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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable George M. McFaddin, Jr., Circuit Court Judge

Case No. 2019-CP-32-03518

Eddie L. Bass, III, #378937, ... Petitioner,

v.

State of South Carolina, ... Respondent.

NOTICE OF APPEAL

Applicant, Eddie L. Bass, III, appeals the order of the Honorable George M. McFaddin, Jr, filed on or about February 26, 2024, and received by the undersigned on March 28, 2024.

April 4, 2024

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STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)	IN THE COURT OF COMMON PLEAS FOR THE ELEVENTH JUDICIAL CIRCUIT
Eddie Bass, SCDC #378937, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2019-CP-32-03518 **ORDER OF DISMISSAL**

I. INTRODUCTION

This matter comes before the Court by way of post-conviction relief (PCR) action commenced by Eddie Bass (Applicant) on August 30, 2019, alleging he is entitled to post-conviction relief based on multiple allegations of ineffective assistance of counsel. The State filed a Return and Motion for a More Definite Statement on February 24, 2020. A hearing into the matter convened before the undersigned on October 13, 2022, at the Lexington County Courthouse. Applicant was present at the hearing and represented by Ashley A. McMahan, Esquire. Assistant Attorney General Samantha Weidauer appeared on behalf of the State. At the hearing, testimony was heard from four witnesses: Applicant; Applicant's mother, Dewanda Abney; and both of Applicant's trial attorneys, Michael Laubshire and Richard Dolce.

In addition to testimony from those individuals, this Court had before it: (1) the transcript from Applicant's January 28 and 29, 2019 trial and guilty plea (hereafter "Tr."); (2) records from the Lexington County Clerk of Court regarding Applicant; (3) Applicant's inmate records from the South Carolina Department of Corrections; and (4) the pleadings filed in the instant post-conviction relief action.

Following a thorough review of the record and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant failed to meet the high burden required for a grant of post-conviction relief pursuant to Rule 71.1, SCRCP, and the Uniform Post-Conviction Procedure Act[1]. For the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

II. PROCEDURAL HISTORY

Applicant is presently incarcerated according to an order of commitment of the Lexington County Clerk of Court. During its June 2018 term, the Lexington County Grand Jury indicted Applicant for trafficking in heroin, second or subsequent offense, 4g or more but less than 14g (2018-GS-32-1887), possession of a weapon during the commission of a violent crime (2018-GS-32-1888), possession with intent to distribute cocaine, second offense (2018-GS-32-562), possession with intent to distribute crack cocaine or crack base, second offense (2018-GS-32-557), and failure to stop for a blue light not resulting in injury or death, first offense (2018-GS-32-552). During its November 2018 term, the Grand Jury indicted Applicant for murder (2018-GS-32-3656) and possession of a weapon during the commission of a violent crime (2018-GS-32-3657).

Applicant's trial on the November 2018 indictments for murder and possession of a weapon during a violent crime began on January 28, 2019. (Tr. p. 4, l. 2-12.) Applicant was represented by Michael Vincent Laubshire, Esquire, and Richard James Dolce, Esquire. Assistant Solicitors Laura Suzanne Mayes and Sutania Alicia Fuller, both of the Eleventh Circuit Solicitor's Office, prosecuted the case. The Honorable William P. Keesley presided. At the start of the second day of trial, on January 29, 2019, Applicant pleaded guilty to voluntary manslaughter, a lesser-included offense of murder. Judge Keesley sentenced Applicant to imprisonment for twenty-eight years plus

[1] S.C. Code Ann. §§ 17-27-10 to -160.

costs and assessments, with credit for time served. In exchange for Applicant's plea to voluntary manslaughter, the State dismissed the November 2018 indicted weapons charge; the five June 2018 indicted offenses mentioned above; and warrants for the sale or delivery of a pistol to, and possession by, certain persons unlawfully (2017A3210201939) and unlawful carrying of a pistol (2017A3210201938) that were outstanding but had not yet been presented to the Lexington County Grand Jury. (Tr. p. 167, l. 1 – p. 168, l. 15.)

Applicant did not appeal his conviction or sentence. Applicant did file an Application for PCR on August 30, 2019. The State submitted its Return on February 24, 2020. Attached to the State's Return and incorporated by reference in this Order are the records of the Lexington County Clerk of Court regarding the subject conviction, the records from the Lexington County Clerk of Court regarding the offenses that were dismissed as a part of Applicant's plea deal, the transcript from Applicant's trial and plea hearing, and the application for post-conviction relief. These items, as well as Applicant's Amended Application filed December 3, 2021, and the testimony of the witnesses at the PCR hearings were considered by this Court.

III. FACTUAL HISTORY

The case began when Applicant met up with some of his acquaintances at a residence in Lexington County, South Carolina. The acquaintances included JaQuan Mavins. While at that residence, Applicant became enraged when someone at the residence had some marijuana that he believed was his. As a result, he began demanding the persons present tell him who took his drugs. It's unknown who gave the name "Cruz Jones" to Applicant, but at some point while at that residence Applicant began operating under the

belief that Cruz Jones had been the one who had taken his drugs.[2] (Tr. p. 163, l. 19 – p. 166, l. 21.) Applicant then left that residence in search of Jones. Applicant was armed with a handgun, which was initially located in his waistband. Prior to leaving and traveling offsite, Applicant stated "Somebody's got to give me answers. Somebody's gonna give me answers." Applicant told Mavins to ride with him and Mavins, who indicated he was afraid when he saw Applicant take the gun out of his waistband and put it in his pocket, did. Id.

Applicant and Mavins then went to several locations. They first went to the Applicant's girlfriend's residence. From there they went to a residence where Jones' girlfriend ("Ms. Hatfield") resided. Applicant told Ms. Hatfield that Jones had stolen his speakers and $2700 worth of drugs and that he needed to talk to Jones immediately. Applicant gave her his phone number and said "have Cruz call me." Ms. Hatfield indicated she "knew something was wrong" and that she believed Applicant had a gun in his pocket. (Id.; see also Tr. p. 182, l. 3-16.) Applicant left Ms. Hatfield's residence about 15 minutes before the murder occurred.

In that time, Applicant located Jones (hereafter, the "Victim") in a car at a residence at 520 Blackville Road in Lexington County, South Carolina. At that point, Applicant, still armed with that same gun that he had back at the Sharon Church Road residence, exited the vehicle he was riding in and approached the vehicle that the Victim was in. Applicant opened the Victim's car door, surprising the Victim, and there was some initial tussling between the men before Applicant began pistol-whipping the Victim repeatedly. (Tr. p. 166, l. 1-18; see also p. 172, l. 19 – p. 174, l. 12.) When pistol-whipping the Victim, Applicant hit him so hard spatter consistent with repeated blows was left across

[2] The State indicated they never found evidence that this was true, only that Applicant believed it to be true. (Tr. p. 174, l. 23 – p. 175, l. 7.)

the roof of the car. (Tr. p. 181, l. 15-25.) The Victim staggered backwards from the blows, after which he was shot in the head by Applicant, who was then several feet away. (Tr. p. 173, l. 2 - p. 174, l. 12; see also Tr. p. 180, l. 13-17.) Applicant's hat was found at the crime scene, with Applicant's DNA on it, further corroborating eyewitness testimony placing Applicant at the scene.[3] (Tr. p. 180, l. 18-24; Tr. p. 183, l. 1-2.)

IV. ISSUES BEFORE THIS COURT

In his original application for post-conviction relief, Applicant alleged as grounds for relief:

1. Applicant did not knowingly and voluntarily waive his right to appellate review of his conviction and sentence.

2. Applicant's trial counsel was ineffective for:
   a. giving bad advice and creating expectations that were not followed through.
   b. failing to adequately argue issues regarding Applicant's indictment.
   c. failing to reasonably investigate to discover facts that might have mitigated Applicant's sentence.
   d. failing to argue mitigation on Applicant's behalf during sentencing.
   e. failing to give Applicant a copy of evidence supplied to the defense in discovery for his review.

3. Applicant's guilty plea was not knowingly and voluntarily made because his attorneys coerced him into pleading guilty.

(Application for PCR, filed 8/30/2019.)

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Standard of Review

[3] Applicant indicates he goes by the name "Nook." (PCR, p. 32, l. 24 - p. 33, l. 4.)

The grounds for relief upon which Applicant proceeded at the evidentiary hearing pertain to alleged ineffective assistance of counsel. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). It is common that post-conviction relief allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of his 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 hearing, 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, 466 U.S. at 687. 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)).

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment." Strickland, 466 U.S. at 690 (emphasis added). The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance" demanded of attorneys in criminal cases. Id.

Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonably professional assistance." Butler, 286 S.C. at 445, 334 S.E.2d at 816; *see* White v. Singletary, 972 F.2d 1218, 1220 (11th Cir. 1992) (instructing reviewing courts evaluating a claim of ineffective assistance of counsel to "at the start presume effectiveness" and "always avoid second guessing with benefit of hindsight"). "The burden of rebutting this presumption rests squarely on the defendant...[i]t should go without saying that the absence of evidence cannot overcome [i]t.'" Dunn v. Reeves, 594 U.S. ___, ___, 141 S. Ct. 2405, 2410 (2021) (quoting Burt v. Titlow, 571 U.S. 12, 22–23 (2013)). In fact, "even if there is reason to think that counsel's conduct 'was far from exemplary,' a court still may not grant relief if '[t]he record does not reveal' that counsel took an approach that *no competent lawyer would have chosen.*" Id. (alteration in original) (emphasis added) (quoting Titlow, 571 U.S. at 23–24).

Review of counsel's actions is hallmarked by deference, as "it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689. No

particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Id. at 688–89; cf. id. at 691 ("Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another."). "Defense lawyers have 'limited' time and resources, and so must choose from among 'countless' strategic options." Dunn, 594 U.S. at ___, 141 S. Ct. at 2410 (quoting Harrington, 562 U.S. at 106–107).

Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Strickland, 466 U.S. at 689; *see* Mazzell v. Evatt, 88 F.3d 263, 269 (4th Cir. 1996) (declining "to allow an ineffective assistance of counsel claim to create a situation where post-conviction attorneys stroll in with the full benefit of hindsight to second-guess trial lawyers who professionally discharge their duties to their clients under the manifold pressures of a state trial"). The ultimate question is not whether counsel's actions were reasonable, but whether there is any reasonable argument counsel satisfied Strickland's deferential standard.

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. 466 U.S. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). A reasonable probability is a probability "sufficient to undermine confidence in the

outcome." Strickland, 466 U.S. at 694. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The applicant's burden of proving both Strickland components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Id. at 686; see Nix v. Whiteside, 475 U.S. 157, 175 (1986) (noting that under Strickland, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding"); cf. United States v. Morrow, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.").

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). When reviewing a guilty plea, 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, 364-365, 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).

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).

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)). Admissions made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements. Id. at 137–38, 654 S.E.2d at 874; see also 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").

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, 345 S.C. at 20, 546 S.E.2d at 419. 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. 356, 371, 66, 137 S. Ct. 1958, 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. 356, 371, 137 S. Ct. 1958, 1967. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences." Id. 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 v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

VI. FINDINGS AS TO CLAIMS RAISED

Applicant has alleged seven specific claims of ineffective assistance of trial counsel and asserts that as a result of Counsel's purported errors, he is entitled to have his conviction reversed or the case remanded for appellate review. This Court finds Applicant has failed to meet his requisite burden of proof as to each allegation. Each allegation is addressed below:

Allegation #1: Applicant did not knowingly and voluntarily waive his right to appellate review of his conviction and sentence.

This allegation is without merit due to the failure of the Applicant to present any evidence to support the allegation. Applicant asserted in his application counsel was constitutionally ineffective in failing to appeal and that Applicant did not knowingly and voluntarily waive his right to appellate review. Applicant did not argue this issue at the PCR hearing. Further, I find Applicant was specifically instructed by the trial court regarding his right to appeal and that Applicant indicated to the trial court that he understood that right. (Tr. p. 197, l. 23 – p. 198, l. 5.) Ultimately the choice and

the decision whether or not to appeal are Applicant's. He was informed of his right and did not choose to file an appeal.

Counsel has a constitutionally imposed duty to consult with a defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores- Ortega, 528 U.S. 470, 120 S.Ct. 1029 (U.S., 2000). Though counsel is required to make certain that a defendant is made fully aware of his or her right to appeal after a *trial*, a different standard applies to a guilty plea:

> 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.

Turner v. State, 380 S.C. 223, 224-25, 670 S.E.2d 373, 374 (2008) (citations omitted); see also Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000) (imposing the duty to consult when there is reason to think either that a rational defendant would want to appeal or that the particular defendant reasonably demonstrated interest in doing so); contra Frazer v. South Carolina, 430 F.3d 696 (4th Cir. 2005) (reading Flores-Ortega to mean counsel generally has a duty to consult with his client regarding whether to pursue an appeal). Therefore, in a collateral action attacking a guilty plea, the "bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief." Jones v. State, 382 S.C. 589, 598, 677 S.E.2d 20, 23-24 (2009) (quoting Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995)).

Experienced PCR counsel was aware Applicant had initially raised this issue and chose not to argue it at the PCR hearing. As significant is that Applicant—the very person who made the claim—was asked at least three times if there was anything else he wished to raise or tell the PCR court and he did not raise the issue. (See PCR, p. 10, l. 2 – p. 52, l. 22 (Applicant's testimony at the PCR hearing.)) At no time in his testimony did he indicate that he wanted to appeal his guilty plea or that he asked his counsel to file an appeal. Applicant has abandoned the issue by his failure of proof at the hearing. PCR, p. 58, l. 10-21. This Court granted the State's motion for directed verdict on the claim during the hearing after the Applicant's testimony. PCR, p. 58, l. 20-21.

Alternately, there was no evidence presented that he desired to appeal the guilty plea or sentence. Importantly, there was no objection to the circumstances at the plea or the sentence. It was the product of a negotiated plea bargain in which the State agreed to allow a plea to the lesser offense of voluntary manslaughter rather than murder, and the State agreed to *nolle pros* possession of a weapon during a violent crime, possession of a firearm, possession with intent to distribute crack cocaine, trafficking in heroin mixed with fentanyl arising from the November 2017 incident. Tr.p. 167-168. The Applicant's sentence was within the statutory limits for voluntary manslaughter for 28 years. Absent an objection to the plea or sentence,

Further, Applicant waived his trial rights when he entered a guilty plea. Under Weathers and Simuel, he has to show either extraordinary circumstances or that he asked counsel to appeal and that counsel did not. Applicant did not show either of these two things. Applicant has not established any 6th Amendment deficiency or prejudice regarding pursuing an appeal of his guilty plea or sentence. Accordingly, this Court denies and dismisses this allegation with prejudice.

Allegation #2: Applicant's Counsel was ineffective for "giving bad advice and expectations that were not followed through."

Next, Applicant asserts that Counsel was ineffective for allegedly "giving bad advice and expectations that were not followed through." On this point Applicant testified first that he'd been offered an open plea. (PCR, p. 13, l. 16-19 ("He said, the good news is they came at you with a plea… but, the bad news is, it's an open plea.")) Thereafter, Applicant testified Counsel told him "if you take this plea deal, I can get you ten years, only if you tell the judge you were not promised anything." (PCR, p. 13, l. 25 – p. 14, l. 2.) Applicant's trial counsel testified differently on this point. He testified that there was never a ten-year offer and that Applicant was never told there was. (PCR, p. 65, l. 13 – 20.) Counsel testified the only offer was for Applicant to plead straight up to voluntary manslaughter and, in return, "if he pled to voluntary manslaughter, with no cap or anything," the State agreed to dismiss all the other charges Applicant had pending, which were numerous. (PCR, p. 62, l. 16 - 18; p. 64, l. 18 – p. 65, l. 20.) I find Counsel's testimony on this point credible.

Further, at the plea, the trial judge told the Applicant that if there was any deal it needed to be on the record in open court or it didn't matter. Applicant indicated he understood. (Tr. p. 167, l. 1 – p. 168, l. 20.) The trial judge then asked Applicant if there was any deal other than reducing the charge from murder to voluntary manslaughter. The Solicitor indicated "yes," and ran through the multitude of charges that were being dropped in exchange for the plea, one of which, being a second offense would have been a mandatory 25 years. Id. Following the Solicitor's statement of the deal, Applicant's attorney was asked if that was the deal as he understood it and he indicated it was. (Tr. p. 168, l. 8 – 11.) Immediately thereafter, Applicant was asked if anyone had promised him anything other than what had just been stated and he indicated "No, sir." (Tr. p. 168, l. 12 – 15.)

I find the evidence compelling on the point there was no promise regarding sentencing. This Court further finds Applicant has not established any "bad advice and expectations that were not followed through." The Applicant was advised of the potential sentence he could receive. (Tr. p. 169, l. 5 – 7.) Moreover, Applicant has not established either an error by Counsel or that, but for the error, there is a reasonable probability that he would not have pled guilty and, instead, would have insisted on going to trial. Accordingly, this Court denies and dismisses this allegation with prejudice.

Allegation #3: Applicant's Counsel was ineffective for failing to adequately argue issues relating to Applicant's indictment.

Next, Applicant asserts that Counsel was ineffective for failing to adequately argue issues relating to Applicant's indictment. (PCR, p. 28, l. 9 - p. 31, l. 5). On this point Applicant testified that he was upset for two reasons. First, because only the lead investigator testified before the Grand Jury (as opposed to the State putting up both the lead investigator and other witnesses), and this deprived the Grand Jury of the right to cross-examine the witnesses. Id. Then, second, because he assumed the investigator told the Grand Jury that he (Applicant) pistol-whipped and shot the Victim and Applicant did not agree with that statement. Id. Counsel Laubshire testified that he had reviewed the indictment and did not see any issues with it. PCR, p. 67, l. 8-23. Counsel also stated that Applicant never mentioned to him any concerns about the grand jury. PCR, p. 74.

Recently the Court of Appeals addressed sufficiency of indictments in Carrier v. State, 441 S.C. 547 (Ct. App. 2023) "In determining whether an indictment meets the sufficiency standard, the court must look at the indictment with a practical eye in view of all the surrounding circumstances." State v. Gentry, 363 S.C. 93, 103, 610 S.E.2d 494, 500 (2005). "When a defendant timely moves to quash an indictment ... the [trial] court must determine whether the defendant[']s constitutional right to have the criminal allegations against him weighed by a properly constituted

grand jury has been violated." State v. Shands, 424 S.C. 106, 119, 817 S.E.2d 524, 531 (Ct. App. 2018) (quoting Evans v. State, 363 S.C. 495, 510, 611 S.E.2d 510, 518 (2005)). "[A]n indictment is a notice document. The primary purpose ... of an indictment [is] to put the defendant on notice of what he is called upon to answer ...." Edwards v. State, 372 S.C. 493, 496, 642 S.E.2d 738, 739 (2007). Specifically, an indictment must "apprise [the defendant] of the elements of the offense and ... allow him to decide whether to plead guilty or stand trial, and ... enable the circuit court to know what judgment to pronounce if the defendant is convicted." Id. Additionally,

> [e]very indictment shall be deemed and judged sufficient and good in law which, in addition to allegations as to time and place, as required by law, charges the crime substantially in the language of the common law or of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood and, if the offense be a statutory offense, that the offense be alleged to be contrary to the statute in such case made and provided.

S.C. Code Ann. § 17-19-20 (2017).

In Evans, the Court delineated three categories of challenges to indictments and their sufficiency. 363 S.C. at 510, 611 S.E.2d at 518. The first category pertains to grand juries "which [are] established or constituted illegally." Id. Indictments issued by these illegally constituted grand juries are "insufficient ... as a matter of law ... to give the required notice to a defendant" and are "deemed a nullity." Id. "In such cases, a defendant['s] challenge 'does not assert a disqualification which affects only a member of a body otherwise lawful, nor a mere irregularity in doing [that] which the law requires[.]' " Id. (quoting State v. Edwards, 68 S.C. 318, 322, 47 S.E. 395, 396 (1904), overruled on other grounds by Evans, 363 S.C. at 510 n.7, 611 S.E.2d at 518 n.7).

The second category focuses on "lesser irregularit[ies]" such as "proving the disqualification of an individual grand juror." Id. at 512, 611 S.E.2d at 519.

Finally, the third category encompasses cases in which "a defendant ... assert[s] a truly minor irregularity in the functioning or processes of the grand jury." Id. at 512–13, 611 S.E.2d at 519. For the third category of cases, "[t]he circuit court ordinarily should not quash an indictment when a defendant ... asserts a truly minor irregularity in the grand jury process." Id. at 513, 611 S.E.2d at 520; see, e.g., State v. Orrs, 189 S.C. 1, 199 S.E. 865 (1938) (rejecting challenge to grand jury based on some paper ballots having red lines while others had blue lines in contravention of a statute requiring ballots be on same type of paper); State v. Jeffcoat, 26 S.C. 114, 1 S.E. 440 (1887) (rejecting challenge to grand jury drawn before effective date of new statute changing time for court to be held).

The Applicant fails to show deficient performance on the part of counsel by failing to object to the lead investigator being the sole name listed as a witness before the grand jury and his speculation on what was stated. Responsible counsel would not have made that alleged objection. See State v. Massey, 430 S.C. 349, 358, 844 S.E.2d 667, 671 (2020) ("A motion to quash does not test the sufficiency of the State's evidence; the sufficiency of the evidence can properly be challenged only by a motion for a directed verdict following the State's presentation of its case at trial.").

Applicant pled guilty to manslaughter following a recitation of the facts of the case which included that he pistol-whipped and shot the Victim. (Tr. p. 166, l. 1-25.) He did not disagree with the Solicitor's recitation and admitted his guilt. Id. I do not find that Counsel was ineffective by failing to argue issues related to Applicant's indictment. Moreover, Applicant has not established either an error by Counsel or that, but for the error, there is a reasonable probability that he would not have pled guilty and, instead, would have insisted on going to trial. Accordingly, this Court denies and dismisses this allegation with prejudice.

Allegation #4: Applicant's Counsel was ineffective for failing to reasonably investigate to discover facts that might have mitigated Applicant's sentence.

Next, Applicant asserts that Counsel was ineffective for allegedly failing to reasonably investigate to discover facts that might have mitigated Applicant's sentence. Specifically, Applicant indicated he felt two of the State's witnesses should have been brought in to speak on his behalf at the sentencing portion of the plea. (PCR, p. 23, l. 17- p. 24, l. 6.) The Solicitor recapped the case at sentencing and referenced statements by the two witnesses. One of the statements had Applicant looking for the Victim minutes before the shooting and the other was the statement of a direct witness to the assault and shooting incidents. (Tr. p. 163, l. 14 – p. 166, l. 18.). Counsel testified that he spoke with the Applicant about mitigation concerning his girlfriend who was pregnant with his child and felt he presented to the judge everything that they had told him. PCR, p. 69, l. 1-12. Further, he stated that Applicant had indicated that he wished he would have called Ida Miller and Jaquan Mavens during sentencing, but he would not have done that. Counsel testified that he spoke with Ida Miller who did not give him anything good about the Applicant so he did not call her. He stated there was a strategic reason in not calling her. Concerning Jaquan Mavans, counsel indicated that he never spoke to him because Mavens did not wish to speak to him. PCR, p. 69-70.

In this instance, trial strategy of Counsel in not calling the witnesses during the mitigation portion of the sentencing aspect of the plea is within an objective standard of reasonableness. Moreover, Applicant has not established either an error by Counsel or that, but for the error, there is a reasonable probability that he would not have pled guilty and, instead, would have insisted on going to trial. Accordingly, this Court denies and dismisses this allegation with prejudice.

Allegation #5: Applicant's Counsel was ineffective for failing to argue mitigation on Applicant's behalf during sentencing.

Next, Applicant asserts that trial counsel was ineffective for failing to argue mitigation on Applicant's behalf during sentencing. The record demonstrates Counsel made several mitigation arguments to the court. (Tr. p. 192, l. 3 – p. 194, l. 4; see also p. 197, l. 14 – 22.) Applicant himself also addressed the trial court during the sentencing phase requesting sympathy. (Tr. p. 194, l. 8 – p. 195, l. 7.) Finally, Applicant's mother and girlfriend argued for mitigation in sentencing. (Tr. p. 195, l. 8 – p. 197, l. 1.) This Court finds Counsel's performance, including in terms of arguing mitigation on Applicant's behalf, was within an objective standard of reasonableness. Moreover, Applicant has not established either an error by Counsel or that, but for the error, there is a reasonable probability that Applicant would not have pled guilty and, instead, would have insisted on going to trial. Accordingly, this Court denies and dismisses this allegation with prejudice.

Allegation #6: Applicant's Counsel was ineffective for failing to give him a copy of discovery for his review.

Next, Applicant asserts that Counsel was ineffective for allegedly failing to provide a copy of discovery for his review. On this point Counsel testified that he met with Applicant multiple times and was familiar with Applicant's case and had sufficient time to go over the evidence. (PCR, p. 59, l. 15 – p. 62, l. 11.) He further testified he went through the material with the Applicant. (Id. at p. 62, l. 1-2.) Counsel acknowledged he did not give the Applicant a personal copy of discovery while Applicant was in jail but that, in addition to going through it with Applicant, "[a] copy was provided to his family. (Id. at p. 60, l. 25 – p. 62, l. 11.) Applicant testified to requesting a copy both for his family and for a family friend lawyer and it is clear from the testimony that, in addition to the family receiving a copy, the family friend lawyer did as well. (Id.; see also PCR, p. 37, l. 16 -18; PCR, p. 39, l. 12 – p. 40, l. 9.) Finally, Applicant was asked at the plea if he was satisfied with Counsel's performance and if Counsel had done all asked of him. (Tr. p. 168, l. 16-22.)

Applicant responded that he was fully satisfied with Counsel and that there was not anything that he wanted his counsel to do that they had not done. Id.

This Court finds Counsel's performance, including in terms of providing discovery to Applicant by going through it with Applicant and providing a hard copy to Applicant's family and an external attorney (both at Applicant's request), was within an objective standard of reasonableness. Moreover, Applicant has not established either an error by Counsel or that, but for the error, there is a reasonable probability that he would not have pled guilty and, instead, would have insisted on going to trial. Accordingly, this Court denies and dismisses this allegation with prejudice.

Allegation #7: Applicant's guilty plea to voluntary manslaughter was not knowingly and voluntarily given because his attorneys coerced him into pleading guilty.

Finally, Applicant asserts that Counsel was ineffective because Applicant's guilty plea was coerced and, thus, was not knowingly and freely given. At the PCR hearing, Applicant indicated he wanted to go to trial instead of accepting a plea offer. (PCR, p. 46, l. 2-3.) However, the evidence from the plea hearing and Counsel's testimony contradicts this statement. At the plea hearing the Applicant was asked if he had had time to discuss the case with Counsel and, further, if he had had enough time to "make up your own mind." (Tr. p. 168, l. 23 – p. 169, l. 4.) Applicant answered "Yes, sir" to both questions. Id. Applicant also admitted at the PCR hearing that he recalled the judge telling him that the charge carried up to 30 years. (PCR, p. 47, l. 1-7; see also Tr. p. 161, l. 8-15 (Trial counsel telling court in front of Applicant that he explained possible punishments, including the maximum) and Tr. 169, l. 5-7 (Court telling Applicant that "[v]oluntary manslaughter is a felony and carries up to 30 years in prison" and asking if Applicant understood that and Applicant's response, which was "Yes, sir.")). Applicant also admitted that he did not bring up or mention the alleged agreement when the Court asked if he had been promised anything not on the record. (Id. at p. 47, l. 8-17.)

I find the evidence refutes Applicant's claim the plea was not knowingly and voluntarily made. First, at the Plea, the plea deal was laid out by the Assistant Solicitor and Applicant admitted there was no deal not covered on the record. (Tr. p. 166, l. 19 – p. 169, l. 7.) Next, the Court covered the voluntariness of the Plea and that Applicant had received no promises that were not already on the record. (Id.) Applicant indicated he was fully satisfied with Counsel, had had enough time to meet with Counsel, had had enough time to discuss his case properly with Counsel, had no complaint with his attorney or anyone else that dealt with the case, and was pleading because of a decision made of his own free will. (Tr. p. 160, l. 16 – p. 171, l. 25.)

The Court also covered the maximum possible sentence for the crime and Applicant indicated he understood. (Tr. 169, l. 5-7.) Applicant was also told if any plea bargain had been made or there was an any external agreement regarding a sentence, it needed to be on the record, or he would lose whatever may have been promised and he indicated all the plea agreements were on the record. (Tr. 168, l. 8-15.) Lastly, I found credible Counsel's testimony that he did not promise Applicant a ten-year sentence. (PCR, p. 65, l. 13-20 ("[T]hat was never conveyed to him, and I never told him he would get any number of years, other than he very well may get 30 years.")).

Ultimately the choice and the decision to plead were Applicant's. He was *informed* of the sentence he faced and freely, voluntarily, knowingly, and intelligently chose to plead guilty. This Court finds Applicant has not established any deficiency of Counsel regarding Applicant's decision to plea, nor any coercion. He also has not shown Counsel's advice to plead guilty was not within the competence demanded of attorneys in criminal cases. Further, I find the Applicant was advised of the potential sentence he could receive. Moreover, Applicant has not established either an error by Counsel or that, but for the error, there is a reasonable probability that he would not have pled

guilty and, instead, would have insisted on going to trial. Accordingly, this Court denies and dismisses this allegation with prejudice.

VII. CONCLUSION

After careful consideration of Applicant's Application and Amended Application for Post-Conviction Relief, the Record of the case, the arguments of Attorneys Weidhauer and McMahan, and the testimony of witnesses, this Court finds Applicant has not met this burden of establishing any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. To satisfy the two prongs of Strickland, Applicant must show Counsel was deficient in his representation and also show the deficiency resulted in prejudice. Applicant has not shown that counsel's representation fell below an objective standard of reasonableness or that his advice to plead guilty was not within the competence demanded of attorneys in criminal cases. In addition to not having shown ineffective performance, Applicant also has not shown that, but for Counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial. Therefore, the Court denies Applicant's requested relief in this matter.

This Court notes if Applicant desires to appeal this Order, he must file and serve a notice of appeal within thirty days from the receipt of this Order through his counsel of record. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the Applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and

2. Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 5 day of February, 2024.

GEORGE MCFADDIN
Presiding Judge
Eleventh Judicial Circuit

Lancaster, South Carolina