

STATE OF SOUTH CAROLINA)
 COUNTY OF LAURENS)
)
 Frederick Calvin Jones, # 321866,)
)
 Applicant,)
)
 v.)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE EIGHTH JUDICIAL CIRCUIT

Case No.: 2021-CP-30-00651

ORDER OF DISMISSAL RECEIVED

AUG 14 2023

S.C. SUPREME COURT

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Frederick Calvin Jones on July 28, 2021. On November 28, 2022, an evidentiary hearing convened before the Honorable R. Scott Sprouse. Applicant was present and represented by Ashley A. McMahan, Esquire. Assistant Attorney General T. Cruise Mitchell represented Respondent. Following a thorough review of the plea transcript and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Laurens County Clerk of Court. In February 2016, the Laurens County Grand Jury indicted Applicant for murder (2016-GS-30-0227). Applicant was represented by Eighth Circuit Public Defender Chelsea B. McNeill. Deputy Solicitor C. Dale Scott of the Eighth Circuit Solicitor's Office prosecuted the case.

K. MICHELLE SIMMONS
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 LAURENS COUNTY
 CLERK OF COURT

On October 23, 2018, Applicant pleaded guilty to the lesser included offense of voluntary manslaughter¹ before the Honorable Letitia H. Verdin. Judge Verdin sentenced Applicant to twenty-five years' imprisonment for voluntary manslaughter.

On November 1, 2018, Applicant's counsel filed a motion to reconsider Applicant's sentence and requested a hearing to address Applicant's motion to reconsider. On December 19, 2018, by written order, Judge Verdin denied Applicant's motion for reconsideration of his sentence finding that Applicant's plea was entered knowingly and voluntarily, and the Court could find no compelling basis for reducing Applicant's sentence. Following the denial of his motion for reconsideration, Applicant filed a timely notice of appeal.

On December 17, 2018, Applicant's counsel filed an Explanation of Appeal Pursuant to Rule 203(d)(1)(B)(iv), SCACR, arguing Applicant was not in possession of any discovery relating the Newberry County charges that were dismissed as part of Applicant's guilty plea. Applicant's counsel argued she was unaware whether such charges were meritorious, and she was not in a position to argue that the dismissal of these charges should not be factored into Applicant's sentencing.

An appeal was perfected on Applicant's behalf by Assistant Appellate Defender David Alexander of the South Carolina Commission on Indigent Defense. Mr. Alexander filed a brief pursuant to *Anders v. California*² requesting to be relieved as counsel and raising the following issue:

1. The plea court erred in denying Applicant's motion to reconsider his sentence.

¹ As a result of Applicant's guilty plea, the State dismissed the following pending charges from Newberry County: four counts of distribution of cocaine base, three counts of distribution of cocaine base within proximity of a school, one count of possession of a sawed-off shotgun, one count of unlawful possession of a weapon by person convicted of a violent crime, one count of grand larceny, and one count of carjacking.

² *Anders v. California*, 386 U.S. 738 (1967).

On May 21, 2021, the South Carolina Court of Appeals issued an order dismissing Applicant's appeal and granting appellate counsel's motion to be relieved. The Remittitur was issued on June 8, 2021.

STATEMENT OF FACTS

On November 17, 2015, Shayla Jenkins and Calvin Walker were walking home from a nearby convenience store. Shayla Jenkins noticed a dark colored medium-sized sedan drive past the couple. As they arrived home, Shayla Jenkins entered the house while Calvin Walker remained in the front yard answering a phone call. As Ms. Jenkins entered the house and hung up her coat, she heard two gunshots and ran outside to see Calvin Walker laying on the ground. Ms. Jenkins called 911 to report that Calvin Walker had been shot. EMS was called to the scene and transported Calvin Walker to the hospital where he was pronounced dead.

A cell phone belonging to Calvin Walker was collected and officers reviewed the last few phone calls and text messages. Calvin Walker was communicating with an individual who was coming to meet Calvin Walker to purchase marijuana. Officers researched the phone number and discovered it belonged to Applicant's mother. Police located and arrested Applicant and located the cell phone on Applicant's person.

Witnesses in the area informed police they heard two gunshots and observed a dark colored sedan leaving the area where the gunshots came from. Police officers were able to locate Applicant's co-defendant Malcolm Jones who was observed driving a blue Pontiac G6. Mr. Jones denied knowing Calvin Walker and being with Applicant on the night of Calvin Walker's murder.

Police interviewed an individual named Alex Lanier who was trying to sell a .32 caliber pistol around the time they were investigating the murder of Calvin Walker. Lanier confirmed he saw Applicant burning clothes in his back yard, and Applicant gave him the gun to try and sell.

Lanier confirmed he saw Applicant and Malcolm Jones together on the day of Calvin Walker's murder.

Police proceeded to interview Applicant, who admitted to riding to Clinton in a blue car driven by Malcolm Jones and Carron Grant, who was not charged. Applicant claimed Malcolm and Carron jumped out of the car towards Calvin Walker and attempted to rob Calvin Walker, before Malcolm Jones shot Calvin Walker.

Malcolm Jones turned himself into police on December 4th 2015, and confirmed he was at the incident location where Calvin Walker was shot, but claimed Applicant was the one who shot Calvin Walker. (GP Tr. p. 6, l. 20–p. 10, l. 14).

ISSUES BEFORE THIS COURT

Applicant timely commenced this PCR application on July 28, 2021. In his application, Applicant alleged he was entitled to relief based on the following grounds:

1. Ineffective Assistance of Counsel:
 - a. Counsel did not represent Applicant on his pending charges in Newberry County and had not reviewed the discovery for Applicant's pending Newberry County charges.
 - b. Counsel failed to object to the trial court imposed sentence which exceeded the negotiated sentence of eighteen to twenty years.
 - c. Counsel failed to seek leave of court to withdraw Applicant's guilty plea on the basis that the Court imposed sentence exceeded the negotiated sentence.
2. Subject Matter Jurisdiction
 - a. "Since no court of General Sessions was convened on the date February 12, 2016, the date the indictment was true-billed, the grand jury proceedings would therefore by necessity be held invalid, and its illegally issues indictment null and without binding legal effect."
3. Involuntary Plea
 - a. Trial Counsel coerced defendant into entering guilty plea through deceptive tactics when defendant wished to stand trial by jury.
4. Prior Bad Act
 - a. Solicitor Scott's introduction of Applicant's pending charges in Newberry County.
5. Trial Court Error
 - a. The plea court erred in denying Applicant's motion to reconsider.
6. Due Process Violation

At the hearing, Applicant proceeded only on claims 1(b) and 1(c). Before this Court are the records of the Laurens County Clerk of Court regarding the underlying conviction, the plea transcript, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, and the records of this post-conviction relief action.

STANDARD OF REVIEW

An applicant may seek PCR 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).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

The reviewing court applies the two-part test outlined in *Strickland v. Washington* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687-88; *accord. Cherry v. State*, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

The applicant has the burden of establishing both deficiency and prejudice in order to be entitled to relief. *Hughes v. State*, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); Rule 71.1(e), SCRPC. To prove deficient performance, the applicant must establish that, in light of all the circumstances, the acts or omissions complained of "were outside the wide range of competence" demanded of attorneys in criminal cases. *Strickland*, 466 U.S. at 688. To prove prejudice, the applicant must establish "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Id.* Significantly, "the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." *Id.* at 696.

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, *Hill v. Lockhart*, 474 U.S. 52 (1985), extended the two-part *Strickland* test to challenge guilty

pleas based on ineffective assistance of counsel. See *Padilla v. Kentucky*, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). The analysis of counsel’s performance under the first prong of *Strickland* remains unchanged—the applicant must show that counsel’s representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. *Hill*, 474 U.S. at 58–59; accord *Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel’s advice to plead guilty was not “within the competence demanded of attorneys in criminal cases.” *Hill*, 474 U.S. at 56.

The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” *Id.* Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” *Id.* at 59. The applicant must further convince the court that a decision to reject the plea bargain would have been rational under the circumstances. *Padilla*, 559 U.S. at 372.

This inquiry “focuses on a defendant’s decisionmaking” and does not turn on the outcome of a defendant’s actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. *Lee v. United States*, 582 U.S. ___, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. *Padilla*, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not

whether counsel would have still advised him or her to plead guilty. *Turner v. State*, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

TESTIMONY PRESENTED AT EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified he met with his counsel, Chelsea B. McNeill, approximately four or five times in person. These meetings took place at the Newberry County Detention Center. Applicant testified they discussed his case, but not as much as he would have liked to. Applicant stated they discussed potential plea deals during those meetings. Applicant testified he was looking for a plea deal because his co-defendant made a deal with the Solicitor's Office, and he believed there was no chance to prevail at trial once that deal was made. Applicant testified there was a plea deal for twenty years suspended to 15, 5 years active reached with the Solicitor, however that deal fell apart when the Solicitor discussed the offer with the victim's family. According to Applicant, a new plea deal was reached with a negotiated sentencing range of 18-20 years. Applicant testified Counsel filed a motion to reconsider sentence after he pleaded guilty.

On cross-examination, Applicant testified that he told the plea court he understood he could receive up to thirty years if he pleaded guilty. Applicant testified he pleaded guilty *after* the Solicitor informed the plea court he was recommending a 25 year sentence. Applicant acknowledged that he never intended to proceed to trial, but instead was looking for the best possible plea deal. Applicant testified he did not want to proceed to trial because of the statements his co-defendant made to law enforcement.

Counsel testified that she made *sixteen* documented visits with Applicant. Counsel testified that Applicant never indicated to her that he wished to proceed to a trial. Once Applicant instructed Counsel to focus on a plea deal, Counsel began speaking with Applicant's mother to begin her

mitigation investigation. Counsel testified she began plea negotiations with Deputy Solicitor Scott. Counsel testified she suggested to the solicitor a plea deal for 20 years suspended to 15 active, with 5 years' probation. Counsel testified that the solicitor told her this was possible. Counsel testified that after Applicant's co-defendant made a deal and after speaking to victim's family the solicitor became uncomfortable with that proposal.

Counsel testified she proceeded with plea negotiations while continuing to keep Mr. Jones and his family in the loop. The next plea offer Applicant received was a recommended sentence of twenty-five years for the lesser included offense of voluntary manslaughter. After discussing the plea with Counsel, Applicant accepted this offer. Counsel testified there is an email corroborating the acceptance of the offer, which the State offered into evidence. *See* State's Exhibit #1. Counsel testified she was able to arrange for Applicant to plead guilty in front of Judge Verdin in October of 2018. Counsel testified she met with Applicant in the holding cell prior to the plea hearing. Counsel testified Applicant then voluntarily pleaded guilty pursuant to the recommended sentence.

Counsel testified she filed a motion to reconsider the sentence on November 1, 2018, which was subsequently denied by Judge Verdin. Counsel testified she agreed with Applicant's decision to plead guilty because he likely would have been convicted of murder at trial under the hand of one, hand of all theory. Counsel testified there was never a plea offer for a negotiated sentencing range of eighteen to twenty years, and Applicant pleaded guilty with the knowledge he would get a twenty-five-year sentence. Counsel testified she filed a notice of appeal following the denial of the motion to reconsider.

FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has had the opportunity to review the plea transcript in its entirety and has heard the testimony at the PCR hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. After a careful review based on the *Strickland* standard set forth above, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Counsel Failed to Object to the Court's Imposition of a Twenty-Five Year Sentence

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland*). Applicant's allegation that Counsel was ineffective for failing to object to the Court's imposition of a twenty-five-year sentence is without merit. Applicant contends that Counsel erroneously advised him he was pleading guilty pursuant to a negotiated sentencing range of eighteen to twenty years. Counsel's credible testimony, her correspondence via email with the Solicitor, and the record from the plea hearing conclusively refute this allegation. This Court finds Counsel properly advised Applicant he was pleading guilty pursuant to a recommended sentence of twenty-five years. Counsel credibly testified the suggested offer for a negotiated range of eighteen to twenty years was rejected by the Deputy Solicitor Scott. Counsel credibly testified Applicant was fully informed of this rejection. Counsel credibly testified Deputy Solicitor Scott then made a plea offer for a recommended sentence of 25 years for voluntary manslaughter. As evidenced by State's Exhibit #1 and the credible testimony of Counsel, this offer was accepted by Applicant.

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Furthermore, at the outset of Applicant's guilty plea hearing, Judge Verdin informed Applicant he was pleading guilty to voluntary manslaughter which carries a maximum sentence of 30 years. (Gp. Tr. p. 4, ll. 3-5). At the same hearing, Deputy Solicitor Dale Scott recommended a sentence of twenty-five years. (Gp. Tr. p. 11, ll. 3-17). After hearing the facts of the case and the recommendation of the Deputy Solicitor, Applicant pleaded guilty. (Gp. Tr. p. 11, ll. 18-21). Following the entry of the guilty plea, Counsel introduced conversations she had with Deputy Solicitor Scott pertaining to the plea negotiations, including the negotiated eighteen-to-twenty-year sentencing range offer which was rejected by the Deputy Solicitor. (Gp. Tr. p. 13, l. 5-p. 15, l. 20). Counsel then recommended a sentence of twenty-five years, suspended to eighteen years active with five years' probation. (Gp. Tr. p. 17, l. 20-p. 18, l. 1). Despite Counsel's best efforts, Deputy Solicitor Dale Scott again recommended a twenty-five-year sentence. (Gp. Tr. p. 20, l. 21-23). Pursuant to the State's recommendation, Judge Verdin sentenced Applicant to twenty-five years' imprisonment.

The record and the credible testimony of Counsel clearly establishes that Counsel and the Deputy Solicitor had not agreed to a negotiated sentencing range of eighteen to twenty years. Therefore, Applicant cannot demonstrate how Counsel was ineffective for failing to object to the Court's imposed sentence of twenty-five years. Thus, this Court finds Counsel was not deficient in failing to object to the sentence imposed.

Even if this Court were to find a deficiency, Applicant's claim would still fail under the prejudice prong of *Hill*. When an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill*, 474 U.S. at 59. Applicant repeatedly testified he never intended on going to trial and was

simply seeking the best plea deal possible. Thus, Applicant could not possibly be prejudiced by any alleged deficiency.

Accordingly, this Court finds Applicant has failed to meet his burden demonstrating how Counsel was ineffective for failing to object to the Court's imposed sentence of twenty-five years. This Court further finds Applicant freely and voluntarily pleaded guilty to the lesser included offense of voluntary manslaughter.

Counsel Failed to Seek Leave of Court to Withdraw Applicant's Guilty Plea

This Court finds Applicant's allegation counsel was ineffective for failing to seek leave of court to withdraw Applicant's guilty plea on the basis the Court-imposed sentence exceeded the negotiated sentence is without merit. "The withdrawal of a guilty plea is generally within the sound discretion of the trial judge." *State v. Rikard*, 371 S.C. at 301, 638 S.E.2d at 75 (Ct. App. 2006). "All that is required before a plea can be accepted is that the defendant understand the nature and crucial elements of the charges, the consequences of the plea, and the constitutional rights he is waiving, and that the record reflect a factual basis for the plea." *Rickard*, 371 S.C. at 301, 638 S.E.2d at 75. As discussed above, the record and Counsel's credible testimony clearly demonstrate there was never a plea offer for a negotiated sentencing range of eighteen to twenty years. Applicant was informed of the Constitutional rights he was waiving, the maximum sentence he faced, and the State's recommendation of twenty-five years. Therefore, this Court finds Applicant has failed to establish that his guilty plea was improperly accepted by the court. Applicant additionally has failed to demonstrate how Counsel's failure to request leave of court to allow Applicant to withdraw his guilty plea has prejudiced Applicant, as Applicant voluntarily and intelligently pleaded guilty to the lesser included offense of voluntary manslaughter and was sentenced within the statutory limits.

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. 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 an appellate counsel's assistance in seeking review of the denial of PCR. Pursuant to Rule 71.1(g), SCRCR, if an applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant must be remanded to and remain in the custody of the State.

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

Walthelle

[Signature]

_____, South Carolina

RS

[Signature]

R. SCOTT SPROUSE
Presiding Judge
Eighth Judicial Circuit