

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Nov 06 2023

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

S.C. SUPREME COURT

R. Kirk Griffin, Circuit Court Judge

Case No. 2018-CP-18-0163

Jabari Moore, SCDC #371498..... Appellant,

v.

State of South CarolinaRespondent.

NOTICE OF APPEAL

Jabari Moore appeals the Order of the Honorable R. Kirk Griffin, signed September 25, 2023 dismissing his Application for Post-Conviction Relief. Appellant’s counsel received notice of this Judgment via U.S. Mail on October 9, 2023.

November 6, 2023



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FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF DORCHESTER
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2018CP1800163

CERTIFIED COPY

Jabari Moore	2023 SEP 27 PM 3:59	South Carolina State Of William R Byars Jr	Dept of Corrections
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by: _____ Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant	

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order, (formal order to follow) Statement of Judgment by the Court:
ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.
 E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

R. Kirk Griffin
 Circuit Court Judge

2768
 Judge Code

9/27/2023
 Date

For Clerk of Court Office Use Only

This judgment was entered on 9/27/2023, and a copy mailed first class or placed in the appropriate attorney's box on 9/27/2023, to attorneys of record or to parties (when appearing pro se) as follows:

Jabari Moore #371498
~~1057 Revolutionary Trail,
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Fairfax, SC 29827~~

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ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Cheryl Graham - Clerk of Court

Court Reporter

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Jabari Moore, #371498

Applicant,

v.

State of South Carolina,

Respondent.

CERTIFIED COPY
2023 SEP 27 11:30 AM
IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Christy Stalton
CLERK OF COURT
DORCHESTER COUNTY
Case No.: 2018-CP-18-0163

ORDER OF DISMISSAL

This matter comes before this Court pursuant to the post-conviction relief (“PCR”) application filed by Jabari Moore (“Applicant”) on January 26, 2018. The State of South Carolina (“Respondent” or “the State”) made its return on May 8, 2018. On September 8, 2022, an evidentiary hearing was held before the Honorable R. Kirk Griffin. Applicant was represented by Leslie T. Sarji, Esquire. Lauren T. Mims, Esquire, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. John T. Kornegay, Esquire, (“Counsel”) also testified. Following a thorough review of the transcript and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet his burden of proof to establish he is entitled to post-conviction relief. Thus, this Court denies and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment by the Dorchester County Clerk of Court. In January 2016, the Berkeley County Grand Jury indicted Applicant for burglary in the second-degree, violent (2016-GS-08-

0130) and grand larceny (2016-GS-08-0129). The Berkeley County charges resulted from a burglary of an AT&T store in Goose Creek, South Carolina, in which law enforcement responded to a burglary call at nighttime. (Plea Tr. 25:22-26:1). Video surveillance from the store showed Applicant and accomplices break into the store and steal cellphones and other items, totaling twenty-seven hundred dollars (\$2,700). (Plea Tr. 26:2-7).

In March 2016, the Dorchester County Grand Jury indicted Applicant for burglary in the first-degree (2016-GS-18-0037) and assault and battery in the first-degree (2016-GS-18-0036). The Dorchester County charges arose from an incident in which Applicant and accomplices broke into a house, and Applicant strangled the victim therein. (Plea Tr. 25:1-8). Applicant and accomplices then ransacked the home, looking for valuables. (Plea Tr. 25:8-11).

Applicant proceeded to plead guilty before the Honorable Diane Goodstein. Applicant was represented by John T. Kornegay, Esquire. Assistant Solicitor Ryan D. Templeton prosecuted the case. Pursuant to a negotiated sentence range of eighteen (18) years to life, Judge Goodstein sentenced Applicant to twenty (20) years imprisonment for first-degree burglary; ten (10) years for second-degree burglary, violent; five (5) years for grand larceny; and ten (10) years for assault and battery, first-degree; all to be served concurrently. Applicant did not file an appeal.

CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleged that he is being held in custody unlawfully for the following reasons:

Ineffective assistance of counsel

- a. "Ineffective assistance of counsel for voluntary exposure to unnecessary danger."
- b. "Counsel failed to advise of statutory rights to one year filing limitations."
- c. "Dereliction of duty."

At the evidentiary hearing, Applicant proceeded on the claim of ineffective assistance of counsel with the following allegations: failure to adequately communicate, failure to adequately

Tr. 34:12-15). Applicant testified he understands basic English and has comprehension. (PCR Tr. 34:19). Applicant stated the judge took a brief moment to allow him to speak to Counsel and ask questions, in which he received Counsel's advice. (PCR Tr. 35:17-36:3). Applicant testified it was his decision to plead guilty. (PCR Tr. 36:4-5). Applicant further testified that, at the time, he told the judge that he thought it was in his best interest to go forward with the plea. (PCR Tr. 32:2-8).

Applicant also testified he felt it was unfair that he did not receive a preliminary hearing. (PCR Tr. 23:8-11). Applicant stated he was informed about a preliminary hearing but did not receive paperwork for a preliminary hearing, in which he felt he could have raised issues and received more detail about what was going on. (PCR Tr. 23:9-15).

Plea Counsel's Testimony

Counsel testified he has been practicing law almost seven (7) years and worked for about four years (4) with the Dorchester County Public Defender's Office. (PCR Tr. 38:4-9). Counsel stated he was appointed to Applicant's case "fairly long after" Applicant was charged, and they met together four or five times. (PCR Tr. 38:13-18). Counsel stated by the time he was appointed it was long past time when he could have requested a preliminary hearing. (PCR Tr. 38:25-39:1).

Counsel testified he received discovery and reviewed it with Applicant. (PCR Tr. 39:4-20). Counsel stated he conducted additional investigation outside of discovery and worked with investigator, John Tisdale. (PCR Tr. 39:21-24). Counsel stated the investigator spoke with the witnesses that Applicant requested, and the victim's son refuted Applicant's assertion that he was invited into the victim's home; Counsel relayed this information to Applicant. (PCR Tr. 39:24-40:5). Counsel testified he also inquired into whether Applicant's co-defendants were willing to revise their statements or give statements in Applicants favor, neither were willing to do so; Counsel relayed this information to Applicant. (PCR Tr. 40:6-13). Counsel recalled explaining to

Applicant, with the investigator, the contents of Applicant's invitation assertion could not be obtained by telephone conversations. (PCR Tr. 41:20-42:2). Counsel testified there was nothing that Applicant asked him to investigate that was not investigated, stating "tracking down witnesses and asking attorneys of the other codefendants, talking to them, all of that was done." (PCR Tr. 45:22-46:6).

Counsel testified he explained the strengths and weaknesses of Applicant's case to him. (PCR Tr. 40:16-18). Counsel testified that he explained to Applicant if case were to go to trial, Applicant's testimony about being invited into the residence by the victim would be without corroborating testimony from either co-defendants. (PCR Tr. 41:16-19). Counsel testified he was prepared to go to trial, but it was Applicant's decision to plead. (PCR Tr. 42:3-5; 6-8). Counsel testified that he explained to Applicant the elements of the crimes, the related crimes, the constitutional rights he was waiving. (PCR Tr. 46:11-22).

Counsel testified he discussed with Applicant the possibility of a life sentence, which was a factor in Applicant's decision to plead. (PCR Tr. 42:6-13). Counsel testified he never communicated to Applicant that he may receive more time because of his race; Counsel indicated another attorney made a movement that seemed to indicate that, but Counsel did not make that impression. (PCR Tr. 46:23-47:4). Counsel contended solicitor's dealings with Applicant had nothing to do with race but was motivated by Applicant's role in the crime: he was the person accused of committing the assault and battery, unlike his co-defendants. (PCR Tr. 47:4-8). According to Counsel, the solicitor in this case, Mr. Templeton, was not open to plea negotiations because of Applicant's role in the crime. (PCR Tr. 42:14-19). Counsel testified he discussed plea options with the solicitor, and ultimately, the State offered either a recommendation of twenty-two (22) years or a negotiated range of eighteen (18) to twenty-five (25) years. (PCR Tr. 42:20-23).

Subsequently, after discussion of options with Counsel, Applicant chose to accept the negotiated range of eighteen to twenty-five years (PCR Tr. 42:25-43:2).

Counsel stated he presented mitigation evidence, and had obtained a mitigation expert, Adrianna Harris, who typed a report that was discussed with the cord. (PCR Tr. 43:3-17). Counsel testified he did not ask Applicant to misrepresent anything to the Court. (PCR Tr. 44:3-7). Counsel testified he had Applicant evaluated for competency by Dr. Knight, a professional in Berkley County. (PCR Tr. 44:24-45:7). Counsel testified there was nothing about Applicant that led Counsel to believe he was incompetent. (PCR Tr. 45:2-4). Counsel stated he did not believe discussing Applicant's mental health history would have impacted the judge's sentencing. (PCR Tr. 12-16).

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony at the PCR hearing. This Court further had the opportunity to observe the witnesses at the evidentiary hearing, closely pass upon their credibility, and weigh their testimony accordingly. After careful review based on the standard in *Strickland*, set forth below, this Court finds Applicant has failed to meet his burden of proof. This Court makes the following 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 allegations in the application. 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 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 proper measure of effective assistance of counsel is whether an attorney provided representation within the range of competence required in criminal cases. *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgement. *Butler*, 286 S.C. at 441, 334 S.E.2d at 813. An applicant must overcome this presumption for relief to be granted. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts apply the two-pronged test outlined in *Strickland* when evaluating ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms". *Cherry*, 300 S.C. at 117, 385 S.E.2d at 625 (citing *Strickland*). Second, counsel's deficient performance must have prejudiced the applicant such 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 117-118, 385 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 plead guilty but would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985); *Dalton v. State*, 376 S.C. 130, 136, 654 S.E.2d 870, 873 (Ct. App. 2007). Additionally, the burden is on the applicant to convince the court that rejecting a plea or plea bargain would have been rational under the circumstances. *Padilla v. Kentucky*, 559 U.S. 356, 272 (2010).

Failure to Adequately Communicate

Applicant contends Counsel was ineffective for failing to adequately communicate with him. This Court finds Applicant has failed to meet his burden on this allegation. "[B]revity of time

spent in consultation with a defendant alone is not indicative of inadequate trial preparation.” *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Applicant must show evidence of how additional preparation or communication would have resulted in a different outcome. *Id.*; *See Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (where application failed to show ineffective assistance of counsel based on lack of preparation by neglecting to show evidence of what counsel failed to discover or what defenses counsel could have pursued had he more fully prepared for the case).

Applicant testified he met with Counsel three (3) times. Counsel testified he met with Applicant four (4) to five (5) times and was adequately prepared to go to trial if Applicant wished to do so. This Court finds *credible* counsel’s testimony that he met with Applicant sufficiently to adequately prepare. This Court finds Counsel’s performance was reasonable in light of the circumstances, and he performed in accordance with professional standards. Further, Applicant did not produce any at the PCR hearing evidence to how additional communication would have resulted in a different outcome.

Failure to Adequately Advise Applicant on Elements of Crimes and Sentence

Applicant contends counsel was ineffective for failing to adequately advise him on the elements of the charges and possible sentences. This Court finds Applicant failed meet his burden on this allegation. “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 involves awareness of “the privilege against self-incrimination, the right to a jury trial, and the right to confront one’s accusers” and “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) (citing *Boykin v. Alabama*, 395 U.S. 238 (1969)). Statements made during a guilty plea should be considered conclusive unless the applicant presents valid reasons why he should be allowed to depart from the truthfulness of his statements. *Dalton*, 376 S.C. at 137-38, 654 S.E.2d at 874. A guilty plea entered because of a *belief* the judge will impose a certain sentence does not render a guilty plea involuntary. *Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997) (emphasis added) (fact that defendant “hoped” and “expected” to get a reduced sentence does not render a plea invalid).

This Court finds *credible* Counsel’s testimony that he advised Applicant of the nature of the charges, possible penalties, and his constitutional rights. This Court finds Counsel’s performance was reasonable in light of the circumstances, and he performed in accordance with professional standards. Furthermore, the plea colloquy establishes the court explained to Applicant the nature of the charges, possible penalties, and the constitutional rights before accepting his plea. Applicant’s statements at the plea hearing and testimony at the PCR hearing indicate he understood the information as explained to him by court and counsel. Applicant has failed to present any valid reason for why he should be able to depart from the statements he made during his plea. The mere assertion that Applicant plead guilty because he was afraid of receiving a particular sentence does not render his plea invalid. Additionally, Applicant has failed to convince the court that rejecting the plea offer would have been rational under the circumstances, due to the evidence against him. Thus, this Court finds Applicant understood the charges and consequences thereof and plead guilty both voluntarily and intelligently.

Failure to Review Discovery

Applicant contends Counsel was ineffective for failing to review discovery with him. This Court finds Applicant has not met his burden on this allegation. Counsel testified that he received

and reviewed discovery with Applicant, in which Counsel discussed the State's evidence and reasonably investigated information provided by Applicant. This Court *credible* Counsel's testimony that he reviewed discovery with Applicant and made reasonable investigations. This Court finds Counsel's performance was reasonable in light of the circumstances, and he performed in accordance with professional standards. Further, Applicant has failed to meet his burden of establishing prejudice.

Failure to Mitigate

Applicant claims Counsel was ineffective for failing to mitigate the sentence. This Court finds Applicant has failed to meet his burden on this allegation. 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). 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*, 380 S.C. at 171, 670 S.E.2d at 362.

This Court finds *credible* Counsel's testimony that he investigated and presented mitigation to the court prior to sentencing, and this Court finds Counsel's testimony is consistent with the plea record. This Court finds Counsel's performance was reasonable in light of the circumstances, and he performed in accordance with professional standards. Further, Applicant has failed to meet his burden of showing a reasonable probability that a different sentence would

have been imposed.

Failure to Schedule a Preliminary Hearing

Applicant asserts Counsel was ineffective for waiving the preliminary hearing. This Court finds Applicant has failed to meet his burden on this allegation. In South Carolina, there is no constitutionally protected right to a preliminary hearing. *State v. Keenan*, 278 S.C. 361, 296 S.E.2d 676 (1982). Additionally, a preliminary hearing is not held if the defendant is indicted by a grand jury or waives presentment before the preliminary hearing occurs. Rule 2(b) SCRCrimP.

This Court finds credible Counsel's testimony that the time for a preliminary hearing had already passed by the time he was appointed, and Applicant was indicted by the grand jury before a preliminary hearing would have occurred. This Court finds Counsel's performance was reasonable in light of the circumstances, and he performed in accordance with professional standards, and Applicant has failed to show prejudice.

[Space left blank intentionally; conclusion follows.]

CONCLUSION

Based on 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 Applicant that should he wish to secure appellate review, he must file and serve a notice of appeal within thirty (30) days of receipt by counsel of written notice of the entry of judgment. See Rule 203, SCAR. If Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Rule 71.1 (g), SCRCR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has the right to appellate counsel's assistance in seeking review of denial of PCR. Refer to Rule 243, SCACR, for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. This PCR application 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 25th day of September 2023



HON. R. KIRK GRIFFIN
Presiding Judge
First Judicial Circuit

Spartanburg, South Carolina.