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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

G.D. Morgan, Circuit Court Judge

2019-CP-42-01255

Eric Harper..... Appellant,

v.

The State, ... Respondent.

NOTICE OF APPEAL

Eric Harper appeals the Honorable G.D. Morgan's Order of Dismissal filed March 20, 2023.

This 3 day of April, 2023.

Susannah Ross, Attorney at Law
Bar #11205
330 E. Coffee St.
Greenville, SC 29601
(864) 242-0029
Attorney for Appellant

Other Counsel of Record:
Chelsey Marto, Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3970
Attorney for Respondent

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
Eric Harper, #376154, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2019-CP-42-01255 **ORDER OF DISMISSAL**

This matter comes before this Court by way of Applicant's post-conviction relief application filed April 2, 2019. Respondent made its return on May 18, 2019, requesting an evidentiary hearing be convened. An evidentiary hearing was held at Spartanburg County Courthouse. Susannah Ross, Esquire, represented Applicant. Assistant Attorney General Chelsey Marto represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's father and Prosecutor Spenser Smith 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 Spartanburg County Clerk of Court. Applicant was indicted at the October 2017 term of the Spartanburg County Grand Jury for resisting arrest of a police officer with assault (2017-GS-42-4952), armed robbery and possession of a weapon during the commission of a violent crime (2017-GS-42-4953), shoplifting (2017-GS-42-5527), third degree burglary (2017-GS-42-5528), two counts of petty larceny (2017-GS-42-5529 and -5530), and

second degree burglary, violent (2017-GS-42-5531). Thomas A.M. Boggs, Esquire represented Applicant. Spenser Smith, Esquire, prosecuted the case. On April 25, 2018, Applicant pled guilty as indicted for armed robbery; as indicted for third degree burglary, and to an additional count of third-degree burglary as a lesser-included offense before the Honorable J. Derham Cole, circuit court judge. Judge Cole sentenced Applicant to imprisonment for concurrent terms of thirty years, suspended to fifteen years, with five years' probation for armed robbery, ten years for resisting arrest, five years for each count of third-degree burglary and thirty days on each larceny and shoplifting charge.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals dismissed the appeal shortly thereafter for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv), SCACR. *State v. Harper*, S.C. Ct. App. filed June 27, 2018. The remittitur was issued on July 13, 2018.

Summary of Relevant Facts

On July 21, 2017, the owner of All Star Gold and Pawn shop stated that a young black male was walking around the store and tried to lean over and grab a tablet. (Tr. 21). The owner kicked him out of the store. (Tr. 21). The owner recalled the man being in the store the day before and, after reviewing security camera footage, saw that Applicant stole an iPad and concealed it under his shirt and left the store. (Tr. 21).

On July 23, 2017, officers responded to a call at All Pawn, where they found one of the front windows was broken to gain access. (Tr. 21). A worker at Chief's stated she saw Applicant leave the building with a backpack and leave towards the back of the business. (Tr. 21-22). Applicant took two iPods or iPads and an iPhone. (Tr. 22). Video footage was obtained. (Tr. 22).

On July 26, 2017, officers responded to All Pawn, where a witness stated that the suspect

had just left right before the officers arrived. (Tr. 22). The suspect was not found, but a black backpack with bolt cutters, a hammer and a taser were found inside. (Tr. 22). The witness saw Applicant break a window in the front of the store and take something out. (Tr. 22-23). The items were sold back to another pawn shop down the road. (Tr. 23). Applicant used a fake ID to sell the items. (Tr. 23).

On August 6, 2017, the victim stated that she was robbed at the S.C. Credit Union by a black male between twelve and fourteen years old with a black skull cap and white and black pattern pants, described as parachute pants. (Tr. 23). She was using the ATM when the male approached with a firearm and demanded she hand over the hundred dollars just withdrawn, along with her purse containing twenty dollars and various cards. (Tr. 23-24). Applicant pulled the trigger as he left, indicating to the victim that it was a B.B. gun. (Tr. 24). She began following him while calling 911 and gave them the direction he was headed in. (Tr. 24).

An officer saw Applicant walking, avoiding eye contact, and carrying a gun and pants matching the description over his shoulder. (Tr. 24). The officer continued following Applicant, who was sweating and had a panicked look on his face. (Tr. 25). He also began digging in the pants on his shoulder, attempting to get something out of his pockets. (Tr. 25). The officer grabbed Applicant and told him he was under arrest. (Tr. 25). Applicant threw several punches at the officer, most landing in the chest. (Tr. 25). Applicant's pants fell off his shoulder, and Applicant broke free and ran towards the Home Depot, where he was ultimately apprehended by several officers. (Tr. 25). Applicant continued proclaiming his innocence while kicking and screaming until he was ultimately leg shackled. (Tr. 25).

Applicant's gym shorts were searched, and $122 dollars and change were recovered. (Tr. 25). All bills were in tens. (Tr. 25). The bank was called, and they explained that the ATM had

recently ran out of twenty dollar bills and was only able to dispense tens. (Tr. 25-26).

Applicant was found with several bags with a white substance in it, which was ultimately determined to not be drugs. (Tr. 26). Applicant had B.B.s on him. (Tr. 26). The white and black pants were recovered and two B.B. guns were found in the pants. (Tr. 26).

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 plea counsel, in that:
    a. "Counsel was ineffective and did not provide the required assistance pursuant to the Washington v. Strickland standards, etc., the Counsel omissions amounted to the Applicant being prejudiced against and falsely charged and convicted of charges that no evidence of the charges being committed, otherwords, Counsel allowed the solicitor to trump up charges against the Applicant, to include but not limited to the Counsel not doing any case research to the Applicant's criminal charges, etc."
    b. "It exist a Brady violation, pursuant to Rule 5, SCRCrim.P., Rule 5 motion was incompleted and Counsel did not disclosed all records from the Solicitor's Office to Applicant until after Applicant was sentenced and committed to the SCDC."
    c. "Case Counsel failed to file post and pretrial motions, the Counsel failed to file a motion to suppress evidence and dismiss charges that the Solicitor never had to charge the Applicant with the charges that Applicant was convicted of, the case Counsel allowed the Court to convict the Applicant of unfounded charges and failed to filed a motion of the Court to record to preserve any issues that could have been reviewed by the appellate court on an appeal."
    d. "The Counsel failed to object to the Court in regards to the Court violating the Applicant juvenile rights, pursuant to the Bryers court, SC case is the controlling well settled laws by the state supreme court, having it noted, the Counsel failed to have reviewed in the defense of the Applicant, there exist no mitigating circumstances and no victim(s) being harm/injured by the Applicant during the alleged crime"
2. Ineffective assistance of appellate counsel, in that:
    a. "Appellate Counsel was ineffective assistance when they did not provide assistance to properly file the appeal by the appellate court rules, the appellant was enforced to litigate his own case and under the circumstances appellant

could not in no instance under no circumstances do legal work in his case, Applicant is a juvenile and with this fact being the case the Court should have place counsel to assist him in the appeal on record."

Applicant, through Counsel, made an amended application dated April 15, 2022:

1. Ineffective assistance of counsel:
    a. Failure to present mitigation of age and intellectual disability;
    b. Failure to review discovery with the Applicant prior to his plea:
    c. Failure to investigate and educate the plea judge regarding the intellectual disability:[1]
    d. Failure to assure parent's presence at the plea;
    e. Failure to move the court to reconsider the sentence;
    f. Failure to effectuate appeal.

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

1. Ineffective Assistance of Counsel.
    a. Failure to present mitigation of age and intellectual disability.
    b. Failure to review discovery with the Applicant prior to his plea.
    c. Failure to investigate Applicant's intellectual disability.
    d. Failure to assure parent's presence at the plea.
    e. Failure to present parents as mitigation evidence during sentencing.
    f. Brevity of time in consultation.
    g. Failure to explain what a jury trial is.
    h. Failure to file an appeal or move to reconsider the sentence.
    i. Failure to argue for strong armed robbery.
2. Involuntary Plea.
    a. Applicant did not know he had the right to proceed to trial.
    b. Applicant was afraid he would receive a harsher sentence if he went to trial.

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 he understood the purpose of the PCR hearing. He stated he sees a therapist every two weeks. He stated he was taking medication to help him sleep. He stated he

[1] This Court interprets "educate the plea judge" as present mitigation evidence concerning his intellectual disability.

made it to the ninth grade and that he has not yet received his GED. He stated he has been taking classes for his GED for a while.

Applicant stated he did not understand everything going on at the guilty plea hearing. He stated he was told he could receive thirty years' imprisonment for one charge. He stated he was not talking to a therapist at the time. He stated he did not know he had a right to go to trial. He stated he remembered the officer and victim being present at the plea hearing. He stated his parents were not at the plea hearing but were otherwise involved in the case. He stated that he has been attacked while in SCDC. He stated he admitted guilty to armed robbery at the plea hearing, but that he only had a loaded bb gun. He stated he was in jail for about eight months prior to the plea.

On cross-examination, Applicant testified he met with Counsel two times prior to the plea. He stated Counsel told him that thirty years' imprisonment was the maximum sentence he could receive. Applicant stated he did not recall saying he understood he had a right to a jury trial at the plea hearing. He stated he did not know what a trial was or how many jurors sat on a jury. He stated he thought his parents would have offered something in mitigation at the plea hearing if they were present. He stated he pled because he thought he would receive less time if he elected to plead over going to trial. He stated he did not bring up his mental health issues to Counsel. He stated that Counsel never explained a trial or the possession charge. Applicant stated he asked Counsel's assistant what the charge was but was never given an answer. He stated he remembered the judge explaining the charges and elements of the charge.

On re-direct, Applicant testified that his reading level at the time of the plea hearing was eighth grade or less. On re-cross, he testified that everything at the plea hearing was spoken out loud.

Father Testimony

Applicant's father testified that Applicant has undergone counseling for his mental health but has not gotten better. He stated that Applicant still acts like he did when he was in the Eighth Grade. He stated that he went to the public defender's office and was told that everything was under control. He testified that the office informed him that the office would take care of Applicant. He stated that Applicant told him that he pled guilty and that after he pled guilty the public defender's office welcomed him with open arms. He stated that something is wrong with Applicant and that it "always has been that way." He testified that Applicant did not understand what was going on in his case and that he is slow at reading and writing. He testified that Applicant's mother went to the public defender's office many times. He stated the office never notified him about the plea and that he told Applicant not to plead guilty. He stated he knows Applicant did not understand the plea proceedings.

On cross-examination, he testified he was not at the plea hearing. On re-direct, he testified that Applicant's parents' phone numbers were given to a secretary at the public defender's office, but that they never contacted them. He stated he felt disrespected by the office. He testified that they brought Applicant into court right after he pled to do the plea. He testified that the public defender's office never called them about the plea. He stated he would have been present if notified.

Prosecutor Testimony

Prosecutor testified that there were not a lot of plea negotiations that took place in this case. He stated that this case was on the trial docket and stated that there was about a week's notice before he knew it would be a plea. Prosecutor stated that the victim of the robbery at the ATM thought the BB gun was real while the robbery was taking place. He stated that Counsel

handled the plea.

On cross-examination, Prosecutor testified that Applicant burglarized a pawn shop and sold some items. He stated that the armed robbery happened during the middle of the day. He stated that a description of Applicant's pants was given to the police and money was found on Applicant's body when he was apprehended. He stated that Applicant was sentenced to thirty years' imprisonment, suspended to fifteen, followed by five years' probation. He stated that this was a relatively strong case and that the victims were involved. He stated Applicant likely would have found guilty at trial. He stated that Applicant had previous experience in family court pleas and that this was not his first time going through the court system. He stated that Counsel told him Applicant was not the smartest person, but Judge Cole went through the plea process very thoroughly and that Applicant seemingly understood the proceedings. He stated that the facts of the case were stated on the record.

On re-direct, Prosecutor testified that the issue of a BB gun versus a regular gun being used is ultimately a jury issue and that an instruction on this could have been requested if the case went to trial.

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. Upon agreement of the parties, this Court has also taken judicial notice of Plea Counsel's general sessions file and all its contents. 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).

Applicant's plea was entered freely, knowingly, intelligently, and voluntarily. At the plea hearing, Applicant stated he understood the charges and potential punishments. (Tr. 4-11). He stated he understood the sentencing ranges. (Tr. 11). He stated he was not aware of an available defense. (Tr. 11). He stated that he understood his right to remain silent, to a jury trial, and to call and confront witnesses. (Tr. 12-15). He stated he was pleading freely and voluntarily. (Tr. 15-16). He stated he understood he was pleading to a violent offense that is not parole able. (Tr. 34). Further, based upon correspondence found in Counsel's file, this Court finds Applicant was intelligent enough in his responses to understand the plea proceedings and consequences of pleading. Thus, this Court finds this plea was entered freely, knowingly, intelligently, and voluntarily and cannot be withdrawn now.

Failure to Present Mitigation – Age/Intellectual Disability

Applicant claims Counsel was ineffective for failure to present a mitigation strategy that included addressing Applicant age and intellectual disability. 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).

Here, the mitigation strategy was reasonable. Counsel stated that Applicant was seventeen years old at the time of the plea and that he was an unlikely candidate for a criminal. (Tr. 32-33). Counsel pleaded the Court for a lenient sentence so Applicant could "get out and make something of himself." (Tr. 33). He stated that Applicant was accepting responsibility for his actions by pleading. (Tr. 33-34). He stated that Applicant had a tortured life, which he largely brought on by himself. (Tr. 33-34). This was a reasonable approach and Counsel was not deficient for exercising it.

Additionally, there has been no showing that had Applicant's intellectual disability been brought up, a different sentence would have been issues. Accordingly, relief is denied on this ground.

Failure to File an Appeal/Motion to Reconsider

Applicant claims Counsel was ineffective for failure to file an appeal or move to reconsider the sentence. The record clearly reflects that Counsel filed a notice of appeal. This was reasonable and Applicant has made no showing that a motion to reconsider would be successful. Accordingly, relief is denied.

Failure to Present Mitigation – Parents

Applicant claims Counsel was ineffective for failure to call Applicant's parents in mitigation. The transcript reflects that Counsel wanted Applicant's mother present at the plea hearing but was unable to reach her. (Tr. 33). Further, as outlined above, Counsel's mitigation strategy was reasonable and Applicant has failed to meet his burden of proof in showing that had this been brought up in mitigation, a different sentence would have been issued. Accordingly, relief is denied.

Failure to Review Discovery

Applicant claims ineffective assistance of counsel and that his plea was unknowing and involuntary because of failure to review discovery. This Court finds this unlikely. However, even if true, Applicant has failed to establish what in his discovery would have caused him to proceed to trial if he knew about the discovery prior to the plea. Accordingly, relief is denied on this ground.

Failure to Investigate Applicant's Intellectual Disability

Applicant claims Counsel was ineffective for failure to investigate Applicant's intellectual disability. *Strickland* makes clear that defense counsel "has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." 466 U.S. at 691. When highlighting failure to investigate as a ground for a larger ineffective assistance of counsel claim, judicial determination of this claim's validity is evaluated for "reasonableness [under] all the circumstances" with "a heavy measure of deference to counsel's judgments" applied. *Id.* At the PCR hearing, Applicant is required to present evidence or witnesses he alleges Counsel did not properly investigate. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Additionally, whether Applicant was prejudiced by Counsel's failure to investigate is contingent on whether the evidence presented would have led Counsel to change his recommendation regarding the plea. *Stalk v. State*, 383 S.C. 559, 562, 681 S.E.2d 592, 594 (2009).

Applicant has failed to present sufficient evidence of an intellectual disability that undermines the validity of the plea. Further, based upon a review of the defense file and the transcript, this Court finds that any intellectual disability did not impact his ability to effectively communicate with Counsel or his understanding of the plea. This is also not sufficient to change

Counsel's recommendation as to the plea. Accordingly, relief is denied.

Failure to Assure Parents' Presence at Plea

Applicant claims Counsel was ineffective for failure to ensure Applicant's parents were involved in the process leading up to the plea and for ensuring they were present at the plea. Beyond using Applicant's parents as mitigation witnesses, this Court finds Applicant's parents had no bearing on the decision to plead or Applicant's understanding of his decision to plead. Accordingly, relief is denied.

Brevity of Time

Applicant alleges that Counsel was ineffective for brevity of time spent in consultation. "[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 claims that Counsel did not speak with him about the case enough. Applicant has failed to show how this brevity of time spent in consultation impacted Counsel's representation of Applicant. There is also no indication that the results of the proceeding or the decision to plead would have been different had Counsel conferred with him more. Applicant has

failed to establish ineffective assistance of counsel and this Court declines to grant relief accordingly.

Failure to Argue Strong Armed Robbery

Applicant claims Counsel was ineffective for failure to argue strong armed robbery. This was waived with entry of an otherwise valid plea. Relief is denied accordingly.

Failure to Explain Jury Trial

Applicant claims Counsel was ineffective and the plea invalid because he did not know he could proceed to trial or what trial would have entailed. However, at the plea hearing, Applicant told the plea court that he did understand he was waiving his right to a jury trial and that he understood what a jury trial consisted of. (Tr. 13-15). He stated he understood the parties choose the jurors, that there are twelve jurors on a jury, and that the jurors need to unanimously find him guilty. (Tr. 14-15). He stated he understood he was waiving his rights to remain silent, and call and confront witnesses. (Tr. 12-15). Thus, this Court finds Applicant not credible in his assertion that he did not understand he could proceed to trial. Accordingly, relief is denied on this ground.

Trial Tax

Applicant contends that he was essentially coerced into pleading because he was afraid of a harsher sentence if he went to trial. Being informed that if he went to trial, he 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.

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.

G.D. MORGAN
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina.

FILED
2023 MAR 20 PM 2:34
CLERK OF COURT
SPARTANBURG COUNTY
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