RECEIVED
Jul 20 2023
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from Colleton County
Court of Common Pleas

Honorable Kristi F. Curtis, Circuit Court Judge

Case No.: 2019-CP-15-00805

NATHANIEL HAMPLETON, # 364904 .... Appellant,

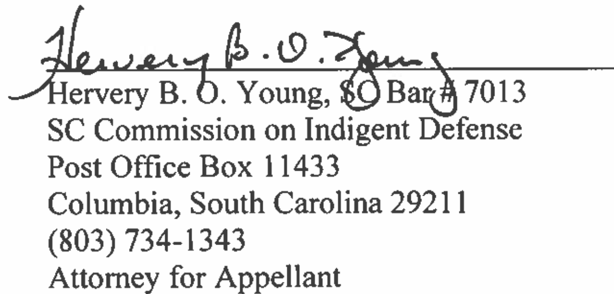
v.

THE STATE .... Respondent.

NOTICE OF APPEAL

Nathaniel Hampleton, #364904, appeals the order dated June 15, 2023, of the Honorable Kristi F. Curtis denying his Post-Conviction Relief application. Appellant received written notice of entry of this order on June 29, 2023.

July 20, 2023



Hervery B. O. Young, SC Bar # 7013
SC Commission on Indigent Defense
Post Office Box 11433
Columbia, South Carolina 29211
(803) 734-1343
Attorney for Appellant

Other Counsel of Record:

Danielle Dixon
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-3737
Attorney for Respondent

STATE OF SOUTH CAROLINA COUNTY OF Colleton	) IN THE COURT OF COMMON PLEAS) FOR THE FOURTEENTH JUDICIAL CIRCUIT
Nathaniel Hampleton, #364904, Applicant, v. State of South Carolina, Respondent.	Case No.: 2019-CP-15-00805 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an application of post-conviction relief filed by Nathaniel Hampleton on October 10, 2019. The State made its return on July 2, 2020. An evidentiary hearing convened on July 21, 2022. Applicant was present at the hearing and represented by James Falk, Esq. Assistant Attorney General Lauren Mims of the South Carolina Attorney General's Office, represented the State.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's aunt Loretta Brunson, and Applicant's plea counsel, David S. Mathews, Esq. ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the Clerk of Court regarding the subject convictions, the pleadings, and the exhibits introduced at the evidentiary hearing. After a review of the record before me, The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant was indicted at the May 2015 term of the Colleton County Grand Jury for attempted murder (2014-GS-15-01109). During its January 2015 term, the Colleton County Grand Jury indicted Applicant for two counts of Attempted Murder (2014-GS-15-01110; 2014-GS-15-01111). Applicant was represented by Assistant Public Defender David S. Mathews of the

Fourteenth Circuit Public Defender's Office. Assistant Solicitor Steve Knight of the Fourteenth Circuit Solicitor's Office, prosecuted the case.

On July 27, 2015, Applicant pled guilty before the Honorable Perry M. Buckner, circuit court judge, to the lesser included offense of Assault and Battery First Degree and Assault and Battery of a High and Aggravated Nature. The State made no recommendation as to sentencing other than concurrent sentences. Judge Buckner sentenced Applicant to fifteen years for Assault and Battery of a High and Aggravated Nature and ten years for both Assault and Battery First Degree charges. Applicant's sentences were ordered to run concurrently and credit was given for time served. Applicant did not appeal his convictions.

Current Application

Applicant commenced this PCR action on October 10, 2019. Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel Involuntary Plea"
2. " My Counsel advised me not to appeal but to fill out a PCR form."
3. "My counsel advised me to file a speedy trial form but on the day the call me he had another plea offer."
4. "There exists evidence of material facts not previously presented and heard."
5. "I was not advised of my charges in the 3 indictments including any lesser included offense the maximum penalty or punishment."
6. "I was forced to take a plea I didn't get time to read over it or be advised what I was pleading to."

Applicant requests the following as relief: "I would like a time reduce by having the Assault and Battery of a High and Aggravated Nature reduce a lesser included offense and drop the two 1st degree."

At the evidentiary hearing, Applicant proceeded forward on the allegations as follows:

1. Counsel was ineffective for advising Applicant not to appeal but to file a post-conviction relief form instead.
2. Counsel was ineffective for filing a speedy trial form and then later calling with an offer of plea.

3. Counsel was ineffective for failing to advise Applicant of his charges in the three indictments, including any lesser included offenses, maximum penalty or punishment.
4. Counsel was ineffective for "forcing" Applicant to take plea that he didn't have time read over and that counsel did not adequately explain.

At the beginning of the PCR hearing, the State moved to summarily dismiss all allegations besides any claims for a belated appeal due to *White v. State*[1], due to Applicant's failure file the post-conviction application until three years after the requisite time period described in §17-27-45(A)-(C). This court took the summary dismissal matter under advisement and allowed further testimony on the merits of the application.

II. RELEVANT TESTIMONY

Applicant's Testimony

Applicant's Testimony Regarding State's Motion to Dismiss

Applicant confirmed he pleaded guilty on July 27, 2015. He further testified that he went to Kirkland Correctional Facility on August 4, 2014 and that he attempted to file a post-conviction relief application July 19, 2016. He stated that he took the application to Lieber Correctional Institution's mail room, had it notarized, and placed it in the mail. Applicant testified that he knew he was supposed to file the Application with the Colleton County Clerk of Court. After some time had passed without receiving a response from the Clerk of Court, he called the Colleton County Clerk of Court's office and they informed him that they never received his application. Applicant states that he found out on April 16, 2019 that his application had been lost. Applicant then sent a grievance letter to Lieber letter on April 5, 2020. Lieber replied on the same form stating that they had no documents indicating that a post-conviction relief application had been mailed. On cross

[1] *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974)

examination, Applicant stated he filed the application in 2016, but did not follow up with Lieber to find out what had happened to his application until April 5, 2020.

Applicant's Testimony on Merits of Application

Applicant testified that he rejected an initial plea offer of six years. Applicant testified that his counsel, Mr. Mathews, advised him that he shouldn't take the first plea offer because it was not a good plea offer. Instead, he testified that plea counsel told him to fill out a form to get a speedy trial. Applicant testified that he was there at the time of the shooting, but his defense was that he had no intentions on shooting anyone. He further testified that his lack of intention was evidenced by the shotgun shell hitting low on the car.

In response to the question of whether or not plea counsel advised him on the lesser-included charges and allegations, Applicant stated that he did not know he would be charged on two other charges. He further testified that he leaned over to plea counsel and asked what the other two charges were, and plea counsel said to follow his lead. Applicant contends that he did not know he was pleading to assault and battery, and if he knew he was pleading to the other assault and battery charges he would not have taken the plea. He further testified that the first time that he knew that he would receive additional charges that would run concurrent was the day of the plea. Applicant testified that when he went to court, he thought he was there for a speedy trial motion, but once he got there, plea counsel told him that the new plea deal that the State was offering was better than the previous deal, and he suggested Applicant take the plea. It is Applicant's testimony that there was only five minutes between the offer and his plea.

On cross-examination, Applicant testified that he met with plea counsel only twice. Applicant testified that the first of these meetings occurred in the county jail, and the second meeting was the date of plea. Applicant testified that there was another meeting to reject the first

plea offer. He further testified that he wanted to go to trial, but never discussed any trial strategies with his lawyer. Applicant remembered that the trial judge advised him of his constitutional rights, including his right to trial, right to confront accusers, and his right to remain silent. Applicant further agreed that he remembered Judge Buckner asked whether he was guilty, and he answered he was in fact guilty, but contends this was before the charges were read. Counsel for the State asked Applicant, "Do you remember Judge Buckner advising you that you waived certain constitutional rights," Applicant replied that he believed that he was only pleading to one charge. Applicant further testified that he remembered telling Judge Buckner that all of those answers were his and that he was telling the truth. After refreshed recollection, Applicant testified that Judge Buckner asked if he needed more time with his attorney. When asked why didn't he stop and ask for additional time, Applicant testified that he asked his attorney what the other charges were for but counsel told him not to worry about anything and follow his lead. Applicant recalled that Judge Buckner read each indictment to him at the plea hearing. Applicant further testified that plea counsel discussed that he would be pleading to Assault and Battery of High and Aggravated Nature and its ramifications, but didn't tell he would have to plead to all three charges. Applicant further testified that he remembered telling Judge Buckner that it was his decision to plead guilty, and that he was satisfied with counsel and didn't need more time. Applicant could not recall Judge Buckner explaining that he had ten days to appeal his plea and didn't know anything about an appeal.

Following cross-examination, this Court further examined Applicant. Applicant testified during the PCR hearing that he had "never been in trouble before" he entered his plea in this case. As a point of clarification, this Court asked Applicant about the prior convictions referenced in the

transcript of the plea hearing. Applicant admitted he did in fact have prior convictions, but that he had never pled to anything of this caliber.

Plea Counsel David Mathews' Testimony

Plea counsel David S. Mathews stated he has been practicing law since 1985, and has done criminal law for a majority of his practice. Mathews further testified that he was appointed to this case, and he opened a file on December 9, 2014. Mathews recalled that Applicant was charged with shooting at a car where one of the passengers was severely hurt, and that Applicant maintained that the shooting was an accident. Mathews states that Applicant told him he had run out of the house and dropped the gun.

Mathews further testified that he met with Applicant a number of times. He testified he met with him on December 10, 2014, then again on December 15, 2014 at the preliminary hearing. He further testified that Applicant was present during a motion for bond reduction on February 16, 2015. The motion for bond reduction was denied but Applicant was granted a speedy trial. On April 15, 2015, Mathews testified he met with Applicant to discuss the initial plea offer, which Applicant later declined on the record. Mathews met with Applicant again at the jail on June 3, 2015, and learned Applicant had changed his mind and decided that he would take a six year concurrent plea. Matthews agreed to reach out to the solicitor. He met with Applicant again on June 22, 2015 to enter into the plea, but the plea was not heard during that term of court. He further testified that that solicitor would not agree to a negotiated plea after receiving pushback from the victims.

Mathews testified that it is his practice to discuss all charges and possible sentences, and he did so with Applicant. He further testified that Applicant never indicated that he did not understand the charges against him. He affirmed that he reviewed all of the discovery that was

provided, and had an investigator look at the car to determine whether the gun could have gone off accidentally as Applicant claimed. The investigator thought that it was unlikely that the events that night happened in the way Applicant proclaimed. He further testified that he discussed going to trial in light of that evidence with Applicant, and explained the strengths and weaknesses of the case. Mathews testified that he felt that it would have been difficult to go forward at trial, but it was ultimately Applicant's decision whether or not to plead guilty. Mathews testified that it would have been great if they could've accepted the State's initial six year offer, but it was Applicant's decision to reject that offer. Mathews still believes that the plea entered into was in Applicant's best interest. He further testified that during his prior meeting with Applicant, he explained all the terms of the plea, as it always his practice to discuss odds of winning or losing at trial. Mathews further testified that it was very unlikely that he told Applicant to follow his lead, as that is not his practice.

On cross-examination, Mathews reiterated that he sent Applicant the plea offer from the State on February 14, 2015 and discussed the offer with Applicant on April 14, 2015. On re-direct, Mathews states that he filed a motion to reconsider following the plea, but it was not heard for some time. He further testified that it is his general practice to discuss appeals with Applicants, but does not recall whether or not he discussed an appeal with Applicant. It is Mathew's opinion that there was any extenuating circumstances that would have warranted an appeal from a guilty plea, but if Applicant asked him, he would have filed an appeal.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the

legal arguments made by the attorneys. Pursuant to section 17-27-80 of the South Carolina Code, this Court makes the following findings based upon all of the probative evidence presented.

Respondent's Partial Motion to Dismiss for Untimeliness

The State argued that all of Applicant's allegations were untimely except for his claim for belated appellate review pursuant to *White v. State*, 263 S.C. 110, 119, 108 S.E.2d 35, 39 (1974). This Court took the matter under advisement at the hearing, and continued to hear testimony on the merits. At the end of the hearing, Respondent renewed its motion and again asserted that all of the amended allegations were untimely filed, except for the request for a belated appeal, to the extent that one was raised in the amendment. This Court finds that the partial motion to dismiss is granted.

The Uniform Post-Conviction Procedure Act states as follows:

> An application for relief . . . must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. §17-27-45(A).

The South Carolina Supreme Court has held the statute of limitations applies to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may be used to raise the statute of limitations defense. *McDonnell v. Consolidated School District of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). The statute of limitations may also be tolled when an inmate places an application in the prison mailroom and a subsequent delay, beyond the inmate's control, renders the application untimely. *Mose v. State*, 420 S.C. 500, 803 S.E.2d 718 (2017). Furthermore, the statute of limitations does not apply when a PCR applicant does not knowingly and voluntarily waive his right to appeal his trial conviction. *White*, 263 S.C. 110, 208 S.E.2d 35. In addition, S.C. Code Ann. §17-27-70(c) authorizes this

Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Respondent moved to dismiss all allegations other than the request for a belated appeal under *White*.

The record shows that Applicant entered a guilty plea on July 27, 2015 and did not pursue a direct appeal. Thus, the application was due to be filed on or before July 27, 2016. The application was notarized on August 26, 2019, and was filed on October 14, 2019; over three years past the requisite filing date. At the hearing, Respondent asserted that Applicant had not presented grounds for equitable tolling of the statute of limitations. Applicant responded by arguing that he is a layman in the law, and therefore, the statute of limitations as set forth in Section 17-27-45 should be equitably tolled.

Applicant testified that he tried to submit his application at an earlier date. However, Applicant did not produce any evidence or specifics about when this took place or why his attempt to timely file was unsuccessful. He testified that he reached out to Lieber Correctional Institution after his alleged second application, and Lieber officials responded saying they never received a post-conviction relief Application for filing.

This Court finds that Applicant has failed to file his application within the one year statute of limitations as required pursuant to Section 17-27-45. Furthermore, he has not shown that he is entitled to equitable tolling of the statute of limitations. He has not shown that his delay in filing his PCR application application's filing was delayed by the prison mailroom. Instead, the application was notarized after the window for timely filing had closed, indicating that it was not completed in a timely manner. Therefore, the State's partial motion to dismiss all allegations

except the request for a belated appeal is granted and those allegations are dismissed with prejudice.

Ineffective Assistance of Counsel

Even on the merits of the case, Applicant did not prove that he is entitled to post-conviction relief in this matter. In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "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.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S.

at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109-10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable."). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced Applicant such 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, 386 S.E.2d at 625. "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." *United States v. Basham*, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he/she would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. *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."). Statements made during a guilty plea should be considered conclusive, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. *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)).

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.

Applicant further claims his plea was not entered knowingly or voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of the plea and the charges against him or her. *Dover v. State*, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991); *see also Boykin v. Alabama*, 395 U.S. 238, 243 (1969) (Courts must make sure defendants have "a full understanding of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought, and forestalls the spin-off of collateral proceedings that seek to probe murky memories."). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. *See Harris v. Leeke*, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001); *Richardson v. State*, 310 S.C. 360, 363, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

Involuntary Guilty Plea based on the Three Separate Indictments

Applicant alleges that his guilty plea was involuntary because he did not understand he was pleading guilty to three separate indictments. However, this Court finds that Applicant does not meet the burden for relief for ineffective assistance of counsel based on an involuntary guilty plea and would deny relief in these matters.

As evidenced by the plea transcript, Applicant was charged with three counts of Attempted Murder. Applicant pled guilty to one count of assault and battery of a high and aggravated nature, and two counts of assault and battery. Judge Buckner read each of the indictments that named three separate victims, and asked Applicant to indicate whether he understood the indictment, to which he replied "yes" to every indictment. Judge Buckner further asked Applicant whether he understood that he was pleading to three separate indictments, with the State's recommendation that all of the sentences run concurrent, to which he replied, "yes, sir." Plea. Tran. p. 12. Judge Buckner then asked Applicant whether he was guilty of the lesser-included offenses of the three indictments, and Applicant replied, "Yes" to each offense as it related to the three different victims. It is Applicant's testimony that he did not understand that he was pleading to several different

indictments, but he indicated the opposite during the plea colloquy, and did not ask the Court for any additional time to review the documents with his attorney. I find the testimony of David Mathews credible in that he discussed the indictments including the lesser included offenses, and the terms of the guilty plea during his meetings with Applicants.

Accordingly, Applicant's allegation that his plea was involuntary because he did not understand that he was pleading guilty to three charges is **DENIED.**

Counsel Ineffective for "Forcing" Applicant to accept a Plea Offer

Applicant contends his plea was involuntary because he was "forced" into taking a guilty plea. This Court disagrees, and finds Applicant knew the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty pursuant to the requirements of *Boykin* and *Pittman.* The plea transcript reflects Applicant entered his plea knowingly and voluntarily, engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the court's questions.

"[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced." *Reed v. Becka*, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). Accordingly, because a criminal defendant waives several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Pittman v. State*, 337 S.C. 597, 524 S.E.2d 623 (1999). To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. *Brady v. United States*, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant's choice. *Id.* at 755; *see also United States v. Smith*, 440 F.2d 521, 528–529 (7th Cir.) (Stevens, J.,

dissenting) (explaining that voluntariness relates to the trustworthiness of the admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. *Boykin*, 395 U.S. at 243. Additionally, the defendant "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). The 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 court and defendant, between court and defendant's counsel, or both." *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993); *See also Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997) (guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge). To ensure the defendant understands the consequences of his guilty plea, the plea judge "usually questions the defendant about the facts surrounding the crime and punishment that could be imposed." *Dover v. State*, 304 S.C. 433, 434–35, 405 S.E.2d 391, 392 (1991). However, the plea judge "does not have to direct the defendant's attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea." *Carter v. State*, 329 S.C. 355, 362, 495 S.E.2d 773, 776 (1998).

The test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). It is "well established that a guilty plea is not

rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment." *United States v. Cox*, 464 F.2d 937, 942 (6th Cir. 1972) (*citing Brady*, 397 U.S. 742). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, *Brady*, 397 U.S. at 750-753, or by increasing the risks of punishment on those who do not. *North Carolina v. Alford*, 400 U.S. 25, 37 (1970).

Nonetheless, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual . . . , a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977); *see also Jamison v. State*, 410 S.C. 456, 469–71, 765 S.E.2d 123, 129–30 (2014) (observing that "guilty plea[s] must be treated as final in the vast majority of cases" and instructing that caution must be exercised so as not to "undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea"). Indeed, admissions made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements." *Dalton*, 376 S.C. at 137–38, 654 S.E.2d at 874 (internal citations and quotation marks omitted); *cf. Blackledge*, 431 U.S. at 73–74 (pointing out that representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a "formidable barrier in any subsequent collateral proceedings").

The voluntariness of a guilty plea, however, "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." *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). An applicant who enters a plea on the advice of counsel may "only attack voluntary, knowing and intelligent character of the plea by

showing that plea counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the [applicant] would not have pled guilty, but would have insisted on going to trial." *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

Here, based on the testimony and record before the court, Applicant was not "forced" into taking a plea that would render his plea involuntary. During the plea colloquy, Applicant told Judge Buckner that no one forced or coerced him into taking this plea offer. Although Applicant testified at the evidentiary hearing that the felt forced to take the plea because he didn't have enough time, Applicant agreed at the evidentiary hearing and testified during the plea hearing that he did not need more time to discuss anything surrounding the proceeding with his attorney. Most importantly, he testified that it was his decision to take the plea. Thus, based upon the plea hearing transcript and post-conviction relief hearing testimony, this Court finds that the plea was freely, voluntarily, knowingly, and intelligently entered and this allegation is **DENIED**.

Counsel was ineffective for filing a speedy trial form

Applicant contends counsel was ineffective for filing a speedy trial motion but then conveying an offer to plead guilty. This Court finds the testimony of plea counsel, David Mathews credible in that there was a speedy trial motion made and granted by the judge. He further testified that following the speedy trial motion being granted, there was an initial plea offer that Applicant rejected on the record because he was not interested in pleading guilty at that time. The Court also finds plea counsel's testimony that Applicant wanted to plead guilty to the six year plea offer after initially rejecting it, but the offer was no longer available. Counsel was not deficient in filing a speedy trial motion then later relaying a plea offer to Applicant, as Applicant showed interest in and wanted to plead guilty to the charges. Furthermore, Applicant was not prejudiced by plea

counsel filing a speedy trial motion then relaying a plea offer, as he pled guilty and received a fifteen year concurrent sentence where he could have received up to ninety years on the original charges.

Based upon the testimony of Applicant and plea counsel, I find that this allegation is without merit and is **DENIED.**

IV. FAILURE TO APPEAL SENTENCE OR PLEA

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 Counsel credible in his testimony that counsel he does not recall Applicant requesting an appeal in this matter, and that there were no extenuating circumstances that existed a warranting an appeal but would have filed an appeal if he was asked by Applicant to do so. Accordingly, Counsel was not required to file one, barring extraordinary circumstances, which have not been shown here. Accordingly, relief on this ground is **DENIED.**

V. 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 application for post-conviction relief must be denied and dismissed with prejudice.

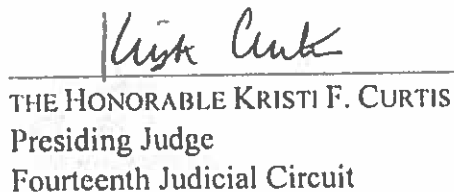
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an 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 the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 15th **day of** June**, 2023.**



THE HONORABLE KRISTI F. CURTIS
Presiding Judge
Fourteenth Judicial Circuit

Sumter, South Carolina