STATE OF SOUTH CAROLINA
In The Supreme Court

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JAN 22 2024
S.C. SUPREME COURT

APPEAL FROM ORANGEBURG COUNTY
Diane S. Goodstein, Circuit Court Judge

2018-CP-38-00640

Malcom Williams, # 374269,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Malcom Williams, # 374269, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed June 5, 2023[1], issued by the Honorable Diane S. Goodstein, Presiding Judge, First Judicial Circuit.

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January 17, 2024

[1] Applicant was not served with notice of the entry of the Order of Dismissal. Applicant's counsel became aware of the Order of Dismissal following a January 10, 2024 meeting request from Applicant's family.

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA COUNTY OF ORANGEBURG	)	IN THE COURT OF COMMON PLEAS FOR THE FIRST JUDICIAL CIRCUIT
Malcom Williams, SCDC #374269, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2018-CP-38-00640 **ORDER OF DISMISSAL**

The matter before this Court is an action for post-conviction relief (PCR) commenced by Malcom Williams (Applicant) on June 4, 2018. The State made its return and motion for a more definite statement on August 1, 2019. A hearing into the matter convened before the undersigned on September 9, 2019, at the Dorchester County Courthouse. Applicant was present and represented by Jonathan D. Waller, Esquire. Assistant Attorney General Sara E. Gunton represented the State. Applicant testified on his own behalf at the hearing. Applicant's plea counsel, R. Douglas Mellard, Esquire, also testified.

In addition to the pleadings in this action, this Court had before it a copy of the Orangeburg County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, the plea transcript, and the records regarding this post-conviction relief action.

After hearing the testimony at the PCR hearing and upon full review of the record, this Court finds Applicant's allegations regarding ineffective assistance of counsel and involuntary guilty plea are without merit. For the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of the Orangeburg Clerk of Court. During its December 2015 term, the Orangeburg County Grand Jury indicted Applicant for murder (2015-GS-38-1360). Applicant was represented by R. Doug Mellard and Peggy Hines, of the First Circuit Public Defender's Office. Tommy Scott of the First Circuit Solicitor's Office prosecuted the case. On October 12, 2017, Applicant appeared before the Honorable Edgar Dickson and pled guilty as indicted. On October 17, 2017, Judge Dickson sentenced Applicant to imprisonment for a term of thirty-two years with credit for time served (811 days).

Applicant filed a timely notice of appeal on October 17, 2017. On October 24, 2017, the South Carolina Court of Appeals notified Applicant, through Counsel, that he had 20 days to submit in writing to the Court any arguable basis that there were issues preserved for appeal. On October 26, 2017, counsel mailed Applicant notice of his right to submit additional information to the Court within 20 days. The Court of Appeals received a timely response from Applicant on November, 14, 2017. On January 8, 2018, the Court of Appeals dismissed Applicant's appeal for failing to provide a sufficient explanation as required by Rule 203(d)(l)(B)(iv) of the South Carolina Appellate Court Rules (SCACR) and remitted the case back to the lower court on January 24, 2018.

II. FACTS GIVING RISE TO GUILTY PLEA

On July 29, 2015, Applicant met the Victim, Lateefah Williams, outside of the Amick Farms chicken plant in Batesburg-Leesville, where they both worked. (Plea Tr. 11). Although they shared a last name, Applicant and Victim were not married; however, they had three children together. (Plea Tr. 11). Victim had an eye appointment at the local Walmart on the

date of the incident. (Plea Tr. 11). Applicant and Victim borrowed a vehicle from co-worker, Latensha Salley, in order to take Victim. (Plea Tr. 11-12). After Victim's eye appointment, she and Applicant stopped at a local gas station to get gas before returning to Amick Farms to pick up Ms. Salley. (Plea Tr. 12). A surveillance camera at the gas station recorded the last known movements of Applicant and Victim while she was alive. The video shows that Victim goes into the gas station several times to buy gas and lottery tickets. (Plea Tr. 12). The video also shows Applicant getting out of the car from the passenger side and going into the gas station. (Plea Tr. 12). Eventually, Applicant leaves from inside the gas station and gets back in the passenger side of the vehicle, and shuts the door. (Plea Tr. 12). The Victim leaves from inside the gas station, gets in the driver's side of the vehicle and shuts the door. (Plea Tr. 12). A few seconds later the recording shows Applicant getting out of the vehicle from the passenger side, shutting the door, walking around to the driver's side, and getting in the vehicle where the Victim was just sitting. (Plea Tr. 12). The car then drives off. (Plea Tr. 12).

It is the State's position that during the time Applicant and Victim were seated in the vehicle together, Applicant stabbed Victim three times with a knife in the side of the neck, where after Victim bled to death while Applicant drove back to his residence in North, South Carolina (Plea Tr. 13). When Applicant neared his home in North, he entered a small side road and then drove 100 to 200 yards into the woods. (Plea Tr. 13). There, he removed Victim's body from the vehicle and left her on the ground, he took off his rubber boots that he wore to work at Amick Farms, and walked home. (Plea Tr. 13). Applicant immediately told his aunt what he had done. (Plea Tr. 13). Applicant's aunt then called Applicant's mother, who called 911. (Plea Tr. 13). The 911 operator spoke to Applicant's mother, Applicant's aunt, and then to Applicant, who confessed to killing Victim. (Plea Tr. 13). Applicant ran

before police arrived at the home. (Plea Tr. 14). However, he was located and taken into custody the following morning. (Plea Tr. 14). While in custody, Applicant gave a video-taped statement, consistent with his 911 call, where he admitted to stabbing the Victim one to two times. (Plea Tr. 14).

III. ISSUES BEFORE THIS COURT

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

1. "Defense counsel lied to defendant and under the ABA standards for representation created constitutional violations because defendant was entitled to a defense from crime of passion."
    a. "Counsel erroneously stated to defendant of entitled to an instruction of involuntary manslaughter only if court determined a charge was appropriate and thus this was inaccurate advice to defendant under State v. Pauling, 264 S.C. 275 (1975), State v. Cooley, 342 S.C. @ 67, 536 S.E.2d @ 668 (200) as evidence supports manslaughter for crime of passion, State v. Byrd 323 S.C. 319 (1996). U.S.C.A. 6th Amend."
2. "Counsel's deficient performance prejudiced defendant and thus was ineffective performance/ assistance."
    a. "Defense counsel's failure to argue/motion before court and before plea that defendant had mitigating factors, that defendant was entitled to voluntary manslaughter based from family's statement of incident. And that issue created platform to form crime of passion, as such defendant would have been entitled to voluntary manslaughter. U.S.C.A. 6th Amend."
3. "Defense counsel failed to file for or argue mitigating factors for crime of passion and preserve issues for appeal. In addition counsel on appeal would not bring up deficient counsel for ineffectiveness because he was the same attorney presiding in the PCR case, thus creating prejudice."
    a. "Defense counsel refused to motion the court before plea for lesser offense as such created bias and prejudice for fair representation, U.S.C.A 6th Amend, 14th Amend."

To the extent the allegations set forth in Applicant's original applications can be construed

as separate grounds for relief from the grounds stated at the PCR hearing, the Court finds those claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice. S.C. Code Ann. § 17-27-90.

IV. RELEVANT TESTIMONY PRESENTED AT EVIDENTIARY HEARING

Applicant Malcom William's Testimony

Applicant testified on his own behalf at the PCR hearing. Applicant testified he was first arrested in North, South Carolina, located in Orangeburg County. (PCR Tr. 6-7). Applicant testified he was living between his mother's house in North, South Carolina, and his sister's house in Salley, South Carolina, as well as working at Amick Farms, located between Batesburg and Saluda, at the time of the incident. (PCR Tr. 8). He testified the incident took place in Batesburg-Leesville and that he returned to Orangeburg following the incident. (PCR Tr. 8). Following his arrest, Applicant stated he was appointed Public Defender, Douglas Mellard (Mellard). (PCR Tr. 8-9). When asked about discussions between him and Mellard, Applicant testified they discussed the nature of the crime, what Applicant was charged with and the elements of the charge, potential penalties of the charge, and what the State would have to prove. (PCR Tr. 9-10). Applicant alleged he and Mellard only discussed potential defenses once Applicant brought them up. (PCR Tr. 10). Applicant stated Mellard told him there were no defenses. (PCR Tr. 10). When asked how many times he met with counsel, Applicant testified they met several times. (PCR Tr. 14). Applicant testified he understood discussions Mellard and he had during these meetings. (PCR Tr. 14). Applicant confirmed he had had a chance to view all discovery in his case. (PCR Tr. 14).

Included in discovery was part of the incident that was captured on video. (PCR Tr. 10). Applicant stated he had seen the video; however, the video did not show the inside of the car where the incident took place. (PCR Tr. 10). When asked whether he and Mellard had a chance to discuss

what took place inside the car, Applicant testified they did and he told Mellard he had a defense based on what occurred. (PCR Tr. 11). Applicant stated he asked Mellard about the lesser charges of voluntary manslaughter and manslaughter. (PCR Tr. 11). Applicant stated in response, Mellard told him the case was a clear-cut case of murder. (PCR Tr. 11). When asked about the allegation in his application indicating Mellard told him *involuntary manslaughter* may be an option, Applicant testified, "I think I been rushing my application" and "I just been focused on it. That's – that's how that came about." (PCR Tr. 12).

Additionally, Applicant testified Ms. Peggy Hinds (Hinds) was appointed to represent him in anticipation of the trial. (PCR Tr. 13). Applicant stated he was ready to go to trial on the murder charge. (PCR Tr. 13). He additionally testified Mellard and Hinds told him if he went to trial, he would receive a life sentence. (PCR Tr. 14). When asked what he alleged Mellard and Hinds did wrong while representing him, Applicant stated they failed to mention he could have received a lesser included offense – specifically, Applicant claims he had a potential defense to the murder charge. (PCR Tr. 15-16). On cross-examination, Applicant agreed Mellard's reasoning for not pursuing a charge for a lesser-included offense was that Mellard did not think the facts supported one. (PCR Tr. 18, 21). When asked whether Applicant had told Mellard that the Victim and he had gotten into a fight, Applicant responded that he didn't think he had mentioned it. (PCR Tr. 23).

Applicant further testified he pleaded guilty after learning he could receive a sentence of life without the possibility of parole and agreed his concern with proceeding to trial was that he could receive a life sentence. (PCR Tr. 18-19). When asked whether he believed he received a light sentence in comparison to life without the possibility of parole, Applicant agreed. (PCR Tr. 19). When asked if there were any plea offers, Applicant stated Mellard wanted to get 30 years, if possible, but was able to get an offer of 32 years. (PCR Tr. 19-20). Applicant stated he did not tell

Judge Dickson he believed he was entitled to a lesser-included offense as Counsels had told him the plea was in his best interest. (PCR Tr. 20). Applicant also conceded it was his decision to plead guilty, that decision was made freely and voluntarily, and no one coerced or threatened him into pleading guilty. (PCR Tr. 20). Applicant testified he communicated everything to his Counsel regarding the facts in this case. (PCR Tr. 20-21). Applicant further testified he agreed at his guilty plea hearing that the facts presented by the Solicitor's Office were correct. (PCR Tr. 22-23).

Plea Counsel Robert Mellard's Testimony

Mellard testified he has been practicing law since 1997 and started at the Public Defender's Office in 2005. (PCR Tr. 25). Mellard stated he was appointed to Applicant's case and met with Applicant multiple times over the course of his representation. (PCR Tr. 25-26). When asked about the evidence available in this case, Mellard testified there was – a broken off knife; the Vicitm's body; surveillance video; and Applicant's admissions to his mother, his aunt, multiple officers, and a 9-1-1 operator that he had stabbed the Victim. (PCR Tr. 27). When asked whether he was aware of the alleged struggle Applicant claimed occurred in the vehicle and led to Victim's death, Mellard testified he was not made aware of a struggle. (PCR Tr. 27). Furthermore, Mellard testified Applicant's version of the facts remained consistent with his initial statements to 9-1-1 and law enforcement. (PCR Tr. 27-28).

Mellard testified there were not really any defenses in this case. (PCR Tr. 28). Mellard further testified that during a meeting with Applicant, Hinds, and himself, on October 11, 2017, Counsels explained the problems with Applicant's case to him and told Applicant there was no sufficient legal provocation for a voluntary manslaughter charge. (PCR Tr. 29). Mellard further testified he had Applicant evaluated and he was found competent. (PCR Tr. 29).

When asked about his pre-trial investigation, Mellard testified that Counsel Hinds and

himself had traveled to where Applicant lived. (PCR Tr. 31). Mellard testified he spoke with Applicant's aunt, as well as went to the scene where the Victim's body was found. (PCR Tr. 31). Mellard testified he also had the assistance of Investigator Danny McDaniel. (PCR Tr. 31). Mellard stated Applicant pled guilty about a month prior to when the case was scheduled for trial. (PCR Tr. 32). He testified they had talked to everyone they could talk to about the case and had started putting together defenses at that point. (PCR Tr. 32-33).

V. STANDARD OF REVIEW

An applicant may seek PCR upon the following types of allegations:

> 1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
>
> 2. That the court was without jurisdiction to impose sentence;
>
> 3. That the sentence exceeds the maximum authorized by law;
>
> 4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
>
> 5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
>
> 6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises

a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. *Strickland v. Washington*, 466 U.S. 668 at 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, *Hill v. Lockhart*, 474 U.S. 52 (1985), extended the two-part *Strickland* test to challenge guilty pleas based on ineffective assistance of counsel. *See Padilla v. Kentucky*, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). The analysis of counsel's performance under the first prong of *Strickland* remains unchanged—the applicant must show that counsel's representation fell below an objective standard of reasonableness demanded of attorneys in

criminal cases. *Hill*, 474 U.S. at 58–59; *accord Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000).

An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the competence demanded of attorneys in criminal cases." *Hill*, 474 U.S. at 56. The second, or "prejudice" prong, however, "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." *Id.* at 58–59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." *Id.* at 59.

This inquiry "focuses on a defendant's decisionmaking" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. *Lee v. United States*, 582 U.S. ___, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. *Padilla*, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—*not* whether counsel would have still advised him or her to plead guilty. *Turner v. State*, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

VI. FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in this action incorporated by way of the State's return, this Court proceeds to the claims raised and

finds each to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

The issues before this Court are whether Applicant's plea was involuntary as a result of ineffective assistance of counsel for failure to request a lesser-included charge of voluntary manslaughter and for failure to investigate defenses on Applicant's behalf. This Court disagrees, and finds Applicant knew the nature of the charges against her and the consequences of pleading guilty pursuant to the requirements of *Boykin* and *Pittman.* The plea transcript reflects Applicant entered his plea knowingly and voluntarily, engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the court's questions. Moreover, this Court finds credible and persuasive the testimony of Counsel Mellard, who presented well-recollected testimony of relevant events leading up to Applicant's guilty plea. The Court finds Applicant's testimony and assertions lack credibility and are self-serving. These credibility findings have been applied to the Court's findings and conclusions set forth below. Accordingly, Applicant's request for relief by way of these allegations is **DENIED** as addressed below.

Allegation Counsel was Ineffective for Failing to Request Lesser-Included Offense and for Failing to Investigate Defenses on Applicant's Behalf

Applicant alleges Counsels were ineffective for failing to investigate defenses on Applicant's behalf and for failing to request a lesser-included charge. Applicant asserts this failure resulted in Applicant's involuntary guilty plea. This Court disagrees and finds the combined record from the plea hearing and the evidentiary hearing clearly establishes Applicant freely, knowingly, and voluntarily pleaded guilty.

"[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced." *Reed v. Becka*, 333 S.C. 676, 685,

511 S.E.2d 396, 401 (Ct. App. 1999). Accordingly, because a criminal defendant waives several constitutional rights by pleading guilty, 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; *see also United States v. Smith*, 440 F.2d 521, 528–529 (7th Cir.) (Stevens, J., dissenting) (explaining that voluntariness relates to the trustworthiness of the admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; 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 v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). The defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993); *See also Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997) (guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge). To ensure the defendant understands the

consequences of his guilty plea, the plea judge "usually questions the defendant about the facts surrounding the crime and punishment that could be imposed." *Dover v. State*, 304 S.C. 433, 434–35, 405 S.E.2d 391, 392 (1991). However, the plea judge "does not have to direct the defendant's attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea." *Carter v. State*, 329 S.C. 355, 362, 495 S.E.2d 773, 776 (1998).

The test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). It is "well established that a guilty plea is not rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment." *United States v. Cox*, 464 F.2d 937, 942 (6th Cir. 1972) (*citing Brady*, 397 U.S. 742). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, *Brady*, 397 U.S. at 750-753, or by increasing the risks of punishment on those who do not. *North Carolina v. Alford*, 400 U.S. 25, 37 (1970).

Nonetheless, 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) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977); *see also Jamison v. State*, 410 S.C. 456, 469–71, 765 S.E.2d 123, 129–30 (2014) (observing that "guilty plea[s] must be treated as final in the vast majority of cases" and instructing that caution must be exercised so as not to "undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea"). 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." *Dalton*, 376 S.C. at 137–38, 654 S.E.2d at 874 (internal citations and quotation marks

omitted); *cf. Blackledge*, 431 U.S. at 73–74 (pointing out that representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a "formidable barrier in any subsequent collateral proceedings").

The voluntariness of a guilty plea, however, "is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). 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).

In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. *Wolfe*, 326 S.C. at 165, 485 S.E.2d at 370; *cf. Rayford v. State*, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that, where the transcript of the guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant's claim his lawyer misadvised him).

Surmounting *Strickland's* high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." *Lee*, 582 U.S. ___, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); *cf. Hill*, 474 U.S. at 58 ("[R]equiring a 'prejudice' showing from defendants who seek to challenge the validity of their

guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.' "). Reviewing "[c]ourts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies." *Lee*, 582 U.S. ___, 137 S. Ct. at 1967. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences." *Id.* Thus, in determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the guilty plea and the evidence presented at the PCR hearing. *Harres*, 282 S.C. at 134, 318 S.E.2d at 361.

As an initial matter, this Court finds Applicant knew the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty pursuant to the requirements of *Boykin* and *Pittman*. Moreover, any deficiency regarding Counsels' advice was cured by the plea colloquy. The plea transcript reflects Applicant entered his plea knowingly and voluntarily, engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the court's questions.

Specifically, during Applicant's plea on October 12, 2017, the plea court explained to Applicant the constitutional rights he waived by pleading guilty. (Plea Tr. 9-10). Upon inquiry from the plea court, Applicant indicated he understood the charges against him. (Plea Tr. 8). Applicant affirmed he understood the nature of the negotiated plea agreement, and he had discussed the consequences of the violent and serious classifications with his attorneys. (Plea Tr. 16). Applicant indicated he was completely satisfied with his lawyers, that he had enough time to speak with them about the facts behind the indictments, the legal elements of the crimes he was charged with, and any possible defenses he may have. (Plea Tr. 9). Applicant further indicated to the plea court he was entering his plea freely and voluntarily, and that he had not been threatened

in any way or promised anything in exchange for his guilty plea. (Plea Tr. 10).

Therefore, the plea transcript reflects Applicant understood the proceedings, interacted intelligently with the plea court, and entered his guilty plea knowingly and voluntarily. At the PCR hearing, Applicant did not present any valid reason why he should be able to depart from the above statements made during his guilty plea. *See Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975), overruled on other grounds by *United States v. Whitley*, 759 F.2d 327 (4th Cir. 1985) (finding that the accuracy and truth of an accused's statements at a guilty plea proceeding are "conclusively" established unless he makes some reasonable allegation why this should not be so). Applicant did not allege any facts tending to prove he was prevented from informing the plea court his attorneys or the solicitor coerced him into pleading guilty. Thus, based on the evidence presented at the plea proceeding, the Court finds Applicant's plea was freely, knowingly, and voluntarily entered into.

At the evidentiary hearing, Applicant claimed his plea was involuntary based on Counsels' failure to discuss or argue potential lesser-included charges available to Applicant and investigate defenses on his behalf. For the reasons discussed below, this Court concludes Counsels were not constitutionally ineffective, nor was Applicant' plea involuntary as a result of any alleged ineffectiveness.

At the evidentiary hearing, Applicant testified he felt Counsels were ineffective because they failed to "mention that with the nature of my crime [and that] I could have got a lesser included offense". (PCR Tr. 15). The Court disagrees, and finds Counsels were not deficient based on Applicant's representations to the plea court as well as Counsels' credible testimony. At the evidentiary hearing, Mellard testified he met with Applicant multiple times over the course of his representation and explained to Applicant the issues with his case – including the fact there was

no sufficient legal provocation for a voluntary manslaughter charge. Furthermore, Applicant testified Counsel Mellard reviewed all discovery with him; discussed possible trial defenses with Applicant and explained to Applicant the charges and exposure he faced if convicted at trial. (PCR Tr. 9-19). Applicant further failed to provide evidence of any defenses or strategies he could have pursued had Counsels been more fully prepared. *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) ("[T]o establish counsel failed to adequately prepare for trial, an applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared.").

The Court finds credible Mellard's testimony that both attorneys *did* in fact explore possible defenses and discuss the likelihood of success at trial with Applicant (PCR Tr. 29). Regarding Mellard's trial preparation, Mellard concluded Applicant would likely be found guilty at trial and testified to discussing the possibility of Applicant entering into a plea deal with the Solicitor's Office (PCR Tr. 28). Mellard further testified that during his pre-trial investigation, he and Counsel Hinds spoke with Applicant's family, travelled to where Applicant had lived, as well as went to the scene where the Victim's body was found. (PCR Tr. 31). Mellard testified he spoke with everyone he could talk to about the case. *See Tollett*, 411 U.S. at 268 ("Counsel's concern is the faithful representation of the interest of his client and such representation frequently involves highly practical considerations as well as specialized knowledge of the law.").

In reviewing a claim that defense counsel failed to properly investigate a defense to a crime, a court's principle concern is whether the investigation "*was itself reasonable.*" *Taylor*, 404 S.C. at 364, 745 S.E.2d at 104 (citing *Wiggins v. Smith*, 539 U.S. 510, 522–23 (2003) (emphasis in original). Mellard testified that he had not been made aware of any type of struggle occurring between Applicant and the Victim, from which a mitigating defense could have arisen (PCR Tr.

27). *See Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630; 34 (Ct. App. 2014) (finding that counsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions). Thus, there was no reason for Counsels to pursue further defenses or prepare for trial.

Further, Applicant indicated to the plea court he had enough time to discuss his case with Counsel prior to pleading guilty and was satisfied with Counsels' services. Specifically, during Applicant's plea, the following exchange occurred:

> THE COURT: Okay. Are you satisfied with their services as your attorney?
>
> THE DEFENDANT: Yes, sir.
>
> THE COURT: Okay. Do you need any more time to talk with them?
>
> THE DEFENDANT: No, sir.

(Plea Tr. 9).

Thus, the Court finds Counsels were not deficient for failing to prepare potential defenses and explore trial strategies based on Counsels' credible testimony they did so and Applicant's representations to the plea court. Moreover, the Court finds Applicant has not presented a valid basis to depart from the above statements made at his plea hearing. The Court finds credibility in Counsels' testimonies that they met with Applicant on multiple occasions and reviewed discovery, discussed the facts of the case, and explained to Applicant his constitutional rights and options for resolving the case (PCR Tr. 26). Therefore, the Court finds Applicant has failed to meet his burden of proof to show Counsels were deficient in failing to pursue a defense and trial strategy.

Further, Applicant presented no evidence of any issue Counsels missed in preparation of the case or any meritorious defense Applicant was unable to raise due to Counsels' allegedly deficient preparation. *See Davis v. State*, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997) ("To establish applicant was prejudiced as a result of counsel's failure to prepare for trial, the applicant

must present evidence to show how the discoverable matters or defenses would have resulted in a different outcome."). Applicant has failed to show how any additional preparation or investigation by Counsels would have changed his decision to plead guilty. *Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009); *see also Porter v. State*, 368 S.C. 378, 386, 629 S.E.2d 353, 357 (2006) (holding no evidence showed counsel's failure to investigate a potential witness would have yielded a result different from that which defendant's counsel believed at the time of the plea and defendant pleaded guilty in light of the complete information available at that time), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018).

The court will not credit Applicant's present claim that he would have gone to trial absent Counsel's alleged failure to prepare, as Applicant has failed to present evidence of any discoverable matters or defenses Counsel would have discovered had they been more prepared. Applicant has offered little more than mere speculation, and thus failed to meet his burden of showing anything to result in a different outcome. Therefore, the Court finds Applicant failed to make an adequate showing that he would have opted to go to trial but for Counsels' lack of preparation. The Court finds no deficiency on the part of Counsels, nor any prejudice to Applicant from the deficiency alleged. Accordingly, Applicant's allegations of ineffective assistance allegation are **DENIED.**

VI. ALL OTHER ALLEGATIONS

As to any and all allegations raised in the application or at the hearing in this matter and not specifically addressed in this order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds those claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice. S.C. Code Ann. § 17-27-90.

VII. CONCLUSION

Based on the evidence presented at the PCR hearing and the record of the plea proceeding, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. This Court finds Applicant freely, knowingly, and voluntarily pleaded guilty and further failed to present any justification as to why the statements he made during the guilty plea hearing should not be considered conclusive. Therefore, based on the foregoing, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). 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. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This Court denies relief and dismisses the action with prejudice; and
2. Applicant shall be remanded to the custody of the State.

AND IT IS SO ORDERED this 31 day of Dec, 2023.

THE HONORABLE DIANE S. GOODSTEIN
Presiding Circuit Court Judge
First Judicial Circuit

St George, ~~South~~ Carolina