STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
Timothy Robert Harrison, S.C.D.C. No. 361541, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2018-CP-42-03003 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief filed by Timothy Robert Harrison ("Applicant") on August 20, 2018. Respondent made its return on or about June 11, 2019. The Court convened an evidentiary hearing into the matter on July 16, 2019, at the Spartanburg County Courthouse in Columbia, South Carolina. Applicant was present at the hearing and represented by Rodney W. Richey, Esq. Johnny Ellis James Jr., Esq., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Chad Snyder, Esq. ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the Spartanburg County Clerk of Court regarding the subject convictions, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the October 2017 term of the Spartanburg County Grand Jury for habitual traffic offender causing great

bodily injury (2017-GS-42-05497); assault and battery of a high and aggravated nature[1] (2017-GS-42-05498); malicious injury to personal property (2017-GS-42-05499); and failure to stop motor vehicle with great bodily injury (2017-GS-42-05500). Chad Snyder, Esq. represented Applicant, and Jennifer A.J. Jordan, Esq., of the Seventh Circuit Solicitor's Office, prosecuted the case. On May 16, 2018, Applicant pled guilty to the above indictments. Accepting the State's recommendation of concurrent sentencing, the Honorable J. Mark Hayes sentenced Applicant to imprisonment for concurrent terms of twenty years for ABHAN, provided that upon service of ten years the balance would be suspended upon five years of probation, and ten years each for the habitual traffic offender, malicious injury to property, and failure to stop counts. Applicant did not appeal his plea or sentence.

Present Application

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. "A Double Jeopardy Claim"
    a. "I was charged with same charge twice."
2. Ineffective Assistance of Counsel, in that:
    a. "All my accomplishments was not presented in court."
3. "They officer had no personal injury, the ABHAN was my car hitting his car."

At the evidentiary hearing, Applicant, by and through PCR counsel, provided the Court a written amendment to his application, which substituted the following allegations:

1. "Trial Counsel was ineffective for not properly presenting complete mitigation at the guilty plea."
2. "Trial Counsel was ineffective for failure to investigat[e] the charges against him."
3. "Trial Counsel was ineffective for not properly communicating with him about his pending case."

[1] While this Court lists all of the convictions which arose from the facts admitted by Applicant during his plea proceeding, and while Applicant indicated his intent to challenge multiple convictions in his application, Applicant asserted at the evidentiary hearing that he was ***only*** challenging the validity of his ABHAN conviction and sentence.

Applicant requests relief as follows:

- "To get back my life, to reduce my time, & a non-violent sentence."

At the evidentiary hearing, Applicant proceeded forward on the amended allegations restated above.[2]

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, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. 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). 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.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel's performance was deficient. Strickland, 466 U.S. at 686; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of

[2] Upon review of the records of the Spartanburg County Clerk of Court, it does not appear the amendment was ever accepted as filed with that office, perhaps due to a scrivener's error. This Court accepts the amendment as filed on the date of the hearing, a copy of which is attached to this proposed order.

the evidence. Rule 71.1(e), SCRCP. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109-10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." Yarborough, 540 U.S. at 6; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable."). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced 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 117-18, 386 S.E.2d at 625. "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between Strickland's prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" Harrington, 562 U.S. at 111-12 (quoting Strickland,

466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." Id. at 112. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." United States v. Basham, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting Elmore v. Ozmint, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he/she would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. 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."). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. 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)).

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.

1. Failure to Present Complete Mitigation

Applicant alleges Counsel was ineffective in failing to properly present complete mitigation during his plea proceeding.

At the plea, Counsel offer both argument in mitigation and the remarks of a witness in Applicant's favor. Counsel emphasized Applicant's change in character in the course of his ten months of pre-trial incarceration, and explained to the court that Applicant read religious materials often, and spoke with the jail chaplain frequently. (Tr. 26, ll. 11-15). Counsel inform the plea court that Applicant was working towards his GED, was taking classes, and had improved his reading ability from that of a second-grade level to a sixth-grade level. (Tr. 26, ll. 15-19). Counsel attributed Applicant's confessed criminal wrongdoing to depression and his addiction to methamphetamines. (Tr. 26, ll. 20-23). Counsel also brought up Applicant's difficult upbringing—a single parent home with a drug-addicted, prostitute mother who was incarcerated at the time of the plea. (Tr. 26-27). Counsel presented a letter from Applicant's grandmother to the plea court. (Tr. 27, ll. 3-6; Tr. 29, ll. 13-20).

Counsel then presented Ben Dismute, the chaplain with whom Applicant worked and the owner of "Evan's Training Center" in Inman, South Carolina. (Tr. 27, ll. 7-17). Dismute explained the center as "an eight-month in residence faith based highly structured level five program." (Tr. 28, ll. 4-7). Dismute further described the ministry as "very intrusive" and "rigorous," and noted that the substantial majority of individuals who initiated participation in the program failed to complete it, but that Applicant was a "good candidate." (Tr. 28, ll. 9-15). Dismute and Counsel told the plea court that the inpatient, non-medical program had no beds available at the time of the plea, but that he wished to be allowed to participate in program later. (Tr. 28-29). Counsel concluded by acknowledging Applicant's deficient impulse control, but

requested the plea court impose a sentence suspended upon service of as little time as was possible in order to facilitate his participation in Dismute's program. (Tr. 29-30).

Applicant then agreed with the statements made by Counsel and was invited to present any additional information he desired to the plea court. (Tr. 30, ll. 9-14). Applicant told the plea court that he had enrolled in a bible college, had completed "five or six different certificates," and was pursuing a ministry degree. (Tr. 30, ll. 16-20).

At the evidentiary hearing, Applicant opined that he felt Counsel's mitigation efforts were incomplete. Applicant testified he had earned a certificate, which he described as a "survival course." Applicant acknowledged he had been speeding, had tried to flee, and had rammed a cop car, but denied that such conduct constituted ABHAN. Applicant asserted that he "probably" would have proceeded to trial on his charges if he had known better. On cross-examination, Applicant acknowledged that he and Counsel had brought up his certificates and work with the chaplain during mitigation at the plea proceeding.

Counsel testified he did not believe he really needed the physical certificates to which Applicant was referring.

The Court finds Applicant has failed to demonstrate any ineffectiveness on the part of Counsel. First, Applicant presented no information in mitigation during the evidentiary hearing which was not already adequately presented during mitigation at the plea proceeding. Second, to the extent Applicant insists the physical certificates should have been presented to the plea court, no such certificates were presented to this Court either, such that it is left with mere speculation. Third, Applicant's testimony that he "probably" would have proceeded to trial had he "known better" is both inadequate to meet Applicant's burden under Hill, and not credible to this Court. Fourth, it appears to this Court that the evidence presented in mitigation was already considered

by the plea court in the sentence it imposed, which despite the contemptable and life-threatening conduct admitted by Applicant, granted him the mercies of concurrent sentencing as recommended by the State, and a total term of incarceration well beneath the statutory maximum limit of twenty years for ABHAN. For all of these reasons, this Court finds Applicant has failed to show any deficiency on the part of Counsel, or that but for the deficiency alleged Applicant would not have pled guilty but would have proceeded to trial, and accordingly his request for relief by way of this allegation is **DENIED**.

2. Failure to Investigate "Assault and Battery of a High and Aggravated Nature"

Applicant alleges Counsel was ineffective in failing to investigate the charges against him. "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 690-91. "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Id. at 691. "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Id.

"The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Id. "Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant." Id. "In particular, what investigation decisions are reasonable depends critically on such information." Id.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

South Carolina law provides that "[a] person commits the offense of assault and battery of a high and aggravated nature if the person unlawfully injures another person, and: (a) great bodily injury to another person results; or (b) the act is accomplished by means likely to produce death or great bodily injury." S.C. Code Ann. § 16-3-600(B)(1). "'Great bodily injury' means bodily injury which causes a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ." S.C. Code Ann. §16-3-600(A)(1). Though now codified, under the common law, ABHAN "'requires an unlawful act of violent injury accompanied by circumstances of aggravation,' which may include 'the use of a deadly weapon, the infliction of serious bodily injury, [or] the intent to commit a felony.'" State v. Dennis, 402 S.C. 627, 638, 742 S.E.2d 21, 27 (Ct. App. 2013) (quoting State v. Coleman, 342 S.C. 172, 176, 536 S.E.2d 387, 389 (Ct. App. 2000)).

The facts of the case as confirmed by Applicant at the plea proceeding may be briefly summarized. Applicant fled from police when they attempted to conduct a traffic stop. During the high speed chase, Applicant abruptly stopped his car, threw it into reverse, and rammed the pursuing trooper's vehicle in an attempt to disable it. Applicant then sped away. The pursuing trooper caught up, executed a pit maneuver to stop Applicant's car, and Applicant's flight was promptly ended. A woman in the car with Applicant, Jessica Wyatt, suffered a broken femur and bruises.

At the evidentiary hearing, Applicant merely asserted that his ramming of the police vehicle with his own vehicle did not constitute assault and battery of a high and aggravated nature.

To the contrary, ramming a car with one's own car is an attack of means likely to produce death or great bodily injury, such that it may absolutely constitute ABHAN. It also appears that injuries resulted and great bodily injury was suffered by another person, though surely not the intended target of Applicant's ramming. Applicant presents no evidence to show that the injuries relied upon to satisfy the requirements of the statute did not arise from the ramming of the police cruiser, or were not the natural and probable consequence of that assault. Having failed to show what, if anything, Counsel could have discovered had he more thoroughly investigated the case, Applicant has failed to meet his burden of proof. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

3. Failure to Communicate

Applicant alleges Counsel was ineffective in failing to adequately communicate with him regarding his case during its pendency. "The brevity 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 (Ct. App. 2012) (citing Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008)). An applicant must present evidence to show how additional time spent in consultation would have resulted in a different outcome; mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 404 S.C. at 500-01, 745 S.E.2d at 382 (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998); Skeen v. State, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997)).

During the group qualification portion of the plea proceeding, the plea court invited the defendants present to stand up if they were satisfied with the work performed by their respective attorneys—all defendants stood. (Tr. 11, ll. 10-15).

At the evidentiary hearing, Applicant briefly reviewed his discussions with Counsel during their first and second meetings, but admitted that he was "lost" during his second meeting with Counsel due to the passing of his grandfather and a close friend. Applicant acknowledged standing up when prompted by the plea court to affirm his satisfaction with Counsel, but asserted he was "kinda unsatisfied" with Counsel at the time of his plea. Counsel testified he met with Applicant four to five times, in addition to their correspondence. Counsel confirmed he and Applicant discussed the elements of the charges against him and that Applicant understood. Counsel testified he received materials responsive to motions pursuant to Rule 5, SCCrimP, and Brady v. Maryland, 373 U.S. 83 (1963), and that he reviewed those materials with Applicant.

The Court finds Applicant has failed to meet his burden of showing ineffectiveness. First, to whatever extent Applicant was not entirely satisfied with the amount of time spent in consultation with Counsel, he was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to proceed with his guilty plea. Second, Applicant presents no evidence to show what, if anything, he could have or would have

learned had Counsel spent more time communicating with him. The Court finds Counsel met with Applicant on an adequate number of occasions, reviewed with him the elements of the offenses charged, and reviewed with him the evidence in the State's possession. The Court finds Applicant knowingly, intelligently, and voluntarily pled guilty. For all of these reasons, Applicant has failed to meet his burden of proof as to either prong of Hill, and his request for relief by way of this allegation is **DENIED**.

[*Conclusion and signature on following page*]

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), an Applicant has a right to an 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 the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 14 **day of** November, 2023

J. DERHAM COLE
Presiding Judge
Seventh Judicial Circuit

_____, South Carolina