

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM COLLETON COUNTY
Court of Common Pleas
The Honorable G.D. Morgan, Jr., PCR Action Judge
2019-CP-15-00149

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Feb 13 2024

S.C. SUPREME COURT

SAMUEL CAMPBELL, #360837,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Samuel Campbell appeals the denial of his post-conviction relief application. The post-conviction relief action was heard by the Honorable G.D. Morgan, circuit court judge, on November 18, 2022, and was denied by written order issued filed on January 31, 2024. Applicant received notice of the judgement on February 5, 2024.

/s Chelsey F. Marto
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STATE OF SOUTH CAROLINA)
 COUNTY OF COLLETON)
 Samuel L. Campbell, SCDC #360837,)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT

Case No. 2019-CP-15-00149

ORDER OF DISMISSAL

COLLETON COUNTY
 COMMON PLEAS COURT
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This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Samuel L. Campbell (Applicant) on February 28, 2019. An evidentiary hearing convened before the Honorable G.D. Morgan, Jr. Applicant was present and represented by James K. Falk, Esquire. Assistant Attorney General Lauren Mims represented the State. At the hearing, Applicant testified on his behalf. Respondent called as a witness trial counsel Christopher J. Murphy. Following a thorough review of the records before this Court and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies and dismisses this application with prejudice.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections serving an aggregate twenty-two-year sentence. In May 2017 term, the Colleton County Grand Jury indicted Applicant for safecracking (2017-GS-15-00257); two counts of breaking into a motor vehicle or compartment to steal (2017-GS-15-00301; -00307); grand larceny, value greater than \$2,000, but less than \$10,000 (2017-GS-15-00303); burglary, 1st degree (2017-GS-15-00305); six counts of burglary – 2nd degree, violent (2017-GS-15-00296; -00297; -00298; -00299; -00308; -

0310); and accessory after the fact to felony (2017-GS-15-00309). These charges arose from nine separate incidents that occurred in January and February of 2017.

On December 14, 2017, Applicant appeared before the Honorable Brooks Goldsmith and pled guilty to safecracking; two counts of breaking into a motor vehicle; grand larceny; seven counts of second-degree burglary; and accessory after the fact to felony. Applicant entered the plea without recommendation or negotiations. Christopher Murphy, Esquire, represented Applicant, and Assistant Solicitor Ceth Utsey represented the State. Judge Goldsmith sentenced Applicant concurrently to twenty-two years for safecracking; five years for each breaking into a motor vehicle charge; five years for grand larceny; fifteen years for each burglary charge; and fifteen years for accessory after the fact.¹

Applicant filed a timely notice of appeal. On March 15, 2018, the South Carolina Court of Appeals dismissed Applicant's appeal pursuant to Rule 203(d)(1)(B)(iv), SCACR, for failure to provide a sufficient explanation to appeal from a guilty plea. The remittitur was sent April 2, 2018.

Current Application

On February 28, 2019, Applicant timely commenced this PCR action alleging he is being held in custody unlawfully for the following reasons:²

1. Ineffective assistance of counsel
 - a. Counsel failed to convey acceptance of the negotiated sentence offered by State and thereafter failed to enforce the 12-15 year plea offer that Applicant detrimentally relied on;
 - b. Counsel failed to object to "unsubstantiated remarks in the courtroom by [victim] Mr. O'Quinn about a case and charges that were never charged, only alleged and no documented confession that the court allowed in its setting during sentencing;"
 - c. Counsel failed to object to a statement made by victim Mr. Flowers regarding a burglary Applicant was not involved in, where Mr. Flowers stated, "Mr. Campbell and that group broke

¹ Judge Goldsmith also revoked Applicant's probation in full.

² Applicant's allegations have been summarized.

into my farmhouse, they ransacked the house. They even went into the attic. They went into the crawl space under the house. They stole everything they could from us;"

2. Involuntary guilty plea
 - a. Applicant detrimentally relied on the negotiated plea offer of 12-15 years when cooperating with the State prior to his guilty plea;
 - b. Applicant felt he "had to plead... because if he did not then he would of received a mandatory 30 years sentence;"
3. Trial court abused its discretion when sentencing Applicant to a greater sentence than that of his co-defendant;³ and
4. Double jeopardy.

SUMMARY OF PCR TESTIMONY

At the PCR hearing, Applicant testified he met with counsel three times at the detention center, including once after counsel received discovery. He stated counsel also met with him two days before he went to court. Applicant testified they did not really review discovery, although counsel told him he had "never seen a more well-put-together discovery." Applicant testified counsel also advised him that victim Orcini had written statements. He stated counsel advised him the solicitor had only offered thirty years.

Applicant testified that when counsel met with him two days before trial, counsel told him he met with the judge and solicitor to see what offer he could obtain or what sentence the judge would likely give at an open plea. Applicant stated counsel told him that the judge asked if anyone would be speaking against Applicant at trial. Applicant further testified counsel told him that "the judge said between 12 and 15 years is what he'd be willing to give me on an open plea." He further stated counsel relayed that if the judge felt like he needed to sentence him to more than 12 to 15 years, he would give Applicant a chance to withdraw his plea. However, Applicant stated he never saw anything in writing. Applicant maintained he did not believe he would receive a sentence of greater than fifteen years and requested to be resentenced in the 12-to-15-year range.

³ In its return, Respondent moved to summarily dismiss this ground.

Applicant testified he confessed when he was arrested and helped police recover some of the stolen property. He stated he had no idea his codefendants were planning to burglarize Dr. Flower's home—he just happened to show up at the house—and he was not called to provide safecracking tools. Applicant complained that his codefendants received a lighter sentence.

Applicant testified he pled guilty because plea counsel advised him to. When asked, however, if he wanted a trial, he replied, "Well, no, I never contested my—my guilt in it." He stated he wanted a better offer than thirty years, which was all he was offered. Ultimately Applicant agreed his goal was to plead guilty, and he understood it was a straight-up plea and he faced up to thirty years.

Plea counsel testified he met with Applicant more than three times. He stated Applicant had already provided two statements to police when counsel was retained. Counsel further explained Applicant had been released on probation in December 2016, and law enforcement had a warrant against him for absconding probation. He testified law enforcement found methamphetamine and items that appeared to be related to the robberies when they served the arrest warrant on Applicant.

Plea counsel testified he reviewed the discovery with Applicant and advised him the evidence against him was overwhelming. He stated the solicitors considered Applicant the ringleader and initially were not going to make any offers. Applicant agreed that his best course of action would be to see if counsel could obtain a favorable plea. Counsel explained the victims were prominent members of the community, and the State was unwilling to negotiate for a long time. Counsel stated he continued to attempt negotiations, and the solicitor eventually agreed to reduce the first-degree burglary charge to second-degree burglary, which removed a mandatory fifteen-year minimum. Counsel testified he relayed to Applicant that the State was willing to

reduce the first-degree burglary charge, but there were no other offers at that time. He stated he spoke with the judge in chambers, but the “judge did not make any type of recommendation as far as the time.” Counsel testified he advised Applicant he would likely get significant time, but he would not be facing life without parole. He advised Applicant he would likely get more than fifteen years but probably not thirty years, which was the maximum sentence for safecracking. Counsel clarified that Applicant understood it was a straight-up plea with no recommendations.

Counsel testified he understood from the beginning that Applicant wanted to plead guilty, although he “prepared in case something went south.” He explained that if he had to proceed on first-degree burglary, he “might as well roll the dice and go to trial.” However based on his discussions with Applicant, he understood that Applicant did not want a trial. Counsel believed it was in Applicant’s best interest to plead guilty.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Beaufort County Clerk of Court records of the underlying convictions, Applicant’s records from the South Carolina Department of Corrections, the trial transcript, Applicant’s appellate records, and the records from this PCR action. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. 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 (2017).

Ineffective Assistance of Counsel / Involuntary Plea

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). An applicant alleging ineffective assistance of counsel must prove “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 813. “The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases.” Watson v. State, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. at 441, 334 S.E.2d at 813. An applicant must overcome this presumption to received relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

To establish ineffective assistance of counsel, 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. Strickland, 466 U.S. at 687–88; Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625. “A PCR applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel’s errors, the applicant would not have pled guilty and would have insisted on going to trial.” Dalton v. State, 376 S.C. 130, 136, 654 S.E.2d 870, 873 (Ct. App. 2007). To prove prejudice following a guilty plea, the applicant “must show that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” Hill v. Lockhart, 474 U.S. 52, 59 (1985).

Advice regarding plea

In his application, Applicant alleged counsel was ineffective for failing to convey his acceptance of the negotiated sentence offered by State and thereafter failed to enforce the twelve-to-fifteen-year plea offer that Applicant detrimentally relied on. He further alleged his plea was involuntary because he detrimentally relied on the negotiated plea offer of twelve-to-fifteen years when cooperating with the State prior to his guilty plea; and he felt he “had to plead... because if he did not then he would of received a mandatory thirty-year sentence. This Court finds Applicant did not prove this claim.

Initially, this Court finds credible counsel’s testimony that the State never made any offers other than to reduce first-degree burglary to second-degree burglary, and he did not advise Applicant that the sentencing range was twelve to fifteen years. This Court further finds credible counsel’s testimony that Applicant wanted to plead guilty. In fact, this was consistent with Applicant’s testimony that he did not want a trial because he “never contested his guilty.” Based on the foregoing testimony as well as counsel’s credible testimony about the strength of the State’s case, this Court finds counsel’s advice was reasonable under prevailing professional norms and not deficient. Likewise, this Court finds Applicant did not prove a reasonable likelihood he would have proceeded to trial but for counsel’s advice. Again, Applicant himself acknowledged he never contested his guilt and did not want a trial. Thus, Applicant did not prove counsel was ineffective.

Applicant likewise did not prove his plea was not knowing or voluntary. This Court finds credible counsel’s testimony that Applicant understood it was a straight-up plea with no recommendations. Further the plea colloquy itself shows Applicant entered the plea knowingly and voluntarily, with an understanding of the sentence he faced. (Plea 3-4, 14-15). Thus, Applicant did not prove his plea was involuntary, and this claim is denied.

Failed to object to victim statements

In his application, Applicant alleged counsel was ineffective for not objecting to statements of victims at his plea hearing. However, Applicant did not offer any testimony or argument on this at the PCR hearing to show what basis counsel should have objected. Further, this court is not aware of an objection counsel could have made that would have precluded the victim statements. Ultimately Applicant did not meet his burden of proof, and this claim is denied.

Trial court error

In his application, Applicant alleged the trial court committed error by sentencing him to a greater sentence than his co-defendants. This Court agrees with the State's return that this is not a cognizable PCR claim and dismisses this claim.

Double Jeopardy

In his application, Applicant alleged "double jeopardy." However, Applicant did not offer any testimony or argument on this at the PCR hearing to show a double jeopardy violation. Further, this Court has reviewed the records and does not see any evidence of a double jeopardy violation. Ultimately Applicant did not meet his burden of proof, and this claim is denied.

CONCLUSION

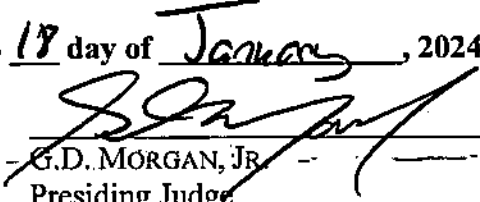
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. This, this application is denied and dismissed with prejudice. Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgement. See Rule 203, SCAC. Applicant has the right to an 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). If applicant wishes to seek appellate review, PCR counsel must serve and file

a notice appeal on applicant's behalf. Rule 71.1(g), SCRCR. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed, with prejudice; and
2. Applicant shall be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 18 day of January, 2024.


G.D. MORGAN, JR.
Presiding Judge
Fourteenth Judicial Circuit

Beaufort, South Carolina.



State of South Carolina
The Circuit Court of the Thirteenth Judicial Circuit

G.D. Morgan, Jr.
Judge

Greenville County Courthouse
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January 24, 2024

Colleton County Clerk's Office
Civil Records
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Walterboro, SC 29488

2024 JAN 31 PM 4: 54
COLLETON COUNTY
COMMON PLEAS COURT

RE: *Samuel Campbell, SCDC # 360837, Case no.: 2019CP1500149*

To Whom It May Concern:

Enclosed herewith, please find an Order of Dismissal for the above referenced case signed by Judge G.D. Morgan Jr. Please file this order, and if you need anything else related to this matter, please do not hesitate to contact us.

With kindest regards,

Brittany Long
Administrative Assistant to
The Honorable G.D. Morgan, Jr.

bpl
Enclosures