STATE OF SOUTH CAROLINA COUNTY OF LAURENS	)	IN THE COURT OF COMMON PLEAS FOR THE EIGHTH JUDICIAL CIRCUIT
Tara Ann Mahan, SCDC #294750, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2020-CP-30-00283 **ORDER OF DISMISSAL**

INTRODUCTION

The matter before this Court is an action for post-conviction relief (PCR) commenced by Tara Ann Mahan (Applicant) on March 16, 2020. On November 30, 2022, a hearing into the matter was convened before the Honorable R. Scott Sprouse. Applicant was present and represented by Ashley A. McMahan, Esquire. Assistant Attorney General T. Cruise Mitchell represented the State.

After hearing the testimony at the PCR hearing and upon full review of the record, this Court finds Applicant's allegations regarding ineffective assistance of counsel and involuntary guilty plea are without merit. For the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections. During its September 2018 term, the Laurens County Grand Jury indicted Applicant for felony DUI resulting in death (2019-GS-30-01402) and possession of methamphetamine, first offense (2019-GS-30-

01404). Applicant was represented by Tristan M. Shaffer, Esquire. Former Deputy Solicitor Owen Warren Mowry, Jr., of the Eighth Circuit Solicitor's Office prosecuted the case.

On October 17, 2019, Applicant appeared before the Honorable Frank R. Addy, circuit court judge, and pleaded guilty as indicted to felony DUI resulting in death and possession of methamphetamine. Judge Addy sentenced Applicant to twenty-two years imprisonment for felony DUI resulting in death and three years' imprisonment for possession of methamphetamine, with those sentences to be served concurrently. Applicant did not file a direct appeal.

STATEMENT OF FACTS[1]

This case arose on June 14th of 2018, in Laurens County. About a half hour before the collision that claimed the life of Wesley Chad Robinson of Laurens, Ms. Liz Ledlow of Greenville was a passenger in a car driven on I-385 by her husband. They observed a four-door Mercury Grand Marquis with a tag number NEN-475 being driven quite slowly but very erratically in the lane of travel on 385 North.

The driving was so bad that Ms. Ledlow's husband reported that he wanted the car behind him, rather than have to deal with what he and Ms. Ledlow perceived as a likely wreck in front of him. Even as their car got past the Mercury, Ms. Ledlow observed the car still swerving back and forth and she called 911 to report it. She described the car in considerable detail, including the tag, and she gave a contemporaneous report of the car's lack of control. She reported that the car left I-385 at mile marker 19.

Highway patrol began looking for the car, but were not able to locate it immediately. A short time later, about ten miles away, a little after 2:00 pm, near the intersection of Fleming Mill Road and Fieldcrest Drive in Laurens County, Mr. Robinson, who was a 29-year old Clemson

[1] The following summarization was taken from the Solicitor's recitation of facts during the guilty plea hearing. (GP. Tr. p. 9 – 15).

graduate, was driving a Kubota tractor with a large mower attachment. He was returning from having mowed a field in preparation for haying and was driving back to the dairy where he was going to park the tractor.

At that same time, Ms. Peggy LeRoy was driving in the opposite lane approaching the tractor. She was prepared to testify that the same Mercury that had been reported by Ms. Ledlow came out of nowhere at a high rate of speed. She was not able to give any estimate as to how fast, but she did believe it was well in excess of the posted 45 miles an hour. She saw the car have an impact with the left rear of the mower, which not only broke the towing bar, causing the mower to separate from the tractor, but also caused the tractor to rollover to the right towards the shoulder. Mr. Robinson was thrown from the driver's seat. The tractor rolled over on top of him, crushing his chest. He died as a result, according to the determination by Dr. Ward. He was prepared to testify that his conclusion was the victim died of extensive blunt force trauma to the chest and to the abdomen resulting in a fracture of the victim's sternum and a separation of mid-thoracic vertebra.

The investigation by MAIT from the Highway patrol found no mechanical problem with the Mercury that would have accounted for the bad driving that had been observed. After striking the tractor mower, the defendant's car then went off the left-hand side of the roadway striking a tree. Ms. LeRoy, who had been coming the opposite direction, stopped her car and got out at once. She indicated that where she parked was probably no more than 50 to 70 feet from the defendant's car as she approached the victim's tractor.

She said that she observed the defendant backing out of the front seat on the passenger side of the car and that the defendant loudly declared several times that she hadn't been the driver and

that the driver had fled. But Ms. LeRoy was prepared to testify that she saw nobody but the defendant in the car. Later, the defendant admitted to law enforcement that she had been the driver.

Ms. LeRoy proceeded to check on Mr. Robinson, but she found no signs of life. Ms. Mahan was arrested for felony DUI at the scene because she exhibited a number of factors that led the officers to believe that she was impaired. At the scene before she was taken to the hospital, a small quantity of marijuana was discovered just outside the car door, along with a glass smoking pipe with suspected meth residue. At the hospital the defendant admitted to the highway patrol trooper that she had smoked both meth and marijuana during the day and turned over to the trooper a quantity of meth that she had on her person. SLED analysis indicated that it was .17 grams.

CURRENT APPLICATION

Applicant timely commenced this PCR application on November 16, 2020. In her application Applicant alleged she was entitled to relief based on the following grounds:

1. Ineffective Assistance of Counsel
   a. "Counsel failed to put on the record to Judge Addy that a plea agreement was entered with Judge Hocker for 10-15 years."
   b. Failure to ensure that Applicant had a preliminary hearing.
   c. "Counsel failed to put on the record that Applicant did not have a preliminary hearing."
   d. Counsel failed to acquire an expert regarding the DNA evidence.
   e. Counsel failed to acquire an expert regarding Applicant's alcohol and drug levels at the time of the crime.
2. Prosecutorial Misconduct
   a. *Brady* violation

At the hearing, Applicant proceeded only on the claim 1(a). Before this Court are the records of the Laurens County Clerk of Court regarding the underlying convictions, 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. (Emphasis added.) *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), SCRCP. 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. 357, 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).

FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in

this action incorporated by way of the State's return, this Court proceeds to the claims raised in the application and finds each to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

A. Failure to Inform Court of Plea Agreement

Applicant contends Counsel was ineffective for failing to put on the record to Judge Addy that a plea agreement was entered with Judge Hocker for 10-15 years. This Court disagrees, and finds Applicant failed to present sufficient evidence or testimony indicating that any such agreement existed. This Court finds credible and persuasive the testimony of Counsel, who presented well-recollected testimony of Applicant's plea negotiations and proceedings.

1. PCR Testimony

Applicant testified that after considering the strength of the State's evidence with Counsel, including witness statements and toxicology results, she decided to pursue a guilty plea. Applicant testified Counsel left the decision of whether to proceed to trial or plead guilty up to her. Applicant testified she was initially scheduled to plead guilty in front of Judge Hocker; however, he recused himself due to a relationship with the victim's family. Following the recusal, Applicant testified she was transported to Greenwood County Courthouse to plead guilty in front of Judge Addy. Applicant testified she does not remember if Counsel informed her she was pleading to a recommended sentencing range of 10 – 15 years. Applicant testified Counsel presented mitigation during the guilty plea hearing, including a video wherein Applicant explained her background and expressed remorse. Applicant testified she was sentenced to 22 years' imprisonment.

On cross examination, Applicant testified she informed the plea court she understood she could receive a 25-year sentence. Additionally, Applicant testified she informed the plea court

nobody promised her anything in exchange for her plea and she was satisfied with her attorney. Applicant again testified she never wished to proceed to trial.

Counsel testified they initially arranged for Applicant to plead guilty in front of Judge Hocker. Counsel testified he met with Judge Hocker who seemed receptive to a sentencing range of 10 – 16 years; however, Judge Hocker was clear he was not going to pre-judge the case. In the course of these discussions, Counsel testified Judge Hocker referred to two cases he presided over involving felony driving under the influence: one of which he sentenced the defendant to 12 years, and another where he sentenced defendant to something greater. Based on this conversation, Counsel testified he surmised that Judge Hocker would sentence Applicant somewhere in the range of 10 – 16 years. However, Counsel testified any plea in front of Judge Hocker was always going to be a straight up plea. Counsel testified Judge Hocker recused himself based on a relationship with one of the victims.

Following the recusal, Counsel testified they were left with three options: plead guilty in front of Judge Addy, plead guilty in front of Judge Keesley, or proceed to trial. Applicant proceeded to a guilty plea hearing in front of Judge Addy. Counsel testified Applicant received a negotiated plea offer of 20 years; however, Counsel thought Applicant would receive a lesser sentence if she pleaded straight up so the offer was rejected. During the plea hearing, Counsel testified he presented a 15-minute mitigation video which included Applicant's background, her show of remorse, and referred to a prior injury Applicant suffered which potentially could have caused traumatic brain injury. Mr. Shaffer noted that he had made this mitigation specifically anticipating they would be in front of Judge Hocker.

Counsel further testified that he did tell the Applicant that Judge Addy probably wouldn't go much higher than the range anticipated by Judge Hocker. Counsel noted that he had not done a

DUI plea in front of Judge Addy before and had he known Judge Addy was going to give the Applicant 22 years, he probably would have recommended his client go to trial instead of pleading guilty.

2. Discussion

"[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).

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). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, *Brady*, 397 U.S. at 750–53, or by increasing the risks of punishment on those who do not. *Alford*, 400 U.S. at 37 (1970); *cf. United States v. Cox*, 464 F.2d 937, 942 (6th Cir. 1972) ("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." (citing *Brady*, 397 U.S. 742)). 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) (citing *Hill*, 474 U.S. 52).

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). In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. *Wolfe v. State,* 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997); *cf. Rayford v. State*, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that, where the transcript of the guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant's claim his lawyer misadvised him).

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).

This Court finds Applicant's allegation Counsel was ineffective for failing to put on the record to Judge Addy that a plea agreement was entered with Judge Hocker for 10 – 15 years is without merit. Although Applicant testified Counsel entered into a plea agreement with Judge Hocker, Counsel's credible testimony demonstrates no such plea agreement ever formally existed. Counsel merely speculated, based on informal conversations with Judge Hocker, occurring very early on in the process, that Applicant would be sentenced somewhere in the range of 10 – 16 years. Counsel credibly testified the plea in front of Judge Hocker was always going to be a straight up plea. Counsel presented a comprehensive mitigation video, but despite his best efforts Applicant was sentenced to 22 years' imprisonment. While Mr. Shaffer did testify that he probably told the Applicant that Judge Addy probably wouldn't go much higher than Judge Hocker, there was no formal plea agreement and Counsel did not erroneously advise Applicant of the consequences of her plea, this Court finds Counsel was **NOT DEFICIENT**.

Even if this Court were to find Counsel deficient, Applicant's claim would still fail as a matter of law for two reasons. First, the allegation fails 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, [s]he would not have pleaded guilty and would have insisted on going to trial." *Hill*, 474 U.S. at 59. Applicant twice testified she never intended on going to trial. Thus, Applicant could not possibly be prejudiced by any alleged deficiency.

Second, even supposing Applicant was under the impression she would be sentenced to 10 – 15 years, her allegation still lacks merit. "Defendant's knowing and voluntary waiver of statutory

or constitutional right 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, 427 S.E.2d 171 (1993). Any possible misconceptions regarding sentencing on a defendant's part can be "cured by the colloquy during the actual guilty plea hearing." *Wolfe v. State*, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997). At the outset of the guilty plea hearing, the Solicitor informed the plea court there is no recommendation in this case. (GP. Tr. p. 4). The plea court then engaged in the following colloquy with Applicant:

> The Court: Ms. Mahan, they tell me that you want to plead guilty to felony DUI and possession of methamphetamine. Do you understand that the felony DUI charge carries a minimum of one year and a maximum of 25 years?
> The Defendant: Yes, I do, your Honor.
> The Court: The meth charge carries up to three years. Do you understand that whatever sentence you receive is entirely up to me? I could give you anything between 1 to 25 years, do you understand that, ma'am?
> The Defendant: Yes, I do.

(GP. Tr. p. 6 – 7).

Although Applicant was hoping for a lighter sentence by pleading guilty, "wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made." Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997). Applicant was aware of the charges and consequences of her plea as evidenced from the record of the guilty plea hearing. Furthermore, the plea court thoroughly explained to Applicant the Constitutional rights she would be waiving by pleading guilty. (Gp. Tr. pp. 17 – 20). Thus, this Court finds Applicant's guilty plea was knowing, voluntary, and intelligent.

Accordingly, Applicant's claim pertaining to Counsel's failure to inform the Court of a plea agreement and subsequent reliance on that agreement is **DENIED**.

VII. 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 her application for post-conviction relief. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. This Court finds Applicant freely, knowingly, and voluntarily pleaded guilty. Therefore, 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 be remanded to the custody of the State.

AND IT IS SO ORDERED this 23 day of June, 2023.

R. SCOTT SPROUSE
Presiding Judge
Eighth Judicial Circuit

Walhalla, South Carolina