STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUT
Randall Price, S.C.D.C No.: 386694	)	Case No.: 2022-CP-42-741
Applicant, v. State of South Carolina, Respondent.	)	**ORDER DENYING APPLICANT'S MOTION TO RECONSIDER, ALTER OR AMEND**

This matter comes before the court by way of the Applicant, Randall Price's, motion to amend and to alter the Post-Conviction Relief Order filed on March 3,2022.

This Court has received the Motion and documents submitted, and after further review and deliberations the court respectfully DENIES applicant's motions. This Court also craves reference to SCRP Rule 59(g).

IT IS SO ORDERED.

October 2, 2023

Brian M. Gibbons
Circuit Judge

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
Randall Price, #386694, Applicant, v. State of South Carolina, Respondent.	Case No.: 2022-CP-42-00741 **ORDER OF DISMISSAL**

This matter comes before this Court by way of Applicant's post-conviction relief application filed March 3, 2022. Respondent made its return on May 2, 2022, requesting an evidentiary hearing be convened. An evidentiary hearing was held on October 20, 2022, at the Spartanburg County Courthouse. Rodney W. Richey, Esquire, represented Applicant. Assistant Attorney General Chelsey F. Marto represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Counsel Steven Sumner, Esquire, Solicitor Barry Barnette, Esquire, and lay witnesses Boyd Plumley, Sr., Boyd Plumley, Jr., and Gina Price also testified. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law 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 October 2020 term, the Spartanburg County Grand Jury indicted Applicant for traffic/hit and run with death (2020-GS-42-2595). Applicant was represented by Steve Sumner, Esquire. Solicitor Barry Barnette of the Seventh Circuit Solicitor's Office prosecuted the case. On December 8, 2021,

Applicant appeared before the Honorable Letitia Verdin, circuit court judge, and pled guilty as indicted without any negotiations or recommendations. Judge Verdin sentenced Applicant to twelve years' imprisonment. Applicant did not pursue a direct appeal.

Summary of Relevant Facts

On October 2, 2020, a collision was reported involving a vehicle that left the scene after striking a moped and causing fatal injuries to the operator. (Tr. 6). Throughout the investigation it was determined that Applicant was the other individual involved in the case. (Tr. 6). Investigators also determined the point of impact, where the victim was found, and that the moped was dragged about one to one and a half miles down the road before being abandoned. (Tr. 6-7). Officers went to Applicant's residence, found the white truck involved in the crash, placed Applicant under arrest, and Applicant stated that the victim died at the scene. (Tr. 6-7). Pieces of the truck left at the scene of the crash were matched to the truck itself. (Tr. 7). The investigation also revealed that Applicant was going at a high rate of speed and accelerated before making contact with the moped. (Tr. 7). After hearing the facts, Applicant pled guilty. (Tr. 7-8).

Current Action Before this Court

In his current PCR application, Applicant alleges he is being held in custody unlawfully because of ineffective assistance of counsel in that:

1. Ineffective assistance of counsel:
    a. Failure to investigate all of the facts/issues.

Applicant filed an amended application on July 14, 2022, alleging:

1. Trial counsel was ineffective for having a pre-trial conference outside the presence of the Applicant; and
2. Trial counsel was ineffective for not allowing the Applicant to present mitigation evidence at the guilty plea.

At the PCR hearing, Applicant proceeded forward on the allegations raised in the

amended application. All other allegations raised in his initial application and amendments are deemed waived and abandoned and, accordingly, will not be addressed in this order.

Summary of the Testimony

Boyd Plumley Sr.

Plumley Sr. testified that he is a family friend. He testified that he went to Applicant's home on the night of the incident. He stated that Applicant's truck was messed up. He thought that Applicant hit a deer. He says that he went back to the scene to look to see what Applicant had hit. He testified that they did not see anything that had been struck by a car. He stated that they drove up and down the road looking in ditches to find out if Applicant had hit anything. They did not see anything during their search. He testified that he was available to testify at the guilty plea but was not called by Counsel to testify on Applicant's behalf.

Boyd Plumley Jr.

Boyd Plumley, Jr. testified that he went to Applicant's home with his father. He stated that he drove to the incident scene looking for signs that Applicant had hit something. He stated that they thought Applicant hit someone. He testified that they did not see anything. He stated that they drove up and down the road looking for something Applicant hit. He stated that he did not see anything that had been hit. He stated that he was available to testify at the guilty plea but was not called to testify

Gina Price

Price testified that she is married to Applicant. She testified that she believed Applicant hit a deer. She stated that she was with Applicant the night the incident occurred. She testified that she went back to the incident scene with Applicant and did not see anything that he could have hit. She testified that she is very familiar with the area because it is near her home. She

testified that she thought Applicant was reasonable in believing that he had hit a deer. She testified that she was at the guilty plea and was available to speak on his behalf but was never called.

Applicant

Applicant testified that he was charged with a hit and run with death. He stated he did not discuss the indictment with Applicant. He stated the charge stemmed from him hitting someone and driving off. He stated that he thought he hit a deer. He stated that he circled back to the scene with his wife to see what he hit but did not see anything. He stated his truck was damaged because of the hit. He stated he did not have a criminal history. He stated he discussed his defense with Counsel. He stated he did not think Counsel contacted the Plumleys. He stated that any mitigation presented in his case was presented in chambers without his presence. He stated he thought he would receive a three-year sentence. He stated he knew he was waiving his right to a trial. He stated he agreed to the in-chambers discussion about mitigation evidence in the case. He stated that he wanted Counsel to review mitigation evidence with him beforehand. He stated that he thought that if Counsel did a better job of mitigating the sentence, he would have received less time. Specifically, he stated he wanted Counsel to inform the Court that he accepted responsibility and went back to the scene and stopped.

Counsel

Counsel testified that he represented Applicant in his hit and run case. He stated Applicant was aware of the mitigation evidence and decided that he wanted the evidence presented in chambers, not at the plea hearing. He stated that Applicant decided to have this settled in chambers because many people supporting the victim were present in the courtroom and both Counsel and Applicant were worried that presenting mitigation in open court would

provoke them in a way that would be detrimental to Applicant. He stated that the people that appeared on behalf of the victim were armed with posters and baby pictures. He stated that he spoke to Applicant's wife before the plea hearing and was familiar with the testimony presented at the PCR hearing. He stated that the mitigation evidence included the fact that Applicant did not have a prior record, that the moped was stopped by the police for having no lights about ten to fifteen minutes prior to the accident. He stated it also included that Applicant had a wife and a career. He stated that he was unsure how Applicant returned home, given how damaged his truck was. He stated that he thought Applicant would receive a lighter sentence, but the Court found the incident egregious, and that Applicant had plenty of time to stop, but elected to leave the victim on the side of the road.

Solicitor

Solicitor testified that Counsel's recollection of mitigation evidence presented to the court was consistent with his own recollection. He stated that this mitigation evidence was offered in chambers.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. Before this Court are the Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the plea transcript, and this PCR action's records. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated Section 17-27-80 (2003).

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. S*ee also* Rule 71.1(e), SCRCP ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."). Reasonableness is determined by the "variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant," and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel's performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed

in virtually "countless" ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel's deficient performance must have prejudiced the applicant so that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters "'only in the rarest case'" because "[t]he likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

In the context of a guilty plea, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Applicant's right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent solemnity and truthfulness included in the guilty plea process. *See Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.").

Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

Failure to Present Mitigation Evidence

Applicant claims Counsel was ineffective for failing to present mitigation evidence, consisting of statements from his wife and friends, all called at the PCR hearing. Counsel may be found deficient for failing to sufficiently investigate and present mitigating evidence. *See Council v. State*, 380 S.C. 159, 172, 670 S.E.2d 356, 363 (2008) (finding it unreasonable for counsel not to further investigate the defendant's background and present even minimal mitigating evidence obtained); *Wiggins v. Smith*, 539 U.S. 510, 521 (2003) (finding it unreasonable when Counsel failed to investigate mitigating evidence beyond a couple retained records, including the presentence investigation report and social service records); *Williams v. Taylor*, 529 U.S. 362, 398 (2000) (finding that Counsel was unreasonable for failing to evaluate the totality of available mitigation evidence). An applicant is prejudiced by this deficiency if there is a reasonable probability that a different sentence would have been imposed but for Counsel's failure to investigate and present mitigating evidence. *Council v. State*, 380 S.C. 159, 171, 670 S.E.2d 356, 362 (2008).

Here, Counsel's mitigation strategy was reasonable. He highlighted that the victim was driving a moped at night without lights, that Applicant did not have a criminal history, and that he had a family and successful career. Further, Counsel credibly testified that he investigated Applicant's wife and understood what she could have offered in mitigation. This Court finds this reasonable.

Additionally, there has been no showing that the mitigation witnesses presented at the PCR would have helped Applicant secure a more lenient sentence. In fact, this seemingly could have led to a harsher sentence, as it exhibits a lack of remorse for what happened. Additionally, Plumley Jr.'s testimony concerning the fear that Applicant hit a person would have been detrimental during sentence. Thus, because Applicant has failed to establish both deficiency and prejudice, relief is denied on this ground.

Pre-Trial Conference

Applicant claims Counsel was ineffective for presenting mitigation evidence in chambers as opposed to open court. Counsel credibly testified that the decision to present mitigation evidence in chambers was a last-minute decision upon recognizing the sheer number of people at the hearing on the victim's behalf. He credibly stated that he wanted the evidence presented in the back out of fear of provoking the victim's supporters further, which could have led to more individuals coming out against Applicant, which could have only hurt Applicant's chances of a lenient sentence. Further, this Court finds that Applicant made the decision to present mitigation evidence in chamber, with only the advice of Counsel. Counsel is not deficient for acting in accordance with Applicant's wishes after being advised by Counsel to do so.

Further, there is no prejudice here. Both Counsel and Solicitor credibly testified that the mitigation evidence was presented to the Court and there is no reason to believe that a change of locale would have produced a more lenient sentence, especially in light of Counsel's legitimate concerns. Thus, because Applicant failed to establish both deficiency and prejudice, relief is denied on this ground.

Conclusion

Based on all the foregoing, this Court finds and concludes that Applicant has not

established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. *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 appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this _____ day of 3/21, 2023.

BRIAN M. GIBBONS
Presiding Judge
Seventh Judicial Circuit

_____, South Carolina.