Failure to get charge dropped down to voluntary manslaughter as part of the plea agreement.
    e. Failure to discuss adequate legal provocation.
    f. Failure to cross-examine Brannon about his suicidal state.
    g. Failure to adequately prepare for trial.
    h. Failure to object to State's opening argument.
    i. Failure to object to mention of Applicant's pardoned charge.
    j. For encouraging Applicant not to testify at trial.
    k. Failure to discuss proceeding to trial or pleading.
    l. Failure to review discovery.
2. Invalid Plea
    a. The plea process was confusing, which rendered the plea unknowing 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 Testimony

Applicant Testimony

Applicant stated that Counsel was appointed to him. Applicant stated that he spent thirty months in the county jail and that interaction with Counsel was sparing. He stated that the met between four and six times. He stated communication was primarily through the kiosk and that Counsel failed to respond. He stated he tried to relieve Counsel in court for failure to communicate with him. He stated that they did not discuss anything beyond what the prosecutor would or would not do.

He stated he received a competency evaluation about a year into the case and that it had nothing to do with his state of mind. Instead, he stated it only dealt with his competency to stand trial. He stated he did not recall receiving an evaluation concerning his ability to conform. He

stated that the evaluation did not assist in his defense.

Applicant stated that he did not discuss the charges or legal provocation with Counsel. He stated Counsel did not discuss the proceedings at all with him. He stated that he told Counsel that this was a voluntary manslaughter case, not a murder case.

He stated that Counsel was ineffective for failure to cross-examine video witness Brannon about Applicant's suicidal state. He stated Brannon was his brother-in-law and he became involved because Applicant went to the house to obtain a gun, he could kill himself with. He stated he did not follow through with this. He stated he told Brannon that he and the victim were having a difficult time together. He stated he wanted Counsel to question Brannon about Applicant's state of mind the day of the incident. He stated he was not himself that day. He stated that the victim told him that she slept with someone else in his home and bed. He stated he was not over the passing of his wife at the time, that he opened up to Victim, that she slept with someone else, and something came over him. He stated he called the police and went to Buddy's house. He stated he knew Buddy since 1994. He stated that Counsel could have questioned Buddy about how nervous and fidgety he was that night, the car he arrived in, and how he got in Buddy's car and went to jail. Applicant testified that Counsel did not object or cross-examine witnesses at trial.

He stated he confessed to the crime because Victim's family was in the courtroom, and they had been through enough. He stated he pled because he did not want to prolong matters further. He stated he also pled because Counsel did a poor job during the trial.

He stated that Counsel did not object to the State's opening concerning the mention of his pardoned charge. He stated he had a prior domestic violence charge that he incurred after the pardon. He stated that his rap sheet was given to the judge, even though it was inadmissible. He

stated that the sentencing judge was told about the pardon, but Counsel did not object.

Applicant stated that Counsel encouraged him not to testify at trial because it would make him look more guilty. He stated that Counsel told him that his testimony would not have helped him. He stated that he would have testified about how his wife passed away and it took him a year and a half to let Victim into his life. He stated that he dishonored his wife by letting Victim in. He stated he did not recall the incident because something took over him. He stated he did not have malice aforethought and that he would have told the jury that if he testified. He stated he pled because Counsel was not representing him well.

On cross-examination, Applicant testified that he did not tell the Court he was dissatisfied with Counsel because he was confused. He stated that he did not tell the judge that he was confused because it all moved very rapidly. He stated that Counsel did not discuss his options to plead or to proceed to trial with him. He stated that Counsel did not review discovery with him. He stated that Counsel did not discuss the admissibility of his prior offenses with him. Applicant testified that Brannon's testimony was taped, and that Brannon testified to things Applicant never discussed with him. He stated that Brannon's testimony was pre-recorded because he passed away before trial due to three types of cancer.

Applicant testified that he wanted to testify at trial that he killed Victim but did so in a heat of passion. He stated he told the plea judge that the killing was in a heat of passion. He stated that he never denied killing Victim. He stated he killed her with a baseball bat and that Victim suffered ten hits to the head. He stated he called 911. He stated he admitted to using crack at the time. He stated that the pathologist stated she showed strangulation signs. Applicant stated Counsel told him he had a very little chance of winning at trial. He stated he did not recall telling the plea judge about his mental illness. He stated he and Counsel were present during the taping

of Brannon's testimony. He stated that Counsel attempted to question Brannon. He stated that Counsel told him he would look more guilty if he testified that he killed Victim but in a heat of passion.

On re-direct, he testified that he was told he could not discuss his conversation with Brannon at trial because it was hearsay. He stated Brannon was interviewed in the hospital and was told what to say by the State. He stated that the State objected to Counsel asking about Applicant's state of mind and the judge told Counsel to rephrase the question.

Counsel Testimony

Counsel testified that he met with Applicant at least five times. He stated Applicant never denied what happened, but just wanted everyone to know why it happened. He stated he explained to Applicant how everything would play out at trial. He stated that this was one of the hardest cases he ever had to try. He stated that the trial strategy was to try to get a voluntary manslaughter conviction. He stated that Applicant would not survive a voluntary manslaughter or murder sentence, given his age. Counsel testified that Brannon was not present for the actual trial, but they captured his testimony on video before trial because of his health and age. He stated that this was a difficult case for him to try, but that he remembered trying to get the testimony about Applicant not acting in the right state of mind. He stated that they discussed Applicant's options from the outset and their attempts to secure a voluntary manslaughter conviction, instead of a murder conviction. He stated that he thought Applicant decided to plead because he realized that the trial was not going well for him. He stated that Applicant was high on drugs, came home, got into an argument, snapped, and used an extension cord to strangle his girlfriend with and began beating her with a baseball bat. He stated that Applicant then called 911 and confessed. Counsel testified he discussed proceeding to trial with Applicant and told

him that to secure a voluntary conviction the jury would have to believe he acted in a heat of passion. He stated that he told Applicant this had to come out through Brannon or Applicant would have to testify. He stated that he did not recall whether Applicant wanted to testify but stated that they did not get far enough into the trial for Applicant to reach that decision. He stated that Applicant was pardoned on another case. He stated this case never went to a jury.

On cross-examination, Counsel testified that they discussed getting a mental health evaluation at all their meetings. He stated Applicant never denied what happened but stated he was not in the right state of mind at the time. He stated he thought Applicant was competent.

Solicitor Testimony

Solicitor testified that Applicant beat the victim with a baseball bat, strangled her with an extension cord, and then called 911 and confessed, telling them that he needed to smoke crack cocaine. He stated that one of the witness's testimonies was taken and recorded before trial and played at trial because he died shortly before trial. Solicitor testified that they found DNA evidence tracing back to Applicant on the bat and that the victim died violently. He stated the State had a strong murder case. He testified that Applicant had an unrelated domestic violence charge involving a different victim that was dropped because the victim died. He stated that Applicant was not pardoned on this charge. He stated Applicant was charged with and convicted of other offenses not discussed at the PCR hearing.

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.

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, and intelligently. Applicant stated he understood the charge, the potential sentence, the elements of the offense, the evidence, and the indictment. (Tr. 90, 92). Applicant stated that Counsel explained everything to him. (Tr. 90). Applicant stated he discussed and reviewed the discovery with Counsel. (Tr. 91). Applicant stated that the defense at trial he discussed with Counsel was that he may be entitled to a lesser included instruction of voluntary manslaughter, but that he had no defense to a voluntary manslaughter charge. (Tr. 91-92). Applicant stated he understood by pleading he was waiving his right to request a lesser included instruction, right to remain silent, right to a jury trial, and the right to call and confront witnesses. (Tr. 92-98). Applicant stated that no one promised or offered him anything, that he was pleading freely and voluntarily, and that he was satisfied with his decision. (Tr. 98-99). Applicant stated he understood he had to serve his sentence day-for-day and that the offense is classified as violent, most serious, and no-parole. (Tr. 99). Applicant stated he was treated for substance abuse in the past, but he does not have an addiction at the time of the plea and that he had been treated for his depression. (Tr. 99-101). He also stated that his medication did not impact his ability to understand the plea proceedings. (Tr. 101). Accordingly, the plea was entered freely, knowingly, and intelligently, and should not be withdrawn now.

Failure to Effectively Communicate with Applicant

Applicant alleges that Counsel was 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 failed to show what Counsel did not communicate with him enough or how further communication would have caused him to proceed to trial. Thus, Applicant has failed to meet his burden of proof concerning both deficiency and prejudice. Accordingly, relief is denied on this ground.

Competency Evaluation

Applicant claims Counsel was ineffective for failing to request a competency evaluation. "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)).

Counsel was credible in testifying he did not see a competency issue. Additionally, Applicant failed to establish, through report, witness, or otherwise, that Counsel was incorrect in that determination. Thus, he has failed to meet his burden of proof in showing that he would have been found incompetent at the time of the plea. Accordingly, relief is denied.

Failure to Discuss Charges

Applicant claims Counsel was ineffective for failure to discuss the charges with him. Based upon Applicant's testimony, he seemingly had a working understand of murder and how that differed from voluntary manslaughter. Additionally, Applicant was informed of the charges at his plea hearing. (Tr. 90, 92). Thus, Applicant is found not credible, and relief is denied on this ground.

Adequate Legal Provocation

Applicant claims Counsel was ineffective for failure to explain to Applicant what adequate legal provocation was. Counsel credibly testified that the defense chosen from the beginning was to try to secure a voluntary manslaughter conviction. Counsel credibly testified that this was a central part of his discussions with Applicant. This Court finds it unbelievable that Counsel would explain voluntary manslaughter at such great lengths with Applicant and not discuss such a core element of the offense with Applicant. Even so, this Court fails to find how further discussion about this would have caused Applicant to proceed to trial instead. Accordingly, relief is denied.

Opening Argument

Applicant claims Counsel was ineffective for failure to object to the State's opening argument. This Court declines to find anything improper about the argument. Further, this Court

finds that Applicant would not have proceeded to trial but for this alleged deficiency. Applicant's cited reasons for not proceeding to trial were to protect the victim's family from being subject to more mental and emotional turmoil over what happened and because he knew trial was not going well. This is not rooted in Counsel's failure to object to the State's argument. Accordingly, Applicant has failed to meet his burden of proof and relief is denied.

Failure to Get Charge Dropped to Voluntary Manslaughter

Applicant claims Counsel was ineffective for failure to get the charge dropped down to voluntary manslaughter as part of the plea agreement. "[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. Easler*, 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.*

Prosecutor credibly testified that he had a strong murder case at hand. He was not required to drop the charge down to the lesser-included offense upon Applicant's request. Accordingly, relief is denied.

Failure to Prepare for Trial

Applicant claims Counsel was ineffective for failure to prepare for trial. Counsel's credible testimony reflected that this was not the case. Regardless, this allegation was waived

through entry of an otherwise valid plea. Accordingly, relief is denied.

Failure to Object to Pardoned Charge

Applicant claims Counsel was ineffective for failure to object to the Solicitor mentioning a charge that Applicant was pardoned of. Solicitor credibly testified that he was never pardoned, and the charge was dropped because the victim died. He credibly testified that Applicant was never pardoned, and that Applicant was charged and convicted of other offenses not discussed at the PCR hearing. Thus, the allegedly objectionable basis did not exist. Regardless, Applicant has failed to establish prejudice because of Counsel's alleged failure to object. Accordingly, relief is denied.

Telling Applicant Not to Testify

Applicant's allegation that Counsel was ineffective for telling Applicant not to testify. "The decision to testify or not is a perilous one. If a defendant does not testify, he foregoes the opportunity to tell the jury his version of events. However, if a defendant chooses to testify, he subjects himself to cross-examination, including possible impeachment with prior convictions." *Brown v. State*, 340 S.C. 590, 594, 533 S.E.2d 308, 310 (2000). "If a defendant chooses not to take the stand in his own defense, the trial judge must, if requested, instruct the jury that the defendant's failure to testify cannot be held against him or considered by the jury in any manner during its deliberations." *Id.* "A defendant's decision to testify or not must be made with knowledge of the consequences of either choice." *Id.*

Regardless of what was conveyed by Counsel, Applicant had a right to testify if he chose to do so at trial. Applicant waived this right through entry of an otherwise valid plea. Accordingly, relief is denied.

Cross-Examine Brannon

Applicant claims Counsel was ineffective for failure to properly cross-examine Brannon on how Applicant was acting and about his state of mind that day. Counsel credibly testified that he attempted to elicit as much of this testimony as possible at the trial. Applicant has failed to show how a more thorough cross-examination on this point would have changed his mind as to the plea. Accordingly, relief is denied.

Trial v. Pleading

Applicant claims Counsel was ineffective for failure to discuss with him his options of pleading or going to trial. This Court finds this testimony not credible given the fact that Applicant decided to plead halfway through the trial itself. This alone is a clear indication that he was aware of both options. Even so, there is no indication that he would have continued with the trial but for the lack of conversation about his options. Accordingly, relief is denied.

Failure to Review Discovery

Applicant claims Counsel was ineffective for failure to review discovery. This Court finds Applicant was aware of the evidence against him, as the bulk of it was rooted in Applicant's 911 call that coupled as a confession. Even so, this Court finds Applicant would not have proceeded to trial but for Counsel sharing the discovery. Applicant's cited reasons for not proceeding to trial were to protect the victim's family from being subject to more mental and emotional turmoil over what happened and because he knew trial was not going well. This is not rooted in the discovery. Accordingly, Applicant has failed to meet his burden of proof and relief is denied.

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 14th day of March, 2023.

DANIEL D. HALL
Presiding Judge
Seventh Judicial Circuit

York, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
IN THE COURT OF COMMON PLEAS

William T. Smith, #249438 Applicant,

v.

State of South Carolina, Respondent.

AFFIDAVIT OF SERVICE

The undersigned hereby certifies that a true copy of the filed Order of Dismissal **(2022-CP- 42-00785)** has been served upon the applicant by mailing one copy in the United States mail, postage prepaid, addressed to:

Susannah C. Ross, Esquire
Ross & Enderlin, PA
330 East Coffee St.
Greenville, SC 29601

This 22nd day of March 2023.

Jordan Hickman
Legal Assistant for Respondent

SWORN to before me this 22nd day of March 2023.

Notary Public for South Carolina.
My Commission Expires: May 16, 2029