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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

Frank R. Addy, Jr., Circuit Court Judge

2016-CP-42-03358

Robert O'Shields..... Appellant,

v.

The State, ... Respondent.

NOTICE OF APPEAL

Robert O'Shields appeals the Honorable Frank R. Addy, Jr.'s Order of Dismissal filed July 21, 2023.

This 25 day of July, 2023.

Susannah Ross, Attorney at Law
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Attorney for Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
Robert O'Shields, #365365	)	Case No.: 2016-CP-42-03358
Applicant,	)	
v.	)	ORDER OF DISMISSAL
State of South Carolina	)	
Respondent,	)	

THIS MATTER CAME BEFORE THE COURT on June 19, 2023 by way of an application for post-conviction relief ("PCR") filed by Applicant Robert O'Shields (hereafter "Applicant") after initially entering a plea of guilty but mentally ill on September 8, 2015 and sentenced to 30 years imprisonment for the murder of his wife. The original PCR application was filed September 8, 2016 and amended June 23, 2020. Various scheduling delays due to motions by Applicant to dismiss his prior PCR attorneys and numerous motions for continuances caused the case to finally be heard on June 19, 2023. Applicant raised several claims of ineffective assistance of counsel, but the crux of Applicant's argument at the evidentiary hearing was his claim that he did not have the requisite capacity at that time to enter his plea of guilty but mentally ill.

The evidentiary hearing on June 19, 2023 was conducted before this jurist at the Spartanburg County Courthouse. Applicant and his PCR attorney Susannah Ross were present. The State of South Carolina was represented by Assistant Attorneys General Andrew N. Cole and Blake Kennedy. Three witnesses testified at the hearing: Applicant, Debbie Gilliland (Applicant's sister), and N. Douglass Brannon (Applicant's trial/plea counsel). This Court took the matter under advisement in order to thoroughly review the record and to consider the testimony and arguments

presented at the evidentiary hearing.

This Court has reviewed: (1) the application and amended application for PCR filed by Applicant; (2) the State's Return; (3) various motions filed by Applicant to relieve prior PCR counsel and to continue the proceedings; (4) materials from Spartanburg County (indictments, warrants, trial subpoenas, etc.); (4) transcript from the plea hearing on September 8, 2015 (26 pages); (5) transcript from a Family Court hearing on April 8, 2014, regarding an Order of Protection (6 pages); (6) pre-trial filings; (7) Applicant's correspondence with the Spartanburg County Clerk of Court requesting information needed for him to draft his original PCR petition; (8) a Psychiatric Evaluation report by E. Selman Watson, Ph.D. dated March 13, 2015, which was entered as Defendant's Exhibit 1 at the plea hearing in September, 2015; and (9) a Psychiatric Evaluation by Donna S. Maddox, MD dated October 5, 2020, which was entered as a Court Exhibit at the evidentiary hearing. Based on the record, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice.

On June 27, 2023, this Court filed a Form Order dismissing Applicant's PCR application and further directed the State to prepare a more formal order memorializing the Court's ruling. This is the final order of this Court for this Matter. Specific findings of fact and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 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 July 2016 term, the Spartanburg County Grand Jury indicted Applicant for one count of violation of an order of

protection (2016-GC-42-2280), murder, and possession of a weapon during the commission of a violent crime (2016-GS-42-2281, counts 1 & 2). N. Douglas Brannon, Esquire, represented Applicant. On September 8, 2015, Applicant pled guilty but mentally ill before the Honorable J. Derham Cole. Judge Cole sentenced Applicant to 30 days imprisonment for violation of the order of protection, 30 years imprisonment for murder, and 5 years imprisonment for possession of a firearm, to be served concurrently.

Applicant did not appeal his guilty plea or his sentence. Applicant filed his Post Conviction Relief application on September 8, 2016. Applicant subsequently hired Dayne Phillips, Esquire to assist with his PCR application. Mr. Phillips filed an Amended PCR Application on June 23, 2020. On February 7, 2022, on the eve of the PCR hearing that was going to be conducted virtually, Applicant filed a motion to relieve Mr. Phillips as his attorney. The motion was granted on April 8, 2022. On October 14, 2022, Susannah Ross, Esquire, was appointed as PCR counsel for Applicant. This matter was continued two more times, on October 27, 2022, and on February 7, 2023, before it was scheduled for an in-person hearing on April 18, 2023.

The evidentiary hearing scheduled for April 18, 2023, before the Honorable Perry H. Gravely did not go forward that day. Instead of proceeding with the evidentiary hearing, Ms. Ross made an oral motion for a continuance at the request of her client who requested additional time to schedule a supplemental mental health evaluation. Judge Gravely granted the continuance. This matter was placed on the next PCR roster in Spartanburg County and scheduled to go forward on June 19, 2023 before this jurist. During a virtual hearing with me and counsel on June 2, 2023, an additional request for another continuance was denied.

At the commencement of the evidentiary hearing on June 19, 2023, Applicant once again requested a continuance so that he could obtain a supplemental psychiatric and/or neurological

evaluation. Applicant also made a motion to relieve his current PCR counsel. This Court denied this latest request for a continuance, and after the Court ruled that the evidentiary hearing would go forward, Applicant withdrew his motion to relieve Ms. Ross.

At the completion of the evidentiary hearing, this Court took the matter under advisement. On June 23, 2023, this Court entered a Form Order denying Applicant's request for relief in his PCR action and directed the State to prepare a more formal order memorializing the Court's ruling. This is this Court's final order denying Applicant's PCR application.

CURRENT APPLICATION

Applicant alleges in his amended PCR application that he is detained unlawfully for the following reasons (excerpts verbatim):

1. Ineffective Assistance of Counsel:

   a. Applicant did not voluntarily, knowingly, or intelligently plead guilty based on Plea Counsel's erroneous advice and failure to request a competency to stand trial evaluation.

   b. Plea Counsel failed to request that the Chief Administrative Judge or presiding judge sign an Order for Competency to Stand Trial Evaluation pursuant to State v. Blair based on Applicant's mental health history and records when it was reasonable and necessary to do so in Applicant's defense.

   c. Plea Counsel failed to have applicant evaluated by an independent qualified medical professional to conduct a forensic psychological competency to stand trial evaluation prior to the plea hearing based on Applicant's mental health history when it was reasonable and necessary to do so in Applicant's defense.

   d. Plea Counsel failed to move for a Blair hearing prior to the plea hearing for the Plea Court to determine Applicant's competency to stand trial based on Applicant's mental health history and records.

   e. Plea Counsel failed to conduct a reasonable investigation and to develop all available, relevant, and admissible or mitigating evidence in preparation of Applicant's defense.

   f. Plea Counsel failed to review all potential defenses prior to Applicant's guilty plea.

STATEMENT OF FACTS

Marianne O'Shields, Applicant's wife, and her daughter were living at the Safe Homes shelter in Spartanburg, South Carolina, in April, 2014. On April 8, 2014, at a Spartanburg County Family Court hearing before the Honorable Kelly Pope-Black, (Case No. 2014-DR-42-1037), the Applicant consented to the entry of an Order of Protection that, for twelve months, limited Applicant to only having contact with Mrs. O'Shields via phone or text regarding visitation with their daughter. (Family Court Transcript; Tr. 17) The Spartanburg County Sheriff's report notes that Applicant violated the Order of Protection on at least three occasions prior to April 30, 2014.

On the morning of April 30, 2014, Applicant shot his wife outside the Safe Homes shelter right after Mrs. O'Shields put her daughter on the elementary school bus. (Tr. 17-18) The State had witnesses and video evidence that placed Applicant at the scene. (Tr. 17-18) More significantly, Mrs. O'Shields called 9-1-1 and identified Applicant as the person who shot her. (Tr. 18) Mrs. O'Shields died from her gunshot wounds shortly after being transported to Spartanburg Regional Hospital. (Tr. 18)

The indictments for violation of the Order of Protection (2014-GS-42-2280) and for murder and possession of a firearm during the commission of a violent crime (2014-GS-42-2281) were entered June 12, 2014.[1] Applicant entered a plea of guilty but mentally ill before the Honorable J. Durham Cole on September 8, 2015. Applicant separately acknowledged that he was voluntarily entering a plea on each of the indictments for murder (Tr. 7), possession of a firearm during the commission of a violent crime (Tr. 8), and violation of an order of protection (Tr. 8). Judge Cole further questioned Applicant regarding his voluntary waiver and effect of the waiver of his right to a jury trial. (Tr. 9-15) A report by E. Selman Watson, Ph.D., dated March 13, 2015, was

[1] The indictment for violation of the Order of Protection was amended June 25, 2015, to increase the time period and include the date of the shooting as an additional violation.

submitted to the Court as Defendant's Exhibit 1. Without objection, Dr. Watson's report was used as the basis for Applicant to plead guilty but mentally ill. (Tr.15-16)

After putting his findings regarding the plea for guilty but mentally ill on the record pursuant to S.C. Code Ann. § 17-24-20(d), Judge Cole asked if any additional hearing regarding Applicant's mental state was requested. (Tr. 16)

> THE COURT: All right. I want to ask the – let me ask this. I have a report from Dr. Selman Watson who conducted a psychological evaluation of the defendant, Robert O'Shields. You participated fully in that evaluation?
>
> DEFENDANT O'SHIELDS: Yes, Your Honor.
>
> THE COURT: And a report has been generated and has been handed up to the Court. Have you and your lawyers discussed this report?
>
> DEFENDANT O'SHIELDS: Yes, Your Honor.
>
> THE COURT: And based upon this report is why your lawyers have discussed with the prosecutor allowing you to plead guilty but mentally ill to each of these charges: is that true?
>
> DEFENDANT O'SHIELDS: Yes, Your Honor.
>
> THE COURT: Solicitor, you're in agreement with the guilty but mentally ill plea?
>
> MR. BARNETTE: Yes, sir. I've looked at the report, understand the findings that he made that he knew the difference between right and wrong but he couldn't conform his activity, what happened that day, which is guilty by a mentally ill.
>
> THE COURT: All right. And you – and this goes for the defense, too, but both the defense and the State accept Dr. Watson's report as being a valid, credible and accurate report?
>
> MR. BARNETTE: Yes, sir.
>
> MR. BRANNON: Yes, Your Honor.
>
> MR. HODGE: Yes, Your Honor.
>
> THE COURT: And none of you request to have a hearing on the issue of mental illness pursuant to 17-24-20?
>
> MR. BARNETTE: No, sir.
>
> MR. BRANNON: No, sir. (Tr. 15-16)

Applicant agreed with the background factual recitation by the Solicitor (Tr. 20) and admitted he had no legal justification to shoot his wife. (Tr. 20)

THE COURT: All right. Mr. O'Shields, did you understand everything that Mr. Barnette just told me?

DEFENDANT O'SHIELDS: Yes, Your Honor.

THE COURT: The material facts, which I am recalling, made not of, that relates to these charges against you is that he says that the victim, Mrs. O'Shields, was living at the Safe home; is that true?

DEFENDANT O'SHIELDS: Yes, Your Honor.

THE COURT: She had left your home and her home, she had gone to the Safe Homes, and you were still living in Lyman?

DEFENDANT O'SHIELDS: Yes, Your Honor.

THE COURT: And she and the child were living at Safe Home?

DEFENDANT O'SHIELDS: Yes, Your Honor.

THE COURT: There was an order of protection that was entered on April the 8th --?

DEFENDANT O'SHIELDS: Yes, Your Honor.

THE COURT: --- that you and she both agreed with?

DEFENDANT O'SHIELDS: Yes, Your Honor.

THE COURT: And Mr. Barnette says that she was taking the child to school. She dropped the child off?

MR. BARNETTE: She had walked the child to the bus stop.

THE COURT: Walked the child to the bus stop, the bus left, and that's when you pulled up and shot her.

DEFENDANT O'SHIELDS: Yes, Your Honor.

THE COURT: And then she dies as a proximate result of those gunshot wounds.

DEFENDANT O'SHIELDS: Yes, Your Honor.

THE COURT: She didn't attack you or threaten you in any way, did she?

DEFENDANT O'SHIELDS: No, Your Honor.

THE COURT: Okay. So you admit and agree with the facts that the solicitor has just stated?

DEFENDANT O'SHIELDS: Yes, Your Honor.

THE COURT: No reason, no legal justification for having shot Mrs. O'Shields?

DEFENDANT O'SHIELDS: No, Your Honor. (Tr.19-20)

Furthermore, the following colloquy took place regarding Applicant's mental state during the plea hearing:

THE COURT: Okay. All right. And have you ever been treated for any type of substance abuse or addiction?

DEFENDANT O'SHIELDS: Years ago for alcohol, sir.

THE COURT: All right. Is there anything about any mental condition or any substance abuse issue that prevents you from fully understanding what you are doing right now?

DEFENDANT O'SHIELDS: No, Your Honor

THE COURT: And is it correct for me to say that on the date in question that this occurred, that you did understand legal and moral right from legal and moral wrong?

DEFENDANT O'SHIELDS: Yes, Your Honor.

THE COURT: But according to the doctor who evaluated you, you could not conform your conduct to the requirements of the law –

DEFENDANT O'SHIELDS: Yes, Your Honor.

THE COURT: -- based upon a mental condition or disorder?

DEFENANT O'SHIELDS: Yes, Your Honor. (Tr. 21-22)

After Applicant's attorneys[2] spoke briefly to reinforce that Applicant was mentally ill when he shot his wife and to ask the Court for a lenient sentence, Applicant spoke briefly on his behalf.

THE COURT: All right. Mr. O'Shields, is there anything you'd like to add to what your lawyers have told me?

DEFENANT O'SHIELDS: No, Your Honor. I'd just like to apologize. (Tr. 24)

Judge Cole accepted the plea of guilty but mentally ill (Tr. 22) and sentenced Applicant to to 30 days imprisonment for violation of the order of protection, 30 years imprisonment for murder, and 5 years imprisonment for possession of a firearm, to be served concurrently. (Tr. 24)

[2] Applicant's attorneys at the plea hearing were Mr. Brannon (criminal trial defense counsel) and Charles A. Hodge (counsel for Applicant for a former Workmen's Compensation claim). Generally, Mr. Hodge stated that Applicant's Workmen's Compensation claim likely contributed to Applicant's mental state on the day he shot his wife.

TESTIMONY PRESENTED AT THE EVIDENCE HEARING

The evidentiary hearing was conducted before this Court on June 19, 2023. Testifying on behalf of the Applicant were Applicant himself and Debbie Gillian, Applicant's Sister. Testifying on behalf of the State was N. Douglass Brannon, Esquire.

Prior to giving his testimony, Applicant asked the Court for another continuance because he had been unable to secure a supplemental psychological or neurological evaluation. Applicant also moved to have his PCR counsel, Ms. Ross, relieved on the basis that she had not subpoenaed two witnesses to appear at the PCR hearing. The Court denied the continuance. After the Court directly inquired whether Applicant wanted to dismiss his PCR counsel mid-hearing, Applicant withdrew the motion to relieve Ms. Ross.

Applicant testimony may be organized by the following general topics: (1) client communication, (2) trial strategy, (3) pre-trial motions, (4) investigation, (5) legal advice, and (6) appeal. Although Applicant presented a myriad of issues, the common thread was an allegation that Applicant did not have the requisite capacity to have entered his plea of guilty but mentally ill.

Applicant testified that Mr. Brannon did not fully investigate the case and told him that some of Applicant's suggested witnesses were not helpful at trial. Applicant testified that Mr. Brannon suggested hiring a different defense psychologist, but they only ended up hiring Dr. Watson. During this portion of Applicant's testimony, Dr. Watson's report from March 13, 2015 was submitted anew to the Court. Applicant testified that he has had conversations with Dr. Watson subsequent to the plea hearing while Dr. Watson was in the prison counseling other inmates. Applicant suggested that Dr. Watson told him that he should not have been sentenced to the 30-years. Mostly, Applicant testified that Mr. Brannon knew that Applicant was not competent

at the time he entered the plea on September 8, 2015. Applicant claimed that he did not realize that he had pled guilty until after he read the plea hearing transcript which he had received from his sister.

Applicant testified that Mr. Brannon did not discuss trial strategy with him and that Mr. Brannon did not file necessary pre-trial motions. He reiterated that Mr. Brannon did not properly investigate defense-friendly witnesses. Applicant testified that Mr. Brannon gave erroneous legal advice regarding whether he should plead or go to trial; albeit, Applicant said that he did not actually recall any such discussion and accused Mr. Brannon and the State of simply wanting to get the case over with. Finally, Applicant testified that Mr. Brannon did not appeal his case or provide guidance to Applicant regarding any future appeals. After additional inquiry by the Court, it appears that Applicant was more concerned regarding his right to appeal the current PCR matter than he was concerned about appealing the original plea.

During cross examination, it became apparent that Applicant's principal issue raised in the evidentiary hearing was his allegation that he was not competent to have entered his guilty plea. Applicant acknowledged that Dr. Watson's report found him mentally ill when he shot his wife on April 30, 2014 but capable of standing for trial or entering a plea when he was evaluated on March 13, 2015. Applicant testified that prior PCR counsel retained Donna S. Maddox, MD to evaluate Applicant, and that Dr. Maddox issued a report dated October 5, 2020. Applicant acknowledged that Dr. Maddox agreed with Dr. Watson's evaluation and further found that "[Applicant] was competent at the time he entered his plea."[3]

[3] During arguments after the testimony concluded, Applicant consented to the submission of Dr. Maddox's report to the Court as an exhibit. The only available copy Dr. Maddox's report was from Ms. Ross's file, which has handwritten notes and comments made by Applicant on it. These handwritten notes and comments are arguably attorney-client communications between Applicant and Ms. Ross; however, Applicant stated that he waived any attorney-client privilege between himself and his PCR counsel and consented to providing the report to the Court. Therefore, Dr. Maddox's report with the handwritten comments was accepted by the Court as an exhibit to the evidentiary hearing. This Court notes that the handwritten comments appear to convey the same issues that Applicant raised in his

Mrs. Gillian, Applicant's sister, testified that her brother was not competent on the day he entered his plea. She said her brother was not in a good frame of mind and had blacked out prior to the start of the plea hearing. During the hearing itself, Mrs. Gillian said that her brother had to look at his attorney before answering the questions from the judge, suggesting that Mr. Brannon was coaching Applicant's answers. Mrs. Gillian also testified that after the last PCR hearing on April 18, 2023, which was continued, she contacted ten prospective doctors asking them to examine her brother, but none of them accepted. Lastly, Mrs. Gillian testified that while Mr. Brannon was investigating the case he demanded an additional ten thousand dollars to hire a specific expert from out of state who ultimately was not hired. Mrs. Gillian strongly implied that Mr. Brannon charged an excessive fee to defend Applicant and then demanded more money.

Mr. Brannon testified that he was retained shortly after Applicant shot his wife on April 30, 2014 and filed his notice of appearance on May 5, 2014. He testified that when he first received the case, he was aware his client may face the death penalty, and a primary goal was to keep Applicant off death row. Mr. Brannon testified that he, in fact, met with his client at least twenty times and that Applicant was well aware of all aspects of his case by the time this case came up for trial. Mr. Brannon also testified that he fully investigated Applicant's case and that additional expert testimony or investigation would not have aided the defense. Mr. Brannon noted that Applicant's case was difficult because of the overwhelming evidence of Applicant's guilt, including the 9-1-1 telephone call by Mrs. O'Shields where she named Applicant as the person who shot her.

Mr. Brannon explained the issue of his fee and the "additional" ten thousand dollars for an

testimony at the PCR hearing; therefore, the handwritten comments appear merely to be cumulative, regardless of whether Applicant waived any attorney-client privilege, and their inclusion in the exhibit entered at the evidentiary hearing was harmless.

expert. Mr. Brannon quoted Applicant a sizeable fee to defend Applicant, which fee is not unusual for a potential death penalty case. Mr. Brannon said he was paid an initial retainer of approximately two-thirds of his quoted fee, but these funds came from an account that was owned jointly by Applicant and his late wife. Within thirty days, Mrs. O'Shields' estate demanded the return of these funds, and Mr. Brannon had to remit them to the wife's estate. Mr. Brannon explained that he discussed retaining several possible defense experts, but recommended retaining Dr. Watson because he was in-state and would have better access to evaluate Applicant. The ten thousand dollars was used in substantial part to retain Dr. Watson. Including the ten thousand dollars, Mr. Brannon testified that he ultimately was paid only approximately a third of his quoted fee.

Dr. Watson performed a psychological evaluation of Applicant and issued a written report on March 13, 2015. With relevance to the current PCR petition, Dr. Watson concluded that Applicant was psychotic and delusional when he shot his wife but was otherwise competent to stand trial and assist his counsel at trial. Mr. Brannon testified that Dr. Watson confirmed these conclusions—and specifically confirmed that Applicant was competent to stand trial—the day before the plea was entered on September 8, 2015.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Standard of Review

Under the Uniform Post-Conviction Procedures Act, an applicant may seek post-conviction relief upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;

4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or

6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

In order to receive relief from a guilty plea, the Applicant must establish that there is a reasonable probability that, but for the Applicant's attorney(s) at the plea hearing, the Applicant would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 US 52 (1985). In South Carolina, a guilty plea is regarded as a waiver of non-jurisdictional defects and claims of violations of constitutional rights. State v. Rice, 401 S.C. 330, 331–32, 737 S.E.2d 485, 485–86 (2013) (citing Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)).

In a post-conviction relief action, the applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Where allegations of ineffective assistance of counsel are made, the question becomes, whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Id. (internal quotations omitted) (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

South Carolina applies a two-prong test for determining effective assistance of counsel that was originally set forth by the U.S. Supreme Court in Strickland.

> First, a defendant must show that counsel's performance was deficient. Under this prong, the proper measure of attorney performance remains simply reasonableness under prevailing professional norms. The second prong of the Strickland test requires a showing that the deficient performance prejudiced the defendant to the

> extent that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. The defendant is required to overcome the presumption that counsel was effective in order to receive relief.

Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989) (citations and internal quotations omitted).

The proper measure of counsel's performance remains whether the attorney "provided representation within the range of competence required of attorneys in criminal cases." Butler at 442, 334 S.E.2d at 814 (citations omitted). Stated another way, "the defendant must show that counsel's representation fell below an objective standard of reasonableness." Hill, 474 U.S. at 57. "A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Strickland, 466 U.S. at 689. Therefore, there is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment. See Strickland, 466 U.S. at 689; Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Indeed, "[r]epresentation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Hill, 474 U.S. at 58.

The two-prong test from Strickland applies to challenges to a guilty plea based on ineffective assistance of counsel. Hill, at 58. "A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty." Turner v. State, 335 S.C. 382, 384, 517 S.E.2d 442, 443 (1999). However, if there is overwhelming evidence of guilt, deficient performance may not result in prejudice. Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991).

Alleged Ineffective Assistance of Counsel Generally

Applicant's testimony regarding client communication, trial strategy, pre-trial motions, investigation, legal advice, and filing a direct appeal generally allege that Mr. Brennan's conduct fell below the acceptable standard for an attorney in this circumstance. This Court need not dwell on these general representation allegations because of the overwhelming evidence that Applicant shot his wife. See Geter, supra. Mrs. O'Shields identified Applicant as the shooter on a 9-1-1 call. It appears that the real issue for trial was Applicant's mental capacity at the time that he shot his wife. As part of the plea, the State accepted Dr. Watson's report as the basis for the Court to accept a plea of guilty but mentally ill; therefore, the question of Applicant's mental capacity at the time that he shot his wife was resolved.

This Court was able to observe and evaluate Applicant, Applicant's sister, and Mr. Brannon at the evidentiary hearing. This Court finds Mr. Brannon's testimony very credible, more credible than that of Applicant. See Simuel v. State, 390 S.C. 267, 270, 710 S.E.2d 738, 739 (2010) (noting that the appellate court "give great deference to a PCR judge's findings where matters or credibility are involved); Lee v. State, 396 S.C. 314, 319, 721 S.E.2d 442, 445 (Ct.App.2011) (noting that the appellate court gives deference to the PCR court's findings regarding credibility since the appellate court "lacks the opportunity to directly observe the witnesses."); Inabinet v. Inabinet, 236 S.C. 52, 55-56, 113 S.E.2d 66, 67 (1960) (noting that the trial judge who saw and heard the witness's testimony is in a better position than an appellate court to evaluate the credibility of the witness); 75B Am.Jur 2d Trial § 1581 ("when a [bench trial] case is tried to the court, the trial judge is the sole or ultimate arbiter of the credibility of the witnesses and the weight to be given specific testimony).

To establish counsel failed to adequately prepare for trial, applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had

counsel more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1988); Morehead v. State, 329 S.C. 229, 496 S.E.2d 415 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997). Applicant provided no testimony at the evidentiary hearing regarding what new or exculpatory information could have been discovered prior to his plea or trial.

Applicant did not file a direct appeal of his guilty plea or sentence. Mr. Brannon testified that he advised Applicant of his right to appeal the guilty plea. As discussed above, the Court finds Mr. Brannon's testimony credible. "[C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000). However, "absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to direct appeal from a guilty plea." Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995), reh'g den. (Aug. 9, 1995) (citations omitted). "A guilty plea is a solemn, judicial admission of the truth of the charges against an individual." Garren v. State, 423 S.C. 1, 12, 813 S.E.2d 704, 710 (2018) (citations omitted). And as the U.S. Supreme Court recognized, "[a]lthough not determinative, a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings." Flores-Ortega, 528 U.S. at 480.

Applicant's claims raised at the evidentiary hearing regarding plea counsel's general assistance of counsel in preparation of trial do not rise to the standards set forth in Strickland. Counsel was not ineffective, and Applicant provided no testimony that, had the advice from

counsel been different, Applicant would not have pled guilty. See Turner, supra. Moreover, the record demonstrates overwhelming evidence of Applicant's guilt so that no prejudice is shown. See Geter, supra. For these reasons, Applicant's general assistance of counsel claims are denied.

Alleged Lack of Capacity at the Plea Hearing

Applicant's primary argument at the evidentiary hearing was that, at the time he entered his plea of guilty but mentally ill on September 8, 2015, he did not possess the requisite capacity to stand trial or enter a plea. "Due process prohibits the conviction of a person who is mentally incompetent." McLaughlin v. State, 352 S.C. 476, 481, 575 S.E.2d 841, 843 (2003) (citing Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 595 (1992)). "The test of competency to enter a plea is the same as required to stand trial." Jeter, 308 S.C. at 232, 417 S.E.2d at 596 (citation omitted). "The accused must have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceeding against him." Lee, 396 S.C. at 320, 721 S.E.2d at 446 (citing Jeter, 308 S.C. at 232, 417 S.E.2d at 596 (citation omitted)). "The defendant bears the burned of proving his incompetence by a preponderance of the evidence." McLaughlin, 352 S.C. at 481, 575 S.E.2d at 843 (citation omitted); Jeter, 308 S.C. at 232, 417 S.E.2d at 596 ("In a PCR action, the petitioner bears the burden of proof and is required to show by a preponderance of the evidence he was incompetent at the time of his plea.")

"Before a defendant may plead guilty, it must be established that the defendant is competent and that the defendant's decision to plead guilty is a knowing and voluntary one." Garren, 423 S.C. at 14, 813 S.E.2 at 711 (citation omitted). The test "is whether the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings

against him." Carnes v. State, 275 S.C. 353, 354-355, 271 S.E.2d 121, 122 (1980) (internal quotation omitted; citation omitted). "The focus of a competency inquiry is the defendant's mental capacity; the question is whether he has the *ability* to understand the proceedings." Garren, 423 S.C. at 14, 813 S.E.2d at 711 (emphasis in original; citations omitted). "The purpose of the 'knowing and voluntary' inquiry, by contrast, is to determine whether the defendant actually *does* understand the significance and consequences of a particular decision and whether the decision is uncoerced." Id. (emphasis and internal quotation in original; citations omitted). Stated another way, an appropriate "test of incompetence which seeks to ascertain whether a criminal defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him." Drope v. Missouri, 420 U.S. 162, 172 (1975) (citation omitted).

Applicant alleges that he was not competent when he entered his plea. It is clear from the plea hearing transcript that neither the Solicitor, Mr. Bannon, nor the trial judge thought that a competency hearing was necessary. Nothing in the plea hearing transcript indicates any hesitancy, misunderstandings, or other red flags to indicate that Applicant was not competent to enter his plea. "Specifically, when establishing Strickland prejudice in the context of plea counsel's failure to request a mental competency evaluation, the applicant need only show a reasonable probability that he was incompetent at the time of the plea." Ramirez v. State, 419 S.C. 14, 21, 795 S.E.2d 841, 845 (2017) (internal quotations and citations omitted). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Ramirez, 419 S.C. at 22, 795 S.E.2d at 845 (quoting Gallman v. State, 307 S.C. 273, 276, 414 S.E.2d 780, 782 (1992)). This Court finds no "reasonable probability" in the record or based on the testimony at the evidentiary hearing to find that Applicant was incompetent when he entered his plea.

Again, nothing in the plea hearing transcript indicates that Applicant misunderstood the proceedings or the impact of his plea. In fact, Applicant unequivocally admitted to shooting his wife based on the facts presented by the Solicitor and he testified that he was intending to plead guilty but mentally ill. Applicant now asks for a supplemental evaluation. This is unnecessary. Applicant was already evaluated twice by psychologists who were hired by Applicant's trial/plea attorney and firs. PCR attorney. Dr. Watson evaluated Applicant in preparation of the trial and his March 13, 2015 report was accepted by the State, and Judge Cole accepted Applicant's plea of guilty but mentally ill. Applicant was evaluated a second time by Dr. Maddox while the current PCR application was pending. Dr. Maddox's October 5, 2020, report was accepted as an exhibit at the evidentiary hearing. Dr. Watson and Dr. Maddox both conclude that, although Applicant was mentally ill at the time that he shot his wife, Applicant had the requisite mental capacity to participate in his trial around September 8, 2015. Applicant provided no testimony or other support that a supplemental mental evaluation conducted prior to a hearing on his PCR would provide different findings concerning Applicant's mental capacity eight years ago when he entered his plea. Certainly, the consistent and closer-in-time determinations by Dr. Maddox and Dr. Watson are better indications that Applicant was competent to enter his plea of guilty but mentally ill on September 8, 2015.

This Court is reminded of the advice by our appellate courts regarding whether an accused is entitled to a competency to stand trial hearing: "evidence of a defendant's irrational behavior, his demeanor at trial and any prior medical opinion on competence to stand trial are all relevant in determining whether further inquiry is required, but that even one of these factors, standing alone, may, in some circumstances, be sufficient." State v. Blair, 275 S.C. 529, 533, 273 S.E.2d 536, 538 (1981) (quoting Drope, 420 U.S. at 180). None of these factors favor Applicant in this petition.

Stated another way, Applicant did not meet his burden of proof that he was incompetent, or even that there was a question of his competence, when he entered his guilty plea. To paraphrase the court in Garren, without *any* proof that Applicant suffered from identifiable mental health issues that undermined his competency to plead guilty, any claim of prejudice is purely speculative. See Garren, 423 S.C. at 13, 813 S.E.2d at 711.

Under the facts and circumstances of this case, based on the record and testimony before this Court, and based on the prior determinations by Dr. Watson and Dr. Maddox regarding Applicant's capacity to stand for trial and enter a plea, the Applicant's claims are not of such weight and quality that require, in the interest of justice, for Applicant's plea of guilty but mentally ill to be vacated. Applicant's claim for relief on this point is denied.

CONCLUSION

Based or the evidence presented at the evidentiary hearing and a thorough review of the record, this Court finds and concludes Applicant failed to meet his burden of proof and there is no basis to set aside Applicant's plea of guilty but mentally ill. Nothing persuades this Court that, under the facts and circumstances in this case and under the interest of justice, the Applicant's guilty plea should be vacated. Therefore, based on the foregoing, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate

procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant Robert O'Shields remain remanded to the custody of the State of South Carolina.

IT IS SO ORDERED this 21st day of July, 2023.

Frank R. Addy, Jr.
Presiding Circuit Judge

Greenwood, South Carolina