

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas  
HONORABLE GEORGE M. MCFADDIN, JR.  
2019-CP-38-00865

**RECEIVED**  
OCT 06 2023  
S.C. SUPREME COURT

MAURICE BOOKARD, SCDC# 377091  
APPELLANT,

vs.

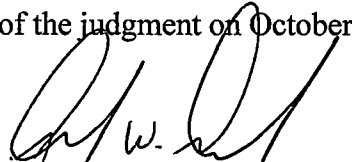
STATE OF SOUTH CAROLINA,  
RESPONDENT.

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**NOTICE OF APPEAL**

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Maurice Bookard appeals the denial of his Post-Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable George M. McFaddin, Jr., Circuit Judge on September 5, 2023 an Order issued on September 14, 2023 and filed on September 21, 2023. The Appellant received notice of the judgment on October 2, 2023.



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minor victim that occurred on or around October 2016. The incident was reported to law enforcement by the victim's doctor's office on November 9, 2016.

On July 17, 2018, Applicant pled guilty<sup>2</sup> to the indictment before the Honorable Edgar W. Dickson. Minh L. Wyman, Esquire, represented Applicant, and Assistant Solicitor Ashley Cornwell, represented the State. Following the State's recommendation of fifteen (15) years, Judge Dickson sentenced Applicant to fifteen (15) years imprisonment.

Applicant filed a timely notice of appeal. On August 23, 2018, the Court of Appeals dismissed the Applicant's appeal for failure to provide a sufficient explanation as to why an appeal from his guilty plea should proceed, pursuant to Rule 203(d)(1)(B)(iv), SCACR.<sup>3</sup>

#### CURRENT APPLICATION

Applicant timely commenced this PCR action on July 1, 2019, alleging he is being held in custody unlawfully for the following reasons:

- 1) Ineffective Assistance of Counsel
  - a. "Because she did not investigate case."

Respondent filed a return requesting a more-definite statement on Applicant's claims. At the hearing, Applicant proceeded on the following allegation:

Ineffective assistance of counsel for failure to investigate the victim's allegation.

#### TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant averred trial counsel could have investigated more, and if counsel had further investigated, Applicant would not have pled. He asserted counsel only met with him twice and did not have sufficient time to prepare his case; did not investigate the victim's alleged history of behavioral problems; a disciplinary issue he alleges occurred between

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<sup>2</sup> Record reflects Applicant plead "no contest" to the indictments. (Plea tr. 15:7-10; 15:17-22.)

<sup>3</sup> *State v. Bookard*, Op. No. 2018-001379 (Ct. App. filed August 23, 2018).

the Applicant and victim; DNA evidence found in his car; and the victim's diary entry, in which she recalled the incident. Applicant asserted rather than investigate, counsel just relayed that a plea would be in his best interest because it was likely he would lose at trial and potentially receive more time. Applicant asserted he did not want to plead but wanted to proceed to trial instead.

Minh Wyman ("plea counsel") testified she met with Applicant numerous times and had sufficient and adequate time to meet and discuss the case. She testified she explained to him the charges the State brought against him, the elements of each charge, and the State's burden to prove each element. She received discovery from the State and reviewed the evidence with Applicant: a video of the victim's forensic interview; the victim's diary entries; photographs; statements given by the victim's mother and cousin; and semen and other possible DNA evidence found in Applicant's car. Counsel testified that she conducted further investigations, including hiring a DNA expert to investigate DNA specimens found in Applicant's car and hiring a handwriting expert to investigate the victim's diary entries. Counsel testified that although she engaged in conversations with Applicant's family regarding further investigation, such conversations proved to be unfruitful.

Counsel testified Applicant did not have a cognizable legal defense, beyond mere denial of the allegations. Counsel explained to Applicant the case at trial would be decided by the jury based on the credibility of the witnesses presented. Counsel testified she discussed potential trial strategies with Applicant and decided the best strategy would be to impeach witnesses through cross-examination. Counsel testified that she explained to Applicant his rights under the Constitution, including the 5<sup>th</sup> Amendment right to remain silent and 6<sup>th</sup> Amendment rights to confront witnesses and proceed to a trial by jury. Counsel testified Applicant understood those rights and wished to proceed with a plea and did not indicate to her a desire to proceed to a trial.



Counsel testified that, prior to the plea, she explained to Applicant the possible penalties and consequences of a plea, and Applicant understood.

As evidenced by the plea colloquy, Applicant proceeded to plead guilty to the State's allegations against him and informed the court that he understood the nature of his charges, possible penalties, and constitutional rights (Plea Tr. 6:25-8:3). Further, Applicant explained to the court his desire to proceed with the plea (Plea Tr. 8:4-6).

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Before this Court are the Orangeburg County Clerk of Court records of the subject conviction; Applicant's records from the South Carolina Department of Corrections; the plea transcript; and the records of the current post-conviction relief action. 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. After a careful review based on the *Strickland* standard set forth below, 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).

#### **Ineffective Assistance of Counsel**

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). An applicant alleging ineffective assistance of counsel must prove "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." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 441, 334 S.E.2d at 813. "The test for effective assistance of counsel is whether the representation was within the range of competence

  
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demanded of attorneys in criminal cases.” *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, 286 S.C. at 441, 334 S.E.2d at 813. An applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

To establish ineffective assistance of counsel, 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. *Strickland*, 466 U.S. at 687–88; *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. “A PCR applicant 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 applicant would not have pled guilty and would have insisted on going to trial.” *Dalton v. State*, 376 S.C. 130, 136, 654 S.E.2d 870, 873 (Ct. App. 2007). To prove prejudice following a guilty plea, the applicant “must show that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

#### ***Failure to Investigate***

This Court finds Applicant failed to prove counsel was ineffective for failing to investigate the facts surrounding the charges against him. At the PCR hearing, Applicant never testified specifically to *what* counsel would have uncovered with further investigation. This Court finds *credible* counsel’s testimony that she explored the avenues provided by Applicant and reasonably investigated the information Applicant provided to her. Further, this Court finds counsel’s investigation into mitigation was reasonable under prevailing professional norms and thus was not deficient. Finally, Applicant did not produce any evidence at the PCR hearing of what a further



investigation would have uncovered and thus failed to prove prejudice in this regard. *Cf. Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995) (providing an applicant must produce witnesses at a PCR hearing to support a claim that counsel was ineffective for failing to interview or call potential witnesses). Thus, Applicant has failed to show counsel was ineffective in investigating.

#### ***Failure to Spend Adequate Time<sup>4</sup>***

Applicant contends counsel was ineffective for failing to spend adequate time on his case. This Court finds Applicant has not shown counsel was ineffective in this regard. This Court finds *credible* plea counsel's testimony that she pursued the avenues provided by Applicant; she reviewed discovery and explained to Applicant the charges against him; she explained to Applicant the weaknesses in his case; and she had sufficient time to prepare. Based on the foregoing, this Court finds counsel's preparation of this case was reasonable within prevailing professional norms and thus was not deficient. Thus, Applicant did not meet his burden of proving prejudice, and this claim is denied.

#### **Involuntary Plea**

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). "To be knowing and voluntary, a plea must be entered with an awareness of its consequences." *Holland v. State*, 322 S.C. 111, 113, 470 S.E.2d 378, 379 (1996). "To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him." *Dalton v. State*, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007).

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<sup>4</sup> Applicant did not raise this allegation in his PCR application, but the issue was raised through Applicant's testimony at the PCR hearing.



This Court finds Applicant failed to show his plea was involuntary. This Court finds *credible* counsel's testimony that she explained to Applicant, prior the plea, the constitutional rights Applicant was waiving and the sentence he faced. Further, the plea transcript itself supports a finding that Applicant was fully aware of the consequences of his plea, and thus pled guilty knowingly, voluntarily, freely, and intelligently (Plea Tr. 15:7-25). Specifically, the plea court asked applicant whether plea counsel had explained his constitutional rights, including his right to a jury trial, and Applicant indicated counsel had explained those rights, counsel had answered his questions, and Applicant understood those conversations (Plea Tr. 7:18:25). Applicant also told the plea court counsel had explained the charges and evidence to him, and he understood the sentences he faced (Plea Tr. 7:4-17). Finally, Applicant informed the plea court no one had promised him anything or threatened or forced him to plead guilty (Plea Tr. 8:8-16). *C.f. Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (“[S]tatements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements.”). Ultimately, the evidence and testimony before this Court establishes that Applicant discussed with counsel the consequences of taking the plea and pled guilty because he did not want to risk receiving more time than that recommended by the State. Based on the foregoing, this Court finds Applicant understood the consequences of pleading and has failed to prove his plea was involuntary.

### 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. Applicant has the right to an 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). If an applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCP. 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 14<sup>th</sup> day of April, 2023.

[Signature], South Carolina

[Signature]  
GEORGE M. MCFADDIN, JR.  
Presiding Judge  
First Judicial Circuit