

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM ORANGEBURG COUNTY

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OCT 06 2023

S.C. SUPREME COURT

Court of Common Pleas

HONORABLE GEORGE M. MCFADDIN, JR.

2020-CP-38-01147

DARYL LOUIS OMAR SUTTON, SCDC# 375148

APPELLANT,

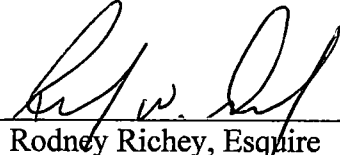
vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

Daryl Louis Omar Sutton 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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STATE OF SOUTH CAROLINA)
 COUNTY OF ORANGEBURG)
)
 Daryl Louis Omar Sutton, SCDC #375148,)
)
 Applicant,)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2020-CP-38-01147

ORDER OF DISMISSAL

CLERK OF COURT
 ORANGEBURG, SC

2023 SEP 21 PM 1:17

FILED FOR RECORD
 WINNIFA B. CLARK

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Daryl Louis Omar Sutton (Applicant) on October 7, 2020. On September 5, 2023, an evidentiary hearing convened before the Honorable George M. McFaddin, Jr. Applicant was present and represented by Rodney W. Richey, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. During the hearing, Applicant testified on his own behalf and called as a witness Chad D. Shelton, Esquire (trial counsel). Respondent did not call any witnesses. 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 serving a twenty-four-year sentence. In May 2019, the Orangeburg County Grand Jury indicted Applicant for murder (2019-GS-38-0058); first degree burglary (2019-GS-38-0059); possession of a weapon during the commission of a violent crime (2019-GS-38-0060); and attempted armed robbery (2019-GS-38-0061). These charges arose from a home invasion involving Applicant and six co-defendants that occurred on October 27, 2018. The home invasion led to the fatal shooting of Julio Minero.

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S.C. SUPREME COURT

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ATTEST: TRUE COPY

Winnif B. Clark
 2020-CP-38-01147
 CLERK OF COURT
 ORANGEBURG COUNTY, SC

On October 24, 2019, Applicant pled guilty before the Honorable Edgar W. Dickson to first degree burglary; attempted armed robbery; and, on the murder indictment, the lesser-included offense of voluntary manslaughter¹. Chad D. Shelton, Esquire, represented Applicant, and Deputy Solicitor Thomas B. Scott, III, represented the State. Judge Dickson sentenced Applicant concurrently to twenty-four years each for voluntary manslaughter and burglary, and twenty years for attempted armed robbery. Applicant did not appeal.

CURRENT APPLICATION

Applicant timely commenced this PCR action on October 7, 2020, alleging he is being held in custody unlawfully for the following reasons:

- 1) Ineffective Assistance of Counsel
 - a. "The guilty plea was not voluntary or intelligently entered as a result of ineffective assistance of counsel and incompetent legal advice and must be set aside"; and
 - b. "Counsel failed to investigate, provide proper legal advice, induce the guilty plea based on erroneous and faulty legal advice rendering the plea involuntary."

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

1. Ineffective assistance of counsel:
 - a. Counsel failed to present mitigation
 - b. Counsel did not make an effort for a lesser plea/more meaningful offer
 - c. Counsel did not spend sufficient time
2. Involuntary guilty plea: Applicant was not given any other options.

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.

¹ In exchange for his guilty plea, the State nolle prossed the indictment (2019-GS-38-0060), was *nolle prossed*.



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 accepted the plea and counsel could have obtained a better offer. He asserted counsel did not fight; rather, counsel just relayed that this was the best offer. Applicant testified he wanted a fifteen-year offer, but trial counsel told him this was the best offer he could get. He testified he was willing to go to trial, but he thought there was no other option. Applicant testified he pled guilty because he feared a potential life sentence if he was convicted of murder. He acknowledged he was shot during the armed robbery but averred he was merely present. Applicant testified he discussed mere presence with his attorney; however, he stated counsel told him the plea would be his best option.

Trial counsel testified he met with Applicant in July 2019 and obtained some background information and phone numbers. He stated he pursued the avenues of mitigation that Applicant asked him to pursue and tried to highlight it as best as he could during the plea. However, counsel relayed that some of the information was not helpful. He stated he attempted to reach out to Applicant's family and spoke to Applicant's mother, but there was "not much there."

Trial counsel testified he attempted to negotiate a plea but there was no avenue for a lower plea. He explained this was a robbery that he believed had been set up by Applicant's co-defendants, and Applicant just happened to be with them that day. However, he explained there was evidence—such as the victim's door being kicked in—that suggested Applicant should have known something about the situation was not right. Trial counsel averred this evidence weighed against a mere presence defense. Trial counsel stated Applicant was shot during the robbery, which placed him at the scene. He stated he explained to Applicant the risks of trial. He also explained that the trial would be primarily based on the credibility of his co-defendants. Counsel



testified he had sufficient time to prepare, he sent Applicant discovery, and he sent Applicant a letter regarding the weaknesses of his case.

FINDINGS OF FACT AND 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. 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 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 present mitigation

This Court finds Applicant failed to prove counsel was ineffective for failing to present mitigation. 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 he explored the avenues provided by Applicant and presented what was helpful, but some of the information was not helpful. 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 to aid in mitigation 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 or presenting mitigation evidence.

Plea negotiations

Applicant contends counsel was ineffective for not procuring a better offer. This Court



finds counsel's testimony that he attempted to negotiate a better plea but there was no avenue for a better plea to be **credible**. Based on the foregoing, this Court finds Applicant did not prove counsel's plea negotiation fell below prevailing professional norms and thus did not prove counsel was deficient. Further, although Applicant generally contended counsel would have obtained a better offer with further investigation, Applicant did not set forth what additional information he believed counsel would have uncovered or otherwise produce such evidence at the hearing. Thus, Applicant did not meet his burden of proving prejudice, and this claim is denied.

Failed to spend adequate time

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 he pursued the avenues provided by Applicant and presented as mitigation the helpful information; he reviewed discovery and explained to Applicant the charges against him; he sent Applicant a letter explaining the weaknesses in his case; and he 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. Further, although Applicant generally asserted counsel would have obtained a better plea offer had he investigated more, Applicant never explained what he believed Applicant would have uncovered or produced such evidence at the hearing. 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), SCRCP; 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,


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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).

This Court finds Applicant failed to show his plea was involuntary. This Court finds **credible** counsel’s testimony that he 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. 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. (Tr. 5-6). Applicant also told the plea court counsel had explained the charges and evidence to him, and he understood the sentences he faced. (Tr. 5). Finally, Applicant informed the plea court no one had promised him anything or threatened or forced him to plead guilty. (Tr. 7). 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.”). This case presents a classic case of buyer’s remorse. 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 a life sentence if convicted of murder. Based on the foregoing, this Court finds Applicant understood the consequences of pleading guilty and has failed to prove his plea was involuntary.



Conclusion

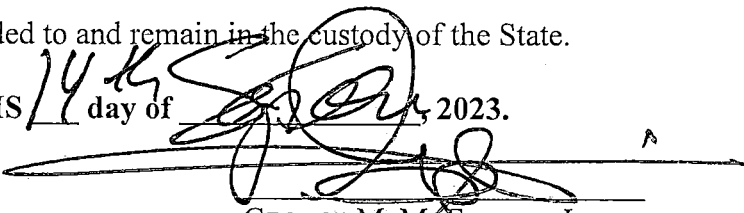
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

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), SCRPC. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

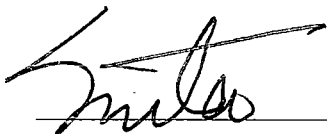
IT IS THEREFORE ORDERED:

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 14th day of September, 2023.



GEORGE M. MCFADDIN, JR.
Presiding Judge
First Judicial Circuit


_____, South Carolina