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**NOTICE OF APPEAL FROM A PCR DENIAL BY THE COURT OF
COMMON PLEAS**

OCT 23 2023

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In Supreme Court of SC

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas

R. Kirk Griffin, Circuit Court Judge

Case #2022-CP-45-00328

The State,

Respondent,

v.

John Dan Cook

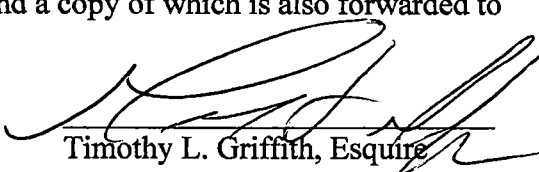
Appellant.

NOTICE OF APPEAL

John Dan Cook, appeals the decision of the Court, in the order dated October 5, 2023, received by counsel on October 16, 2023, where Mr. Cook was denied his request for Post-Conviction Relief. Mr. Cook was represented at the hearing by Timothy L. Griffith, Attorney at Law who files this notice on behalf of the Appellant. The order herein attached and a copy of which is also forwarded to the SCCID Appellate Division.

Dated

10/17/23


Timothy L. Griffith, Esquire
2338 Mount Vernon Dr.
Sumter, SC 29154
Telephone: (803) 499-2012
Attorney for Appellant (relieved)
Will not be representing on appeal

Other Counsel of Record:
Zachary W. Jones, Esquire
Assistant Attorney General
South Carolina Attorney General's Office
P.O. Box 11549, Columbia, S.C. 29211

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

John Dan Cook, #386297
Applicant,

v.

State of South Carolina,
Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE THIRD JUDICIAL CIRCUIT

) Case No.: 2022-CP-45-00328

) ORDER OF DISMISSAL

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OCT 23 2023

S.C. SUPREME COURT

This matter comes before the Court by way of an application for post-conviction relief (“PCR”) filed by John Dan Cook (“Applicant”) on August 15, 2022. The Court convened an evidentiary hearing into the matter on June 13, 2023, at the Sumter County Courthouse. Applicant was present at the hearing and represented by Timothy L. Griffith, Esq. Zachary W. Jones, of the South Carolina Attorney General’s Office, represented Respondent.

After reviewing all records and evidence before the Court, this Court finds Applicant has not met his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is currently confined in the South Carolina Department of Corrections. In September of 2020, the Williamsburg County Grand Jury indicted Applicant for disseminating harmful material to a minor, sexual exploitation of a minor, criminal sexual conduct (“CSC”) with a minor in the third degree, CSC with a minor in the second degree, and seven counts of CSC with a minor in the first degree. (2020-GS-45-00149). In July of 2021, the Williamsburg County Grand Jury indicted Applicant for one count of CSC with a minor in the third degree, three counts of CSC

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10/25/2023
Williamsburg County
Clerk of Court
Kingstree SC

with a minor in the first degree, disseminating harmful material to a minor and sexual exploitation of a minor. (2021-GS-45-00122). Applicant was represented by Doward Harvin, Esquire, and William J. V. Barr, Esquire (collectively, "Counsel"). Assistant Solicitor Warren S. Anderson, of the Third Circuit Solicitor's Office, prosecuted the case. On October 19, 2021, Applicant pled guilty to one count of CSC with a minor in the first degree before the Honorable Kristi F. Curtis, circuit court judge. Following a thorough plea colloquy, Judge Curtis accepted Applicant's guilty plea and sentenced him to twenty-five years' imprisonment, pursuant to the State's recommendation. Applicant did not pursue a direct appeal or otherwise challenge his plea or sentence until the filing of this instant post-conviction relief action.

Present Application

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following:

10(a) Insufficient Counsel. I requested new Counsel be appointed for me, but was denied by the Judge.

11(a): I was held in County Jail for nearly 2 ½ years, going up for bond 1 time, even though I requested to my lawyer that I would like to go up for another bond hearing. I know of no motions that were filed on my behalf. Then in March or April of 2019 my lawyer Doward Harvin stepped down from the Public Defender's Office. In June of 2019 I was given Mr. William Joseph Virgil Barr as my lawyer and asked him for a bond hearing but instead was asked to sign a plea deal. Upon standing in front of the judge on Oct. 18, 2021 I asked the Judge for new counsel, telling the judge that I didn't feel my lawyer had done everything for me. I was told no, that I could not fire my lawyer because I didn't like them. I was given 14 hours by the judge to accept the plea deal or go to trial in 2 weeks with the lawyer I just tried to fire. Having felt before that nothing had been done on my behalf, I really felt my back was against the wall and so was persuaded to sign the plea deal. I was taken back in front of the judge on Oct. 19, 2021 for sentencing. My lawyer

never spoke to me again after that or offered any advice as to what legal alternatives I may have had including appeal.

Applicant requests relief as follows:

“Any relief, including a reduction in sentence, any relief regarding the stipulations of my release and counseling for me.”

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, and weighed the testimony accordingly. Before the Court are Applicant's records from the South Carolina Department of Corrections, the transcripts of Applicant's plea proceeding, the records of the Williamsburg County Clerk of Court regarding the subject convictions, and the application for post-conviction relief. This Court has reviewed the records submitted to it by the parties, the legal arguments made by the attorneys, and the pleadings. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented:

Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “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.

The record includes the transcript of Judge Curtis's plea colloquy with Applicant, in which Applicant indicated that he had discussed the decision to plead guilty with Counsel, that Counsel had answered all of his questions, that he was satisfied with Counsel's assistance, that he did not need any additional time to confer with Counsel, that he had reviewed the States evidence with Counsel, and that he was not being coerced into pleading guilty in any way. (Tr. pp.3-7).

Applicant's sworn statements during the plea colloquy "carry a strong presumption of verity," and he bears the burden to show valid reasons why he should now be permitted to depart from the truth of those statements. *Blackledge*, 431 U.S. at 73-74; *Dalton*, 376 S.C. at 137-38, 654 S.E.2d at 874.

At the evidentiary hearing, Counsel Barr testified he met with Applicant multiple times prior to the guilty plea, went over the discovery and Applicant's version of what happened, and discussed the plea offer. Counsel Barr testified the evidence against Applicant was strong because Applicant had made statements that were tantamount to a confession, claiming that something of a sexual nature had happened between him and his minor victim, but that he was merely trying to "educate" her about sex. Counsel Barr advised Applicant that he had no chance of getting a bond due to the seriousness of the crimes he was charged with. Counsel Barr did not believe they would have a viable defense strategy at trial, and he testified that he thought the plea offer was in Applicant's best interest. Counsel Barr further testified that Applicant had a lengthy pattern of promising to enter a guilty plea, then withdrawing at the last minute; the solicitor was clear that Applicant was not going to get a better offer. Counsel Barr recalled seeing a sentencing sheet in the file that reflected a less-than-twenty-five-year sentence; he asked the solicitor about it and was told that was not the offer that was on the table.

Counsel Harvin testified that he represented Applicant before leaving the Public Defender's office, at which time Counsel Barr took over representation. Counsel Harvin testified that he met Applicant multiple times and talked about the case in great detail. He filed a motion for a bond, but he believed getting a bond would be impossible because Applicant had confessed to raping several members of his family. Counsel Harvin testified that there was never a ten-year plea offer, or any offer to plead to anything less than CSC with a minor in the first degree, which carries a twenty-five year minimum sentence; however, it was possible that an earlier offer included an additional ten-year sentence on one of the other charges, which could be where the ten-year sentencing sheet came from.

Assistant Solicitor Warren Anderson testified as well. He testified that sentencing sheets had been prepared for some of the less serious charges that were ultimately dismissed as part of the plea bargain, but that he never made an offer for less than twenty-five years. He read from an email in his file, which reflected that there was "no way" the State would offer less than the mandatory minimum of twenty-five years.

The Court finds Applicant's testimony at the evidentiary hearing, to the extent it contradicts the testimony of Counsel and Applicant's own sworn statements during the plea colloquy, is not credible. The Court further finds the testimony of Counsel and Assistant Solicitor Anderson mutually consistent and highly credible. Based on the record and the credible testimony presented at the evidentiary hearing, the Court finds Applicant's decision to plead guilty was knowingly, voluntarily, and intelligently made. The Court further finds Counsel did not fail to communicate any plea offers. Therefore, Applicant has not met his burden of proving either deficiency or prejudice regarding Counsel's performance. Accordingly, the Court finds this allegation must be denied and dismissed with prejudice.

In addition, Applicant failed to present any evidence at the evidentiary hearing regarding Counsel's alleged failure to discuss an appeal with him. Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal only when there is reason to think (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for an appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. *Roe v. Flores-Ortega*, 528 U.S. 470, 480 (2000). A highly relevant factor in this analysis is whether the conviction follows a guilty plea, because a guilty plea reduces the scope of appealable issues and indicates that the defendant seeks an end to further judicial proceedings. *Id.* In addition, where the sentencing court clearly instructs a defendant about his appeal rights, counsel might reasonably decide he need not repeat that information. *Id.* at 479-80.

Applicant has not alleged any non-frivolous grounds for appealing, nor has he claimed that he ever demonstrated an interest in appealing to Counsel. Furthermore, Applicant pled guilty, suggesting he sought an end to judicial proceedings. Finally, Judge Curtis advised Applicant of his appeal rights on the record. (Tr. p.13, lines 20-24). Accordingly, the Court finds no merit to Applicant's claim that Counsel were ineffective for failing to discuss an appeal with him.

III. 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 application for post-conviction relief must be denied and dismissed with prejudice.

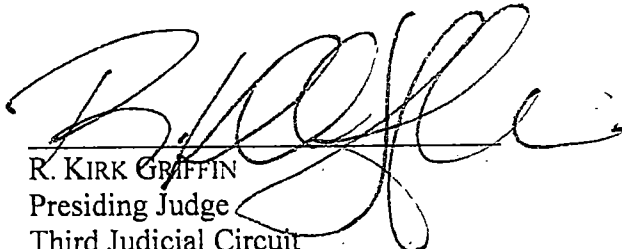
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453,

409 S.E.2d 395 (1991), Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant's attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice; and
2. That Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 3rd day of October, 2023.


R. KIRK GRIFFIN
Presiding Judge
Third Judicial Circuit

Sumter, South Carolina