STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
Tre'vion Anderson, #382594, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2020-CP-42-03171 **ORDER OF DISMISSAL**

This matter comes before this Court by way of Applicant's post-conviction relief application filed September 17, 2020. Respondent made its return on April 11, 2022, requesting an evidentiary hearing be convened. An evidentiary hearing was held on June 8, 2022, at the Spartanburg County Courthouse. Fletcher Smith, Esquire, represented Applicant. Assistant Attorney General Chelsey Marto represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Attorneys J. Patricia Anderson and William Bean, IV, 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 2017 term, the Spartanburg County Grand Jury indicted Applicant for unlawful carrying a handgun (2017-GS-42-1066). During its June 2019 term, the Spartanburg County Grand Jury indicted Applicant for three counts of attempted murder (2019-GS-42-3111, -3113, -3115) and one count

of aggravated breach of peace (2019-GS-42-3112). Applicant was represented by William S. Bean, IV and J. Patricia Anderson, Esquires. Assistant Solicitor Spenser H. Smith of the Seventh Circuit Solicitor's Office prosecuted the case. On October 23-24, 2019, Applicant appeared before Judge Cole and pled guilty to the following terms and negotiations:

1. On the unlawful possession of a weapon charge (-1066), Applicant pled as indicted to a negotiated time-served sentence.
2. On the -3111 and -3113 attempted murder charges, Applicant pled to the lesser included offense of first-degree assault and battery.
3. On the -3114 attempted murder charge, Applicant pled guilty as charged to a recommendation a cap of twenty years' imprisonment.
4. On the -3114 weapons possession charge, Applicant pled guilty to unlawful carry of a pistol.
5. On the -3115 attempted murder charge, Applicant pled guilty to the lesser included offense of assault and battery of a high and aggravated nature.
6. The -3112 aggravated breach of peace charge was *nolle prosequi* indicted as a part of the plea deal.

Judge Cole sentenced Applicant to eighteen years' imprisonment for the -3114 attempted murder charge, one year for the -3114 weapons' possession charge, fifteen years for assault and battery of a high and aggravated nature, ten years for both first degree assault and battery charges, and one year for the unlawful possession of a pistol charge. The -3115 sentence was to run consecutively to the -3114 sentence, but was suspended during the period of probation for five years. All other sentences run concurrently. Applicant did not pursue a direct appeal.

Summary of Relevant Facts

Concerning the pistol charge, on October 28, 2016, Deputies responded to an alley regarding a suspicious vehicle. (Tr. 22). Five black males exited the vehicle along with a large amount of smoke. (Tr. 22). A .45 extended mag pistol was in plain sight between the floorboard and front passenger seat and Applicant had the best access to the weapon. (Tr. 22).

Concerning the remaining charges, on October 29, 2018, deputies responded to an apartment complex because of a shooting. (Tr. 22). Upon arrival, officers found a black male,

Kendrick Jones, who had gunshot wounds to both his thighs. (Tr. 22). Jones spent twelve days in the hospital and had surgery to take veins out of his stomach to reconstruct arteries in his legs. (Tr. 29-30). Jones had about three hundred staples down both sides of his legs and was in bed under care of his parents for a significant period of time. (Tr. 30). Another male, Dekenio Kelly, was discovered shot in the foot and was transported to the hospital in a personal vehicle. (Tr. 22, 30).

Witnesses heard four or five gunshots and saw a burgundy car with black rims.(Tr. 23). Several people were standing outside a laundromat about to walk to a gas station to get snacks when this car drove up and three or four black males began shooting at them. (Tr. 23). The shooting was captured on video. (Tr. 23). Witnesses stated they did not know who the males were because they were unable to see them. (Tr. 23).

On October 22, 2018, the burgundy car with black rims was found. (Tr. 23). The car was towed and searched. (Tr. 23). It was apparently a rental car. A victim's bill of rights for James Patton, a co-defendant, was found in the car. (Tr. 23).

Two males inquired about the car. (Tr. 23). Officers went to and spoke with them. (Tr. 23). Officers were able to recognize Applicant on the surveillance footage. (Tr. 24). Applicant admitted he owned the car but stated he did not commit any wrongdoing. (Tr. 24). Applicant was ultimately taken into custody and gave an alibi, stating that he admitted it was him on the video but that he was dropped off at his aunt's house, which requires going down a different road. (Tr. 24).

Officers determined that Patton was the driver and he was seen in the vehicle outside the gas station where he met up with Applicant. (Tr. 24). The surveillance footage showed Applicant got in the rear driver's side of the vehicle. (Tr. 24). Shells casings were found outside the

laundromat. (Tr. 25-26).

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 counsel."
    a. "Counsel's performance was deficient and prejudiced defendant."
        i. "Counsel's [half-hearted] efforts prevented fair trial."
            1. "failure to file timely motions."
        ii. "Failure to maintain adequate communications with defendant."
            1. "I only consulted with Counsel twice and was below reasonable."

Applicant amended his application, alleging:

1. Applicant's plea was involuntary because:
    a. The Court failed to inform Applicant that the charges could be run either concurrently or consecutively.
    b. Applicant was not properly informed of the nature and elements of the offense and the facts that the sentences could be run concurrently or consecutively and that the Judge did not have to follow the State's recommendations.
    c. Applicant was not properly informed of the difference between a negotiated and recommended sentence.
2. Ineffective assistance of counsel:
    a. For failure to object to the Court's continuous questioning of Applicant after he admitted to the allocution of the State.
    b. For failure to inform Applicant of his right to appeal and for failure to file the notice of appeal.

Applicant proceeded forward on the allegations in the amended application, as well as:

1. Involuntary plea:
    a. Applicant only pled because Counsel was not adequately prepared.
    b. The Court coerced Applicant into pleading through its questioning.
    c. Applicant thought he was pleading under the Youthful Offender Act.
    d. Applicant was afraid of a much harsher sentence if he went to trial.
    e. Applicant thought he was pleading to a twenty-year cap.
2. Ineffective assistance of counsel:
    a. Failure to request a motion for a bond hearing.
    b. Failure to share and review all discovery with Applicant.
    c. Brevity of time in consultation.

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 he talked to PCR Counsel in Lee County's correctional facility. He stated that his attorneys failed to inform him of his right to file a direct appeal and consult with him about a potential appeal. He stated that he asked Counsel about next steps and a PCR action, but that Counsel never mentioned a direct appeal.

Upon questioning of the Court, Applicant stated he only pled because he did not think Counsel Bean represented him effectively. He stated that he was upset that Counsel Bean did not object at the plea and stated that he thought the judge was pressuring him into pleading. He stated he requested a motion for a bond hearing, but that Counsel never pursued that. He stated he requested discovery from Counsel, but that he only received half of his discovery. He stated that he was handed a packet of his most important discovery the day before his plea. Applicant did not know the terms of his plea and did not understand the difference between a negotiated and recommended sentence. He stated that he was entered a plea under the Youthful Offender Act.

Upon questioning of PCR Counsel, Applicant stated that trial Counsel was not prepared for trial. He testified that they only met two or three times and never had a substantial conversation. He stated that Counsel told him that if he did not plead, he was in trouble. He stated he wanted to take the gun charge to trial. He stated he did not want to plead and would have preferred going to trial.

On cross-examination, Applicant testified that he talked to Counsel about [illegible] and other

next steps. He stated he would have gone to trial if he knew he was not going to receive a YOA sentence. He stated he talked to Counsel Bean for seven or eight minutes total. Applicant testified that Counsel Anderson told him he stood a solid chance of success at trial. He stated he pled because he was afraid, he would receive more time at trial. He stated that Counsel Bean told him to plead, because if he did not plead, he would be in serious trouble. He stated he took Counsel Bean's word as law. He stated he told the Plea Court he wanted to withdraw his plea and stated that his grandmother told him not to withdraw in the middle of the proceedings. He stated that the Court informed him of the rights he was waiving and the indictments and basic elements of all offenses. Applicant stated he told the Plea Court he had plenty of time to talk to Counsels and that he was under the impression that he did not have another choice. He stated he pled freely and voluntarily. He stated Counsel told him what to say during the plea proceedings. He stated that he pled because Counsel Bean told him to and that he did not know what to think at the time.

Applicant's Mother Testimony

Applicant's mother testified that she spoke with Counsel Bean, who informed her that Applicant was pleading to a twenty-year cap. She stated she asked Counsel Bean about the Youthful Offender Act. On cross-examination, she testified that she was not present at the plea.

Counsel Bean Testimony

Counsel Bean testified that he has had this case since its inception. He stated he had eight or nine meetings with Applicant before the plea. He stated he told Applicant that if he went to trial, he would likely be convicted. He stated he discussed the plea offer with Applicant and told him that sentencing recommendations are not binding on the Court like a negotiated sentence is. He stated that he discussed the discovery and evidence with Applicant. He stated that he would

likely receive more time in prison if he went to trial. He stated he still thinks the plea was in Applicant's best interest. He stated that he had a good idea of what the State's case consisted of and did not think more had to be investigated. He stated that Applicant seemingly understood the plea. He stated that they did not discuss the Youthful Offender Act. He stated he told Applicant that he does not handle post-conviction relief matters. He stated Applicant asked about a post-conviction relief action, not a direct appeal. He stated he would have filed a notice of appeal if Applicant had requested one. Counsel Bean testified that the judge allowed Applicant to withdraw the plea initially because of a lack of understanding. He testified that he did not recall if this matter was on the trial docket. He stated he believed it was Applicant's decision to plead.

On cross-examination, Counsel Bean testified that he did not recall a conversation with Applicant concerning an appeal. He did not recall receiving a letter from Applicant about the case.

Counsel Anderson Testimony

Counsel Anderson testified that she represented Applicant in his juvenile charges first before he incurred the additional gun charge. She stated that the Youthful Offender Act was brought up concerning the gun charge. She testified that this charge was integrated with the charges Counsel Bean was representing Applicant on out of an attempt to effectively time manage. She stated that she was surprised by Applicant's decision to plead. She stated he pled freely and voluntarily. She stated that she thought the plea was in his best interest because if he was found guilty at trial, he never would have left prison. She stated she thought Applicant wanted to go to trial but was not involved in discussions regarding the plea. She stated Applicant never asked her to file an appeal but asked Counsel Bean about it. She stated she informed Applicant about his right to appeal before the plea. She stated that the only issues she thought he

could raise on appeal was a claim concerning the involuntariness of the guilty plea.

Applicant Rebuttal Testimony

Applicant stated he was requesting a belated appeal. He stated that Counsel Bean was incorrect in his statement that he visited him eight or nine times.

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 § 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, 116, 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.

Involuntary Plea

In the context of a guilty plea, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Applicant's right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent solemnity and truthfulness included in the guilty plea process. *See Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

For a plea to be valid, the applicant must have been aware of the nature and crucial elements of the offense, the maximum and minimum penalties, and the rights he is waiving by accepting the plea. *Boykin v. Alabama,* 395 U.S. 238 (1969); *Roddy v. State*, 339 S.C. 29 (2000). 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).

The plea was freely, knowingly, intelligently, and voluntarily entered. Applicant stated at the plea hearing that he wanted to plead to all the charges. (Tr. 35-37). He stated he had plenty of time to talk to Counsels and his family. (Tr. 37). He stated he was happy with his decision to plead. (Tr. 37). He stated he agreed with the facts. (Tr. 37-38). He stated he wanted to waive his rights to remain silent, to call and confront witnesses, and to a jury trial. (Tr. 39-40). He stated that he was pleading freely and voluntarily, and no promises or threats were made to induce the plea. (Tr. 41). Thus, based on the plea transcript, this Court finds that the plea was entered freely, knowingly, intelligently, and voluntarily. Additionally, both attorneys credibly testified that pleading was in Applicant's best interest. Thus, this Court finds the plea was valid and denies Applicant's request to vacate it now.

Concurrent v. Consecutive Sentencing

Applicant claims Counsel was ineffective and the plea invalid because Applicant did not understand the difference between concurrent and consecutive sentencing. His attorney credibly

testified that he explained the different to Applicant.

Nature/Elements of Charges

Applicant claims his plea was involuntary because he did not understand the nature and elements of the charges. However, at the plea hearing, Applicant stated he understood the charges and sentencing ranges after the Court explained the elements, charges, negotiations, and sentencing ranges. (Tr. 5-10). Thus, this Court finds Applicant not credible in his testimony at the PCR hearing and finds Applicant pled with a full understanding of the charges. Thus, relief is denied on this ground.

Recommendations v. Negotiations

Applicant claims his plea was involuntary because he did not understand the difference between a recommended and negotiated sentence. However, this Court finds Counsel Bean credible in his assertion that he informed Applicant that a recommended sentence is non-binding and that a negotiated sentence is binding. Accordingly, this Court finds this claim is without merit and denies relief as a result.

Inadequate Preparation

Applicant claimed that he was coerced into pleading because Counsels were not prepared for trial. However, he also testified that he decided to plead because he was afraid of a harsher sentence at trial. Counsel credibly testified that he knew what the State's case consisted of and did not think anything else needed to be investigated. Additionally, Applicant failed to show or state how further preparation would have made a difference. *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 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). Thus, relief is denied on this ground.

Coercion into Pleading

Applicant claims he was coerced into pleading by the Court because the Court engaged him a plea colloquy. This Court does not see anything in the plea record establishing this. Instead, what the record reflects that the plea Court properly explored whether Applicant understood the plea proceedings. Accordingly, because there is no evidence of coercion, relief is denied on this ground.

Youthful Offender Act

Applicant claims the plea was involuntary and Counsel ineffective because he thought he was pleading under the Youthful Offender Act. However, this Court finds Counsel Anderson credible in her assertion that the Youthful Offender Act was discussed in reference to the gun charge, but these discussions halted when Applicant picked up additional charges that he was represented by Counsel Bean on. Counsel Bean was credible in his assertion that the Youthful Offender Act was not discussed in reference to the charges he represented Applicant on. Thus, this Court finds this allegation incredible and declines to grant relief accordingly.

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.

Twenty-Year Cap

Applicant stated his plea was invalid because he thought he was pleading to a twenty-year cap. However, this was applicable to only one of his charges. Additionally, Applicant failed to show that Counsel erroneously told him this or why it would have caused him to go to trial instead. Accordingly, relief is denied on this ground.

Failure to Object to Colloquy

Applicant claims Counsel was ineffective for failure to object to the Court's questioning of Applicant after he admitted to the allocution. After reviewing the plea transcript, this Court declines to find anything inappropriate or objectionable in the questioning and declines to find any prejudice suffered. Thus, this Court denies relief as a result.

Failure to Inform of Right to Appeal

Applicant claims Counsel was ineffective for failing to file an appeal. Counsel is required to make certain the defendant is made fully aware of the right to appeal following a trial. *White v. State,* 263 S.C. 110, 208 S.E.2d 35 (1974). However, absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. *Weathers v. State*, 319 S.C. 59, 459 S.E.2d 838 (1995). The bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief. *Id.* Instead, there must be proof that extraordinary circumstances exist such that the defendant should have been advised of the right to appeal. *Id.* Extraordinary circumstances may exist when there is reason to think that a rational defendant would want an appeal, such as when non-frivolous grounds for an appeal exist, or when the defendant reasonably demonstrates an interest in appealing. *Id.; Roe v. Flores-Ortega*, 528 U.S. 470 (2000).

This Court finds that Applicant's focus post-plea was not on filing an appeal, but on pursuing a post-conviction relief action. This was confirmed by Counsel Bean, who credibly

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, but Counsel credibly testified that they talked more than twice as much as Applicant claims. This Court therefore declines to grant relief on this ground.

Failure to Review and Share Discovery

Applicant claims Counsel Bean was ineffective for failure to review and share all of the discovery with him. Specifically, Applicant testified he was only shown half the discovery and was given a packet of the most important discovery the day before the plea. However, this Court finds Counsel Bean credible in his testimony that he discussed the discovery and evidence with Applicant before the plea. Therefore, 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 and hereby is 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.

testified Applicant asked about a PCR action, not a direct appeal. Counsel Bean also credibly testified that he would have filed a notice of appeal if Applicant had requested one. Counsel Anderson also credibly testified that Applicant did not request an appeal from her. She also credibly testified that the only issue she thought Applicant could have raised on appeal is an invalid plea issue, which was addressed in his PCR action. Accordingly, this Court finds no reason why Applicant should be permitted to pursue an appeal from his plea, particularly because he seemingly never requested an appeal at all. Thus, relief is denied on this ground.

Failure to Request Bond Hearing

Applicant claims Counsel was ineffective for failure to request a bond hearing. Applicant has failed to meet his burden of proof in showing that Counsel was unreasonable in failing to request bond, especially in light of the seriousness of the charges. Additionally, Applicant has failed to show that this alleged failure prejudiced him, or how it would have caused him to proceed to trial. Accordingly, relief is denied on this ground.

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

IT IS THEREFORE ORDERED:

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 22 day of March, 2023.

WILLIAM A. MCKINNON
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina.

ALAN WILSON
ATTORNEY GENERAL

March 31, 2023

The Honorable Amy W. Cox
Clerk of Court - Spartanburg County
PO Box 3483
Spartanburg, SC 29304-3483

Re: **Tre'vion Anderson, #382594 v. State of South Carolina**
2020-CP-42-03171

Dear Ms. Cox:

Enclosed please find the original Order of Dismissal signed by the Honorable William A. McKinnon, in the above-captioned case, for filing in your office. In addition, please forward proof of service and a time stamped copy back to our office for our file.

Sincerely,

Megan Harrigan Jameson
Senior Assistant Deputy Attorney General

MHJ/jbh

cc: Fletcher N. Smith Jr, Esquire

FILED
2023 APR -4 AM 9:04
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

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