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Anderson, SC CSC, CP/OS

STATE OF SOUTH CAROLINA )  
COUNTY OF ANDERSON )

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

Gerald Akeem Gadsden, SCDC #327003, )

Case No. 2020-CP-04-2431 )

Applicant, )

**RECEIVED**

ORDER GRANTING BELATED )  
APPELLATE REVIEW AND DENYING )  
ALL OTHER ALLEGATIONS )

v. )

JAN 30 2024

State of South Carolina, )

SC Court of Appeals

Respondent. )

This matter comes before this Court by way of post-conviction relief action commenced by Applicant Gerald Akeem Gadsden on December 10, 2020. Respondent, the State of South Carolina, made its Return on July 26, 2021, requesting an evidentiary hearing to resolve the claims as set forth in the application. On February 15, 2023, Applicant, through appointed counsel, Don A. Thompson, Esquire, filed a Supplemental Application asserting an additional allegation of ineffective assistance of counsel. An evidentiary hearing was convened on March 2, 2023, at the Anderson County Courthouse before the Honorable Perry H. Gravely. Applicant was present and was represented by Assistant Public Defender Don A. Thompson, Attorney. Assistant Attorney General Taylor Zane Smith represented the State. In support of these claims, Applicant testified on his own behalf at the hearing. Assistant Public Defender Gordon Allan Senerius, Esquire (Plea Counsel), also testified at the evidentiary hearing.

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief, other than failure to perfect applicant's appeal as discussed herein, and, accordingly, denies and dismisses this action with prejudice.



### PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Anderson County Clerk of Court. Applicant was arrested on April 19, 2016, following an investigation into the shooting death of Chance Tate, which occurred the day prior. During its September 2016, term the Anderson County Grand Jury indicted Applicant for murder and possession of a weapon during the commission of a violent crime (2016-GS-04-1758). On January 8, 2020, Applicant appeared before the Honorable J. Cordell Maddox, Jr., and entered an Alford<sup>1</sup> plea to the lesser-included offense of voluntary manslaughter.

The State dropped the weapons charge in exchange for Applicant's plea. Assistant Public Defender Gordon Allan Senerius represented Applicant. Tenth Circuit Deputy Solicitor Catherine Townsend Huey and Assistant Solicitor Stan Lee Overby, Jr., prosecuted the case. The State recommended a twenty-year sentence to run concurrent to Applicant's sentence of life without parole (LWOP) that Applicant is currently serving on an unrelated charge in Greenville County. Following the State's recommendation, Judge Maddox sentenced Applicant to twenty years' imprisonment to run concurrent with the Greenville sentence.

Applicant filed a timely notice of appeal. On March 10, 2020, the Court of Appeals requested Plea Counsel forward the guilty plea explanation to Applicant and inform him he had twenty days to notify the Court in writing of any arguable basis that there are issues preserved for appeal. Plea Counsel failed to provide the Court with any indication that Applicant was served with the guilty plea explanation pursuant to Rule 203(d)(1)(B)(iv), SCACR, and Applicant's appeal was dismissed. The case was remitted back to the circuit court on November 9, 2020.

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<sup>1</sup> North Carolina v. Alford, 400 U.S. 25, 31 (1970).

**FACTS GIVING RISE TO THE PLEA**

The facts giving rise to Applicant's plea were articulated by Solicitor Huey at Applicant's plea hearing, as follows:

MS. HUEY: Thank you, Judge. This offense occurred on April 18th of 2016 at around 9:30 at night. APD officers were dispatched to 325 H Street in Anderson city. When they arrived, they found the victim lying in the roadway next to a vehicle. He had a gunshot wound to his head. Detectives began to interview individuals who had been there, and they, of course, identified the defendant, Gerald Gadsden, as the shooter. The shooter, Gerald Gadsden, took off running. He ended up calling his bondsman and confessing to this incident to the bondsman, and he was arrested a short time later.

(Plea Tr. p. 13, ll. 13-25).

**CURRENT APPLICATION**

In his original PCR application, Applicant alleged that he is being held in custody unlawfully based on the following (excerpted verbatim):

1. Ineffective Assistance of Counsel
  - a. "Ineffective counsel do to not requesting a psychological evaluation."

Applicant filed an amended application alleging he is being held in custody unlawfully on the following additional grounds (excerpted verbatim):

1. Ineffective Assistance of Counsel
  - b. "...[A]pplicant instructed counsel to file an appeal in this matter. Counsel initiated the appeal but failed to take actions necessary to perfect the appeal thereby causing the Sout Carolina Court of Appeals to dismiss [A]pplicant's appeal."

At the evidentiary hearing, Applicant raised two additional allegations: Plea Counsel was ineffective for failing to investigate whether Applicant was criminally responsible, and involuntary guilty plea due to mental condition.

Before this Court are Applicant's application for PCR, Applicant's amended PCR application, the Anderson County Clerk of Court general sessions records from the underlying conviction, the transcript from Applicant's plea hearing, Applicant's complete records from his appeal, Applicant's records from the South Carolina Department of Corrections, and the records of this PCR action.

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel through the PCR action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility.

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief, except Applicant's allegation regarding Plea Counsel's failure to perfect his appeal. See Rule 71.1(e), SCRPC (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

Accordingly, set forth below are the relevant findings of facts and conclusions of law as required by § 17-27-80 of the South Carolina Code:



*INEFFECTIVE ASSISTANCE OF PLEA COUNSEL, GENERALLY*

Applicant alleged Plea Counsel provided ineffective assistance of counsel. 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 decision making" 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. 357, 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).

#### *INVOLUNTARY GUILTY PLEA*

Applicant claims his plea was not entered knowingly or voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris 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, 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). Statements 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. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985)).

This Court finds Applicant cannot meet his burden as to his claims of ineffective assistance of Plea Counsel rendering his guilty plea involuntary and finds Applicant's plea was freely and voluntarily given. The specific claims are addressed below:

***INITIAL FINDINGS BASED ON THE RECORD***

This Court makes the following initial findings from the record: 1) Applicant was not on any medication at the time of his plea hearing, but had previously been on medication (Plea Tr. pp. 3, 14-15); 2) Applicant had been diagnosed with schizophrenia and bipolar (Plea Tr. p. 3); 3) Plea Counsel believed Applicant to be competent at the time of Applicant's plea (Plea Tr. pp. 3-4); 4) Applicant had previously been found not competent but restorable in the Greenville action, and Applicant's competency was restored (Plea Tr. p. 4); 5) Applicant understood he was pleading to voluntary manslaughter with a recommended sentence of twenty years to be served concurrent to his life sentence (Plea Tr. p. 4); 6) No one had threatened or forced Applicant into pleading guilty (Plea Tr. pp. 4, 5); 7) Applicant understood Judge Maddox could reject the recommendation and sentence Applicant to a maximum of thirty years for voluntary manslaughter (Plea Tr. p. 4); 8) Applicant waived his constitutional right to a jury, his right to remain silent, and his right to put up a defense (Plea Tr. pp. 4-5); 9) Applicant had enough time to speak with Plea Counsel prior



to his plea, and was satisfied with Plea Counsel's representation of him (Plea Tr. pp. 5, 8); 10) Applicant informed Judge Maddox he had been released 72 hours before the incident from MUSC mental institution and he was not in his "right mind" when he committed the crime (Plea Tr. p. 6); 11) Applicant waived a possible conflict of interest with Judge Maddox (Plea Tr. pp. 6-8); 12) Applicant informed the court he did not believe he was guilty of voluntary manslaughter (Plea Tr. p. 9); 13) Judge Maddox called a recess to allow Plea Counsel to speak with Applicant (Plea Tr. p. 9); 14) After the recess, Judge Maddox, Solicitor Overby, and Plea Counsel discussed the possibility of continuing Applicant's plea as an Alford plea for voluntary manslaughter, as Applicant had issue with his competency at the time of the incident, and another recess (Plea Tr. pp. 10-11); 15) After discussions, there was an hour long recess, in which Plea Counsel explained to Applicant what an Alford plea was (Plea Tr. pp. 11-12); 15) Applicant understood what an Alford plea was (Plea Tr. p. 12); 16) Plea Counsel informed Judge Maddox Applicant's competency evaluations were done during his Greenville case and no testing had been done in Anderson County, but Plea Counsel had no reason to believe Applicant had become incompetent since then (Plea Tr. p. 14); 17) Judge Maddox found Applicant appeared competent to plea and accepted Applicant's Alford plea (Plea Tr. p. 16).

***ALLEGATIONS RAISED IN THE APPLICATION***

**Allegation: Plea Counsel was ineffective for failing to request Applicant undergo a psychological evaluation.**

Applicant alleged Plea Counsel was ineffective for failing to request Applicant be psychologically evaluated to determine if he was competent at the time of his plea.

"Before a defendant may plead guilty, it must be established that the defendant is competent and that the defendant's decision to plead guilty is a knowing and voluntary one."

Garren v. State, 423 S.C. 1, 813 S.E.2d 704 (2018); See Sims v. State, 313 S.C. 420, 423-24, 438

*DAG*

S.E.2d 253, 254–55 (1993). A defendant is competent to plea if he has “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him.” Carnes v. State, 275 S.C. 353, 271 S.E.2d 121 (1980), citing Dusky v. United States, 362 U.S. 402, 80 S. Ct. 788, 4 L. Ed. 2d 824 (1960). Counsel will not be found deficient where they reasonably relied on their perceptions of a defendant’s competency in determining if an evaluation was necessary. Garren v. State, 423 S.C. 1, 813 S.E.2d 704 (2018); Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992) (finding counsel acted reasonably in relying on his own perceptions of a defendant’s competency)). To prove prejudice from counsel’s failure, applicant must show there is a reasonable probability he would have been deemed incompetent at the time of his plea. Jeter, 308 S.C. at 233–34, 417 S.E.2d at 596.

On direct examination, Applicant testified he started receiving treatment for his mental illness at age thirteen and has been placed in a mental institution about seven times. (PCR Tr. p. 8). Applicant testified he was not on medication when he committed the crime, and he received a competency evaluation before going to court in Greenville. (PCR Tr. pp. 8-9). Applicant testified he took Depakote and Haldol for his schizophrenia and bipolar but went without his medication for almost two months, leading to his Greenville case. (PCR Tr. pp. 11-12). Applicant testified he was on medication at the evidentiary hearing and had been taking it regularly since his incarceration. (PCR Tr. p. 13). Applicant did not provide any additional testimony or evidence to show he was incompetent at the time of his plea.

On direct examination, Plea Counsel testified Applicant informed him of his mental health issues, but he did not have Applicant’s competency evaluated because Applicant appeared competent to him. (PCR Tr. pp. 23-24). Plea Counsel testified he would have requested an



evaluation of Applicant by the Department of Mental Health if he believed Applicant was not competent, and he has requested such evaluations before. (PCR Tr. p. 24). Plea Counsel testified if Applicant had failed to engage in discussions or ask questions it would have raised red flags concerning his competency, but Applicant seemed to understand everything Plea Counsel told him and asked pertinent questions. (PCR Tr. pp. 24-25). Plea Counsel testified that he would not have let Applicant enter a plea if he believed Applicant did not understand what was going on. (PCR Tr. p. 26).

On cross-examination, Plea Counsel testified he assumed Applicant was on medication at the time of his plea because he was competent when Plea Counsel spoke with Applicant. (PCR Tr. pp. 33, 36). Plea Counsel testified at the time of Applicant's plea he did not have any questions concerning Applicant's competency and Judge Maddox did not have concerns either. Also, Plea Counsel testified that at any time during the hearing, if Judge Maddox had concerns, he could have *sua sponte* ordered an evaluation of Applicant. (PCR Tr. pp. 36-37).

On re-direct, Plea Counsel testified he believed he would have known whether or not Applicant was taking his medication, but he could not recall. (PCR Tr. p. 37).

Respondent admitted two letters written by Applicant to Plea Counsel before Applicant's plea, wherein Applicant advised Plea Counsel about possible defenses he may have, including: Applicant's competency to stand trial and whether Applicant was criminally responsible. (Res. Ex. 1 and 2). Specifically, in the letter dated March 1, 2018, Applicant inquired if he could plead insanity as he, "Wasn't fully aware of [his] mental condition during the act of the crime." (Res. Ex. 1). Additionally, Applicant stated evidence existed that there were other shell casings at the scene of the crime. (Res. Ex. 1). In his second letter, Applicant essentially created a memorandum, citing case law, and argued he should be psychologically evaluated to determine his competency



to stand trial and whether he was criminally responsible. (Res. Ex. 2). Both of these letters were obtained from Plea Counsel's file of Applicant's case.

This Court finds based on the combination of Plea Counsel's persuasive testimony, the record, and Respondent's exhibits that Plea Counsel was not deficient for failing to request a competency evaluation on Applicant. Plea Counsel reasonably relied on Applicant's Greenville evaluation finding his competency had been restored and Plea Counsel's own perceptions of Applicant's mental state during the course of his representation. See Jeter, 308 S.C. 230, 417 S.E.2d 594 (Counsel was not ineffective for failing to request mental examination of defendant which might have formed basis of insanity defense or determination that defendant was not competent to stand trial; trial counsel reasonably relied on his own perceptions that defendant was not mentally deficient, particularly since counsel was familiar with defendant from previous representation and further family never raised their concerns regarding competency to defense attorney ); Cf. Ramirez v. State, 419 S.C. 14, 795 S.E.2d 841 (2017) (Plea counsel's deficient performance in failing to request additional competency evaluation prejudiced defendant, and thus amounted to ineffective assistance of defendant who applied for post-conviction relief; even though there was some evidence to support conclusion that defendant was competent to stand trial, there was reasonable probability that defendant was incompetent at time of his plea, based on psychological examination report and counsel's interactions with defendant).

However, even if this Court found Plea Counsel deficient, Applicant could not show resulting prejudice from Plea Counsel's failure to request a psychological evaluation. Plea Counsel credibly testified at the evidentiary hearing that, based on his perceptions, Applicant was competent at the time of his plea. Plea Counsel testified he had fruitful discussions with Applicant, and Applicant asked pertinent questions. The record of the plea hearing supports Plea Counsel's



testimony, considering Applicant was responsive to the plea court's questioning and participated in discussions regarding the proceedings. Additionally, Respondent admitted two letters written by Applicant evidencing Applicant was aware of the charges against him and actively participated in his case. (Res. Ex. 1 and 2). Notably, Judge Maddox stated Applicant seemed to understand what was taking place during his plea, and there was an order before the plea court stating Applicant's competency had been restored. State v. Motts, 391 S.C. 635, 707 S.E.2d 804 (2011) (A presumption of continued competency arises from a prior finding of competency).

Furthermore, Applicant relied solely on his diagnosis of schizophrenia and bipolar disorder and the fact he was not taking his medication at the time of his plea, to support his contention he was incompetent at the time of his plea. Sellers v. State, 362 S.C. 182, 607 S.E.2d 82 (2005), abrogated by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) ("A witness's mental illness is not enough to rebut the presumption set forth in Rule 601, SCRE.")). Applicant has failed to present testimony or other evidence that would overcome the presumption he was competent at the time of his plea. Jeter, 308 S.C. at 232, 417 S.E.2d at 596 (In a PCR action, the petitioner bears the burden of proof and is required to show by a preponderance of the evidence he was incompetent at the time of his plea); See Rule 71.2(e), SCRCP.

Therefore, this Court finds Plea Counsel was not deficient in failing to request Applicant undergo a psychological examination prior to his plea. Accordingly, this allegation is **DENIED** and **DISMISSED WITH PREJUDICE**.

A handwritten signature in black ink, appearing to be the initials 'JHL'.

**Allegation: Plea Counsel was ineffective for failing to perfect Applicant's appeal, denying Applicant of his constitutional rights to appeal.**

Applicant alleged he was denied his right to appeal because Plea Counsel failed to perfect his appeal.

"Following a trial, counsel must make certain the defendant is made fully aware of the right to appeal." Simuel v. State, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010). "However, the standard for a guilty plea differs." Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). "Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea." Id.; See Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000). Where an applicant's appeal is dismissed due to counsel's failure to comply with the local rules, an applicant is entitled to a new appeal. Roe, 528 U.S. at 485, citing Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985).

On direct examination, Applicant testified he requested Plea Counsel file an appeal on his behalf on the grounds Plea Counsel was ineffective for failing to have Applicant undergo a mental health evaluation in Anderson County prior to his plea. (PCR Tr. pp. 15-16). Applicant testified he received mail informing him Plea Counsel failed to fill out certain paperwork, but he never received a letter or request that he needed to provide certain information. (PCR Tr. pp. 16-17).

On direct examination, Plea Counsel testified he provided a guilty plea explanation to the Court of Appeals as required under Rule 203. (PCR Tr. pp. 26-27). Plea Counsel testified he could not recall personally forwarding the guilty plea explanation to Applicant, but stated the

paralegal should have forwarded it to Applicant as it is the standard practice. (PCR Tr. p. 27). Plea Counsel testified he could not find anything in his file indicating a copy of the guilty plea explanation was forwarded to Applicant, and he is merely assuming it was sent to Applicant. (PCR Tr. pp. 27-28).

On cross-examination, Plea Counsel testified he did not recall his conversation with Assistant Attorney General Lilian Meadows in February 2021, where he informed her he found the letter he was supposed to send to Applicant under some paperwork on his desk and he had forgotten to send it to Applicant. (PCR Tr. pp. 29-30). At the conclusion of the hearing, Respondent conceded Applicant did not knowingly and voluntarily waive his rights to appeal.

Therefore, this Court finds Plea Counsel failed to comply with the rules, resulting in the dismissal of Applicant's appeal and denying Applicant his constitutional right to appeal. Accordingly, this Court finds Applicant is entitled to belated appellate review pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974), and relief by way of this allegation is **GRANTED**.

***ALLEGATIONS RAISED DURING THE EVIDENTIARY HEARING***

**Allegation: Involuntary guilty plea due to mental condition.**

Applicant alleged his plea was not given freely and voluntarily because he did not understand what he was pleading to because of his mental condition.

On direct examination, Applicant testified he understood he was pleading to voluntary manslaughter, but he requested to plead to involuntary manslaughter. (PCR Tr. pp. 13-14). Applicant then testified he believed he was testifying to involuntary manslaughter. (PCR Tr. p. 14). Applicant testified he did not understand he was pleading to a twenty-year sentence, did not fully understand what he was pleading to, and did not fully understand the consequences of his plea. (PCR Tr. p. 15). Applicant testified he told Plea Counsel he was not on his medication at



the time of his plea. (PCR Tr. p. 15). Applicant testified that Plea Counsel was aware of his mental health issues. (PCR Tr. p. 16).

On cross-examination, Applicant testified that he wanted to plead to involuntary manslaughter and not voluntary manslaughter, but he understood what he was pleading to. (PCR Tr. pp. 18-19).

As an initial matter, this Court finds Applicant understood the consequences of his plea and the charges against him, as evidenced by the record of Applicant's plea hearing. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985)) (Statements 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))). Notably, Applicant testified at the evidentiary hearing he understood he pled to voluntary manslaughter, but that he *requested* to plead to involuntary manslaughter; evidencing Applicant understood his plea proceedings. Additionally, this Court has found Applicant was competent at the time of his plea even though he was not taking his medication at the time, *supra*

Therefore, this Court finds Applicant's plea was freely, voluntarily, and intelligently given. Accordingly, this allegation is **DENIED** and **DISMISSED WITH PREJUDICE**.

**Allegation: Plea Counsel was ineffective for failing to investigate and request psychological evaluation to determine if Applicant was criminally responsible.**

Applicant alleged Plea Counsel was ineffective for failing to investigate whether Applicant was criminally responsible for shooting the victim, and Plea Counsel should have requested Applicant be psychologically evaluated to determine his criminal responsibility.

Strickland v. Washington makes clear that defense counsel "has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary."

466 U.S. 668, 691 (1984). “A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). “[W]hile the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.” Ard v. Catoe, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007) (internal quotation marks omitted) (emphasis omitted). However, this duty is limited to a reasonable investigation. Id. at 331, 642 S.E.2d at 597.

Further, to prevail on a claim of ineffective assistance based on failure to investigate, a PCR applicant must ordinarily present some probative evidence that could have been discovered by a more thorough investigation. See Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998) (reversing the PCR court’s grant of relief where the applicant failed to “present any evidence of what counsel could have discovered or what other defenses he would have requested had counsel more fully prepared for the trial”); Lee v. State, 396 S.C. 314, 721 S.E.2d 442 (Ct. App. 2011) (“To show “prejudice within the context of counsel’s failure to fully investigate the petitioner’s mental capacity, ‘the [petitioner] need only show a reasonable probability that he was either insane at the time [the crime was committed] or incompetent at the time of the plea.’”)).

A person is insane if, due to mental disease or defect, he lacks the capacity: (1) to distinguish moral or legal right from moral or legal wrong, or (2) to recognize the particular act charged as morally or legally wrong. State v. Grimes, 292 S.C. 204, 205, 355 S.E.2d 538 (1987); S.C. Code § 17-24-10(A). The primary focus of the insanity defense is on the act charged. Grimes, 292 S.C. at 205, 355 S.E.2d at 539.



On direct examination, Applicant testified he was released from a mental institution, MUSC, 72 hours before committing the crime. (PCR Tr. p. 11). Applicant testified he was not on his medication from the time of his release to the date of his plea hearing. (PCR Tr. p. 11).

On direct examination, Plea Counsel testified he discussed Applicant's mental health issues, and the treatment Applicant was in. (PCR Tr. p. 23). Plea Counsel testified he does not recall discussing the timeline of events from the night of the incident, specifically when Applicant was released from MUSC to when the incident occurred. (PCR Tr. p. 25).

On cross-examination, Plea Counsel testified he did not check for criminal responsibility because Applicant appeared to be competent and understood what was going on. (PCR Tr. pp. 33-35). Plea Counsel testified he did not recall the specifics of Applicant's version of the events the night of the incident, but that Applicant did not deny he did it and he had no question about Applicant's competency. (PCR Tr. p. 38).

The facts of Applicant's case indicate the victim had a gunshot wound to the head, and upon investigation, detectives identified the shooter as Applicant. Applicant fled from the scene of the shooting and confessed that he shot the victim to his bondsman. Applicant was arrested a short time later. (Plea Tr. p. 13).

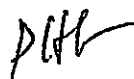
This Court finds Plea Counsel was not ineffective for failing to investigate Applicant's criminal responsibility and failing to request an evaluation to determine if Applicant was criminally responsible. Applicant failed to present probative evidence at the evidentiary hearing of what Plea Counsel could have discovered through a more thorough investigation. Applicant merely desires this Court to infer he was not criminally responsible because he was confined in a mental institution at MUSC days prior to the shooting. Notably, Applicant did not provide documentation regarding his confinement, why he was released, and any evaluations done while



he was at MUSC. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (“The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.”). Additionally, the testimony Applicant presented does not establish a reasonable probability Applicant was insane at the time of the incident. Moreover, the facts of Applicant’s case indicate he understood what he did was either morally or legally wrong, as Applicant fled the scene. State v. Poindexter, 314 S.C. 490, 431 S.E.2d 254 (1993) (Jury could deduce from lay testimony defendant fled state after murder and defendant appeared normal after murder that defendant was not insane, even where expert testimony favored findings defendant was insane)); See State v. Lewis, 328 S.C. 273, 494 S.E.2d 115 (1997); United States v. Jones, 601 F. App’x 297 (5th Cir. 2015) (District court did not err in rejecting robbery defendant’s insanity defense; witnesses testified that defendant fled from scene of his offenses, indicating consciousness of guilt, and defendant concealed evidence of his offenses)).

Therefore, Plea Counsel was not ineffective for failing to investigate Applicant’s criminal responsibility, and thus Plea Counsel was not ineffective for failing to request evaluation of Applicant’s criminal responsibility. Accordingly, this allegation is **DENIED** and **DISMISSED WITH PREJUDICE**.

[CONCLUSION AND SIGNATURE ON FOLLOWING PAGE]



**CONCLUSION**

Based on the evidence presented at the PCR hearing and a thorough review of the record before this Court, this Court finds Applicant has not proven any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief, except for Applicant's allegation regarding Plea Counsel's failure to perfect his appeal. Therefore, this application is denied and dismissed with prejudice, and Applicant's request for belated review is granted.

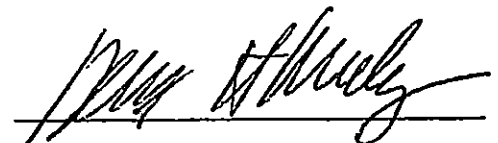
This Court notifies Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. See Rule 203 SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

**IT IS THEREFORE ORDERED:**

1. The applicant is granted a belated appellate review pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).
2. The balance of the application for post-conviction relief be denied and dismissed with prejudice; and
3. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 15<sup>th</sup> day of Dec., 2023.

'23 DEC 27 PM 4:27:55  
Anderson, SC CDC, CP/68



HONORABLE PERRY H. GRAVELY  
Presiding Circuit Court Judge  
Tenth Judicial Circuit

Piedmont, South Carolina