

STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM LAURENS COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Edward W. Miller, Circuit Court Judge

Case No. 2020-CP-30-00174

Dante Z. Wheeler, #370182, Petitioner,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Applicant, Dante Z. Wheeler, appeals the order of the Honorable Edward W. Miller, filed on or about April 8, 2024.

April 21, 2023



ASHLEY A. MCMAHAN, ESQUIRE

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ATTORNEY FOR APPLICANT

Opposing Counsel:
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STATE OF SOUTH CAROLINA)
 COUNTY OF LAURENS)
)
 Dante Z. Wheeler, SCDC #370182,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE EIGHTH JUDICIAL CIRCUIT

Case No. 2020-CP-30-00174

ORDER OF DISMISSAL

K. MICHELLE SIMMONS
 2024 APR - 8 A 10: 00
 LAURENS COUNTY
 CLERK OF COURT

INTRODUCTION

The matter before this Court is an action for post-conviction relief (PCR) commenced by Dante Z. Wheeler (Applicant) on February 18, 2020. On March 7, 2023, a hearing into the matter was convened before the Honorable Edward W. Miller at the Laurens County Courthouse. Applicant was present and represented by Ashley A. McMahan, Esquire. Assistant Attorney General T. Cruise Mitchell represented the State. During the hearing, testimony was taken from Applicant and Tristan M. Shaffer (Counsel).

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

PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections for unrelated charges. During its December 2018 term, the Laurens County Grand Jury indicted Applicant for first-degree burglary (2018-GS-30-02171) and possession of methamphetamine (2018-GS-30-02171). Applicant was represented by Tristan M. Shaffer, Esquire. Assistant Solicitor M. Wade

Dowtin of the Eighth Circuit Solicitor's Office prosecuted the case.

On November 14, 2019, Applicant pleaded guilty to the lesser-included offense of third-degree burglary and as indicted to possession of methamphetamine before the Honorable G. Thomas Cooper Jr.. Judge Cooper sentenced Applicant to three years imprisonment for each offense, with the sentences to be served concurrently. Applicant did not appeal his conviction or sentence.

FACTUAL SUMMARY

On August 30, 2018, around 12:15am, law enforcement received two calls regarding a break-in in Laurens County. (Gp. Tr. 8). The victim Michael Boyd, and Boyd's neighbor called police to report a man walking around the residence and the victim's backyard carrying a flashlight. (Gp. Tr. 8). Upon arrival, police located Applicant, who claimed that he was staying in the shed behind the residence, however Mr. Boyd denied this claim. (Gp. Tr. 8-9). Police found the back door of the residence open, and a number of items missing from the residence. (Gp. Tr. 9). Applicant was found with a bag of jewelry belonging to the victim's daughter, along with a small quantity of methamphetamine. (Gp. Tr. 9). Applicant alleges that the victim paid applicant in jewelry for cutting the victim's grass, the victim has denied this claim. (Gp. Tr. 9).

CURRENT APPLICATION

Applicant timely commenced this PCR application on February 18, 2020. In his application Applicant alleged he was entitled to relief based on the following grounds:

1. Ineffective Assistance of Counsel.
 - a. "My lawyer did not present information to the court that I asked him to. He also did not file motions that I asked him to file."

On or about February 28, 2023, Applicant amended his application to add the following allegation:

1. Ineffective Assistance of Counsel.
 - a. "Failure to address the fact that the Applicant lived on the property."

INEFFECTIVE ASSISTANCE OF COUNSEL, GENERALLY

In a PCR action, Applicant bears the burden of proving the allegations in his application by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985); Rule 71.1(e), SCRPC. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel’s performance was deficient. *Strickland*, 466 U.S. at 687; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy

judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also* *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Second, counsel's deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 694). “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696–97.

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.* 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. The applicant must further convince the court that a decision to reject the plea bargain would have been rational under the circumstances. *Padilla*, 559 U.S. at 372.

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).

FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in

this action incorporated by way of the State's return, this Court finds Applicant's allegations of ineffective assistance of counsel are without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

Failure to Present Information to the Court and Failure to Address the Fact Applicant Lived on the Property

Applicant contends counsel was ineffective for failing to present information to the court and for not addressing the fact that the Applicant actually lived on the property in question. This Court disagrees and finds counsel was not ineffective in this regard.

1. PCR Testimony

Applicant testified he met with Counsel three times: twice at the city detention center and once in the holding cell of the courthouse. Applicant testified Counsel discussed the charges he was facing and reviewed discovery with him. Applicant testified he asked Counsel for the body cam footage of law enforcement. Applicant testified the body cam footage would corroborate that he had permission to be on the property. Applicant testified the owner gave him permission to live in the shed and shower inside the house. Applicant testified he was served with an eviction notice while he was in jail. Applicant testified he wanted to take a plea for probation, but Counsel did not inform him about three-year plea offer until day of plea. Applicant testified he took the plea offer because he was tired of dealing with Counsel. Applicant testified the home owner paid him in his daughter's jewelry in exchange for cutting the grass. Applicant testified he would exchange the jewelry for narcotics.

Counsel Tristan Shaffer testified he met with Applicant 3-4 times. During these meetings, Counsel testified he went over Applicant's charges and reviewed discovery. Counsel testified he was prepared to present, at trial, evidence Applicant may have had a right to enter the dwelling.

However, Applicant ultimately made the decision to plead guilty knowing he would be sentenced to only three years. Counsel testified he requested the body cam footage on June 21, 2019, but does not recall if he received it or not. Counsel testified his trial strategy would have been to argue Applicant had license to enter the home. Counsel explained he would not have relied on a jury believing Applicant was not on the property at the time the crime was committed; the evidence showed Applicant was present at the scene and there was clearly forced entry into the house. Counsel testified Applicant was apprehended and law enforcement found jewelry, meth, flashlight, and knives in his bookbag. Counsel testified Applicant agreed to take the three-year plea offer.

2. Discussion

This Court finds Applicant's allegation Counsel was ineffective for failing to present information to the Court and not addressing the fact Applicant lived on the property in question is without merit. Specifically, Applicant wanted Counsel to present evidence he lived on the property and had permission to enter the home. Additionally, Applicant asked Counsel to obtain the body camera footage from law enforcement. This Court finds Counsel requested the body camera footage from law enforcement and was prepared to argue, at trial, that Applicant had license to enter the home based on the homeowner allowing Applicant to live on the property. Based on Counsel's credible testimony, this Court finds Counsel was adequately prepared to present and argue the defense that Applicant lived on the property and had license to enter the home.

Applicant was originally indicted for first-degree burglary which carries a fifteen year to life sentence. Counsel was able to negotiate a very favorable plea deal wherein Applicant was able to plead to the lesser included offense of third-degree burglary in exchange for his guilty plea. At the guilty plea hearing, Applicant waived his right to present a defense at trial. (Gp. Tr. 6). Additionally, Applicant informed the plea court Counsel did everything he asked him to in

preparation for this case and was satisfied with his representation of him. (Gp. Tr. 7). The plea court sentenced Applicant to three years' imprisonment. This Court finds the nature of this plea deal is evidence of Counsel's highly competent representation of Applicant. Furthermore, Applicant waived his right to present a defense at trial, including presenting evidence he actually lived on the property in question. Thus, Counsel was not deficient for failing to present this argument to the plea court. Based on the foregoing, Counsel was **NOT DEFICIENT** in his representation of Applicant.

Furthermore, Applicant failed to present "any evidence of how additional preparation or communication would have resulted in a different outcome." *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012); see *Jackson v. State*, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998) (explaining that, where an applicant failed to present any evidence of what counsel could have discovered or what other defenses he would have requested counsel pursue had counsel more fully prepared for the trial, applicant failed to show his counsel's lack of preparation prejudiced him); *Harris v. State*, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (finding that, when there is evidence counsel met with a defendant in preparation for trial and there is no evidence additional preparation on the part of counsel would have affected the outcome at trial, counsel cannot be said to have been ineffective), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). Here, Applicant has failed to present sufficient evidence or testimony that had Counsel presented additional information to the plea court he would have insisted on proceeding to trial. Therefore, Applicant has not met his burden establishing prejudice.

Accordingly, this allegation is **DENIED**.

CONCLUSION


Based on the foregoing, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. Therefore, the allegations of ineffective assistance of counsel are denied and dismissed with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application with respect to all other allegations for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 27 day of March, 2024.


THE HONORABLE EDWARD W. MILLER
Presiding Judge
Eighth Judicial Circuit


South Carolina



ALAN WILSON
ATTORNEY GENERAL

March 27, 2024

The Honorable Michelle Simmons
Laurens County Clerk of Court
Post Office Box 287
Laurens, SC 29360-0287

Re: Dante Z. Wheeler, #370182 v. State of South Carolina
2020-CP-30-00174

Dear Ms. Simmons,

Enclosed please find the original Order of Dismissal signed by the Honorable Edward W. Miller, in the above-captioned case, for filing in your office. In addition, please forward proof of service and a time stamped copy back to our office for our file.

If you have any questions regarding this matter, please let me know.

Sincerely,



T. Cruise Mitchell
Assistant Attorney General

TCM/zew
Enclosure

cc: Ashley A. McMahan, Esquire

K. MICHELLE SIMMONS
2024 APR - 8 A 10:00
LAURENS COUNTY
CLERK OF COURT