THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT
APPEAL FROM JASPER COUNTY
Court of Common Pleas
The Honorable Roger Young, Sr., PCR Action Judge
2022-CP-27-00287

TRAVIS BROWN, #345374,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Travis Brown appeals the denial of his post-conviction relief application. The post-conviction relief action was heard and denied by the Honorable Roger Young, Sr., circuit court judge, on November 27, 2023, and was denied by written order issued filed on January 2, 2024. Applicant received notice of the judgement on January 9, 2024.

/s Chelsey F. Marto
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STATE OF SOUTH CAROLINA COUNTY OF JASPER	)	IN THE COURT OF COMMON PLEAS FOR THE FOURTEENTH JUDICIAL CIRCUIT
Travis L. Brown, #345374, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2022-CP-27-00281 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Travis L. Brown (Applicant) on June 20, 2022. On January 4, 2023, Respondent filed its return requesting an evidentiary hearing and moving for a more definite statement. On November 27, 2023, an evidentiary hearing convened before the Honorable Roger M. Young, Sr. Chelsey Marto, Esquire, represented Applicant. Staff Attorney Chase Seymour of the South Carolina Attorney General's Office represented Respondent. Applicant was present and testified on his own behalf at the hearing. Assistant Public Defender Carolyn Carmody (Counsel) also testified. Further, following a thorough review of the records before this Court and the testimony and evidence presented at the 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 an eight-year sentence. In October 2019, the Jasper County Grand Jury indicted Applicant for failure to stop for a blue light (2019-GS-27-00088); possession with intent to distribute cocaine base – 3rd offense (2019-GS-27-00089); and trafficking in cocaine, 10 grams or more but less than 28 grams – 3rd offense (2019-GS-27-00090). These charges arose from an incident on January 31,

2019, in which officers clearing a traffic stop observed Applicant's tag light was out and that his vehicle swerved while driving. Police attempted to pull Applicant over, but Applicant did not stop and led police on a high-speed pursuit. Applicant eventually abandoned his car and fled into the woods. Officers apprehended Applicant and found 27.83 grams of cocaine and 2.04 grams of cocaine base in Applicant's pocket.

On October 13, 2021, Applicant appeared before the Honorable Carmen T. Mullen and pleaded guilty as indicted for failure to stop for a blue light and to the lesser-included offense of possession with intent to distribute cocaine base – 2nd offense, and the lesser-included offense of trafficking cocaine, 10 grams or more but less than 28 grams – 2nd offense. Assistant Public Defender Carolyn Carmody represented Applicant. Assistant Solicitor Lynorr Musser represented the State. Judge Mullen sentenced Applicant concurrently to three years for the failure to stop for a blue light charge; eight years for the possession with intent to distribute cocaine-base, second offense charge; and eight years for the trafficking in cocaine charge. Judge Mullen additionally delayed reporting and released Applicant on an ankle monitor until January 4, 2022, pending surgery for a fracture in Applicant's foot. Applicant did not file a direct appeal.

ALLEGATIONS

Applicant timely commenced this PCR action on June 30, 2022, alleging:

1. Ineffective assistance of counsel
    a. Involuntary Guilty Plea
        i. "I entered an involuntary plea of guilty"
        ii. "My attorney was ineffective and had substance abuse problems"
    b. Did not appeal because "Attorney Abandoned My Case"
        i. "I'm requesting to have my right to an appeal restore because a PCR isn't a substitute for an appeal".

Applicant filed an amended PCR application on August 11, 2023, alleging the following grounds for relief:

1. Ineffective assistance of counsel
    a. "Mr. Brown elected to plead because he was unaware he could pick his jury at trial."
    b. "Mr. Brown's plea was involuntarily, unknowingly, and unfreely entered because the judge at the plea hearing determined that he had to decide that day, or the plea would be taken off the table."
    c. "Counsel was constitutionally ineffective for failure to file an appeal."

At the hearing, Applicant proceeded only on the allegations as set forth in his application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Jasper County Clerk of Court records of the underlying convictions; Applicant's records from the South Carolina Department of Corrections; the plea transcript; and the records of Applicant's current PCR action. This Court has further had the opportunity to observe the witnesses presented at the evidentiary hearing, closely pass upon their credibility, and weigh their testimony accordingly. Further, 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 fact and conclusions of law as required by section 17-27-80 of the South Carolina Code.

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When the application alleges ineffective assistance of counsel, the applicant must prove "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, 466 U.S. 668 (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, 466 U.S. at 687-88. First, an applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, courts measure 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). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, a PCR applicant must prove that counsel's deficient performance 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 117-18, 386 S.E.2d at 625.

The Sixth Amendment right to counsel also applies to a defendant entering a guilty plea. Hill v. Lockhart, 474 U.S. 52 (1985). When reviewing a guilty plea, the Strickland deficiency prong remains unchanged—Applicant must show that counsel's representation fell below an objective standard of reasonableness. Hill, 474 U.S. at 58–59. To show prejudice, Applicant must show a reasonable probability exists "that, but for counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59.

Applicant was Unaware He Could Pick His Own Jury

Applicant contends he was unaware that he could pick his own jury for trial. Specifically, Applicant contends that Counsel informed him that he would have to use a jury that already been used in a murder trial earlier that day. Applicant avers he based his decision to plead guilty on this erroneous understanding. This Court finds Applicant has failed to show Counsel was ineffective

in this regard.

"The right of trial by jury shall be preserved inviolate." S.C. Const. art. I, § 14. "A 'defendant has a constitutional right to be tried by competent jurors,' which 'implies a tribunal both impartial and mentally competent to afford a hearing.'" State v. Hurd, 325 S.C. 384, 480 S.E.2d 94, 97 (Ct. App. 1996) citing Tanner v. United States, 483 U.S. 107, 134, 107 S.Ct. 2739, 2755, 97 L.Ed.2d 90 (1987). "[E]very defendant is entitled to a fair trial." State v. Bonneau, 276 S.C. 122, 126, 276 S.E.2d 300, 302 (1981).

Initially, this Court finds **not credible** Applicant's testimony that Counsel informed him he would have to reuse a jury from a prior murder trial. This Court finds **credible** Counsel's testimony that Applicant was involved in his case, and Counsel was never under the impression that Applicant was confused about whether he was able to choose his own jury for trial. Counsel testified that Applicant never told her that he did not understand the process of picking a jury, and Counsel would have clarified this information if needed. Counsel further testified that she was appointed as counsel before Applicant retained another trial attorney, Don Colongeli, Esquire. Counsel explained that Applicant would have known he did not have to reuse a jury that had already been used because he had already been to trial once. Moreover, Applicant admitted at the evidentiary hearing that he was familiar with the jury selection and trial processes before he pled guilty. Therefore, this Court finds Applicant has failed to show Counsel was deficient in failing to inform him that he could select his own jury for trial. Likewise, without more, this Court finds Applicant has failed to show prejudice.

Applicant's Plea was Involuntary

Further, Applicant contends his plea was involuntary because Judge Mullen decided Applicant must plea that day or the plea would be taken off the table. Applicant believed he did

not have enough time to decide whether or not he wanted to plead guilty. Applicant testified that Judge Mullen informed Applicant he should speak with his attorney and must make up his mind that day. Because of this, Applicant felt coerced into pleading guilty. This Court finds Applicant has failed to show Counsel was ineffective in this regard.

The Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. Boykin v. Alabama, 395 U.S. 238 (1969); Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999). To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. Brady v. United States, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant's choice. Id. at 755. Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he is waiving, including the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. Boykin, 395 U.S. at 243. Additionally, the defendant "must be aware of 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, 337 S.C. at 599. In determining whether a plea was voluntary, the reviewing court must consider the entire record, including the transcript of the guilty plea. Harres v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

"Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual . . . , a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007). Indeed, admissions made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137–38, 654 S.E.2d at 874. An applicant who enters a plea on the advice of counsel may "only

attack voluntary, knowing and intelligent character of the plea by showing that plea counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the [applicant] would not have pled guilty, but would have insisted on going to trial." Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). Surmounting Strickland's high bar is not easy, and the societal interest in finality has "special force with respect to convictions based on guilty pleas." Lee, 582 U.S. ___, 137 S. Ct. at 1967.

At the plea hearing, Judge Mullen informed Applicant he was facing third offense drug charges and would be facing up to a minimum of twenty-five years imprisonment if convicted at trial. In response, Applicant indicated he understood and that he had spoken to his attorney and wished to proceed forward with the plea. During Judge's Mullen colloquy with Applicant, Applicant also indicated he understood that by pleading guilty he was giving up his constitutional rights to cross-examine witnesses and present his own witnesses. (Tr. 10). Applicant further indicated he was satisfied with Counsel's representation and did not have any physical or mental problems that prevented him from understanding what was happening. (Tr. 10-11). Additionally, Applicant acknowledged the drug charges he pled guilty to were second offenses, not third offenses, and that he would also be pleading guilty to failure to stop for a blue light. (Tr. 13).

This Court finds **credible** Counsel's testimony that it was Applicant's decision to plead guilty. At the evidentiary hearing, Counsel testified she was prepared to go to trial for Applicant. Counsel also testified that she spoke with Applicant about the plea offer, reviewed the plea form with him, and advised him of his rights. Counsel stated Applicant understood the plea, and although he did not want to go to prison, he was satisfied with the plea deal. Counsel did not believe there were any red flags regarding Applicant's understanding of the plea deal, and Applicant's wife wanted Applicant to be home. Counsel explained that she was able to negotiate

to get Applicant's ankle monitor taken off and for Applicant to have a later prison report date so Applicant could spend Christmas with his family. This Court finds the foregoing testimony by Counsel to be credible. Based on the foregoing, Counsel was not deficient in her representation of Applicant.

Moreover, on cross-examination, Applicant acknowledged that he spoke with Counsel before deciding to plead guilty. Applicant also acknowledged that he was satisfied with Counsel's representation of him and that he did not have any physical or mental problems that would prevent him from understanding what was occurring at the plea hearing. Applicant also admitted that Judge Mullen informed him of the rights he would be giving up by pleading guilty. Without more, Applicant has failed to show prejudice. Based on Judge Mullen's plea colloquy with Applicant at the plea hearing and the testimony presented at the evidentiary hearing, this Court finds Applicant's plea was made freely, voluntarily, knowingly, and intelligently. Accordingly, this Court finds Applicant has failed to show Counsel was ineffective in this regard.

Counsel Failed to File a Direct Appeal

Finally, Applicant contends that Counsel was ineffective for failing to file a direct appeal. "Absent extraordinary circumstances…there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea." Turner v. State, 380 S.C. 223, 224–25, 670 S.E.2d 373, 374 (2008) (citing Roe v. Flores–Ortega, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000); Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995)). Extraordinary circumstances include "when there is reason to think a rational defendant would want to appeal…or when the defendant reasonably demonstrated an interest in appealing." Id.

During the evidentiary hearing, Applicant admitted that he never informed Counsel of his desire to appeal his guilty plea. Additionally, Counsel testified that Applicant had not informed

her of his desire to file a direct appeal. Counsel further testified that although Applicant did not want to go to prison, he seemed happy with his plea. Counsel also testified she believed the plea deal was good for Applicant and believed Applicant knew that too. This Court finds Counsel's testimony **credible**. Applicant cannot assume Counsel should act on his behalf without expressly relaying his desires to Counsel. This Court finds the foregoing testimony of Counsel credible. Based on the foregoing, Applicant did not reasonably demonstrate he had an interest in appealing his plea.

Further, at the plea hearing, Applicant indicated that he understood he faced a minimum of twenty-five years imprisonment if convicted at trial. (Tr. 10). As a result of Applicant's plea, Applicant received concurrent sentences of three years for failure to stop for a blue light and eight years for each drug charge. (Tr. 18). Applicant also received 624 days of credit for time served and a later prison report date as part of his sentence. (Tr. 18-19). Given Counsel's testimony at the evidentiary hearing and the testimony as demonstrated in the plea transcript, this Court finds there would be no reason to think a defendant in Applicant's situation would want to file an appeal.

Therefore, this Court finds Applicant has failed to show that Counsel's performance fell below prevailing professional norms. Likewise, Applicant has failed to show prejudice. Therefore, this Court finds Applicant has failed to demonstrate Counsel was ineffective in this regard.

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.

Should Applicant wish to appeal, he must serve and file a notice of appeal within thirty days to secure appellate review. 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 denial of PCR. Rule 71.1 (g). SCRCP provides that if 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 custody of the State.

AND IT IS SO ORDERED this 13th day of December, 2023.

HON. ROGER M. YOUNG, SR.
Presiding Judge
Fourteenth Judicial Circuit

Chambers, South Carolina.