

NOTICE OF APPEAL FROM A PCR DENIAL BY THE COURT OF  
COMMON PLEAS

THE STATE OF SOUTH CAROLINA  
In Supreme Court of SC

APPEAL FROM CLARENDON COUNTY  
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Case #2022-CP-14-00486

The State,

Respondent,

v.

Michael Terrance Lawyer

Appellant.

NOTICE OF APPEAL

Michael Terrance Lawyer, appeals the decision of the Court, in the order dated February 22, 2024, received by counsel on March 29, 2024, where Mr. Lawyer was denied his request for Post-Conviction Relief. Mr. Lawyer was represented at the hearing by Timothy L. Griffith, Attorney at Law who files this notice on behalf of the Appellant. The order herein attached and a copy of which is also forwarded to the SCCID Appellate Division.

Dated

4/4/24



Timothy L. Griffith, Esquire

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Sumter, SC 29154

Telephone: (803) 499-2012

Attorney for Appellant (relieved)

Will not be representing on appeal

Other Counsel of Record:

T. Cruise Mitchell, Esquire

Assistant Attorney General

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RECEIVED

APR 09 2024

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
COUNTY OF CLARENDON

Michael Terrence Lawyer,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE THIRD JUDICIAL CIRCUIT

Case No. 2022-CP-14-00486

**RECEIVED**

APR 09 2024

**ORDER OF DISMISSAL** S.C. SUPREME COURT

**I. INTRODUCTION**

The matter before this Court is an action for post-conviction relief (PCR) commenced by Michael Terrence Lawyer (Applicant) on November 4, 2022. On March 1, 2023, a hearing into the matter was convened before the Honorable Edgar W. Dickson at the Sumter County Courthouse. Applicant was present and represented by Timothy Griffith, Esquire. Assistant Attorney General T. Cruise Mitchell represented the State.

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 relief and dismisses this action with prejudice.

**II. PROCEDURAL HISTORY**

During its October 2020 term, the Clarendon County Grand Jury indicted Applicant for criminal sexual conduct – third degree (2020-GS-14-00283). Applicant was represented by Lewis King Cutter, Esquire. Assistant Solicitors Darla Pierce and Phillip Little prosecuted the case.

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Edgar W. Dickson, Clerk-Clarendon S.C.

On November 29, 2021, Applicant pleaded guilty as indicted before the Honorable Kristi Curtis. Sentencing was deferred until January 5, 2022. Judge Curtis sentenced Applicant to five (5) years for criminal sexual conduct – third degree. Applicant did not file a direct appeal.

### **III. STATEMENT OF FACTS<sup>1</sup>**

On June 8, 2019, officers with the Clarendon County Sherriff's Office responded to a civil disturbance at the corner of West Boise Street and Edgeworth Drive in Clarendon County. At that time, officers talked to Ms. Hilton. She stated that the night before that she had people over at her residence to watch a basketball game. She fell asleep, and sometime in the middle of the night, she woke up and found that her shorts were pulled down to her ankles and Mr. Lawyer was performing cunnilingus on her. It was not consensual. Applicant confessed to the crime.

### **IV. CURRENT APPLICATION**

Applicant timely commenced this PCR application on November 4, 2022. In his application Applicant alleged he was entitled to relief based on the following grounds:

1. Ineffective Assistance of Counsel
  - a. "My lawyer failed to address me that based on my criminal history and prior SVP commitment it would be likely that the State would file a SVP civil action, and I wasn't given a lesser included offense for my plea. If I had known that my criminal history/prior SVP commitment was a condition, I would have voided a plea deal."

This is the only allegation Applicant alleged during the PCR hearing.

### **V. STANDARD OF REVIEW**

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

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;

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<sup>1</sup> The following factual summary was taken from the Solicitor's recitation of the facts presented during the guilty plea hearing. Gp. Tr. pp. 6 – 7.

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

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

The reviewing court applies the two-part test outlined in *Strickland v. Washington* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. 668, 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; *accord. 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 applicant has the burden of establishing both deficiency and prejudice in order to be entitled to relief. *Hughes v. State*, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); Rule 71.1(e), SCRPC. To prove deficient performance, the applicant must establish that, in light of all the circumstances, the acts or omissions complained of “were outside the wide range of competence” demanded of attorneys in criminal cases. *Strickland*, 466 U.S. at 688. To prove prejudice, the applicant must establish “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” *Id.* Significantly, “the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” *Id.* at 696.

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 decisionmaking" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. *Lee v. United States*, 582 U.S. 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).

## **VI. FINDINGS OF FACT & CONCLUSIONS OF LAW**

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in this action incorporated by way of the State's return, this Court finds Applicant's claim to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following *findings of facts and conclusions of law* based upon all of the probative evidence presented.



### ***Failure to Advise Applicant of Potential SVP Commitment Proceedings***

Applicant contends Counsel was ineffective for failing to advise Applicant of the possibility of a civil commitment pursuant to the Sexually Violent Predator (SVP) Act. This Court disagrees and finds Counsel properly advised Applicant of this possibility. This Court finds credible and persuasive the testimony of Counsel, who presented well-recalled testimony of the conversations he had with Applicant, including properly informing Applicant of the potential consequence of SVP commitment proceedings. Furthermore, the record from the plea hearing demonstrates Applicant was properly informed of this consequence prior to entering his guilty plea.

#### **1. PCR Testimony**

Applicant testified he pleaded guilty to criminal sexual conduct third degree non-violent offense. Applicant testified he was sentenced to five years. Applicant testified he learned shortly after he started serving his sentence that his case was being referred to the alternative disciplinary team for review for the Sexually Violent Predator's program. Applicant testified he was referred to the SVP program despite serving a sentence for a non-violent crime. Applicant testified he was not made aware he could be subject to SVP proceedings prior to his guilty plea. Applicant testified he would not have pleaded guilty had he known this. Applicant testified Counsel never informed him of the SVP program. Applicant testified that when Judge Curtis was informing him of the SVP process during his plea hearing, he did not believe it applied to him because he was pleading guilty to a non-violent offense. Applicant reiterated he would not have pleaded guilty had he known it applied to him.

Counsel testified he is employed at the Clarendon County Public Defender's Office and was appointed to represent Applicant. Counsel testified they negotiated a plea deal for Applicant

to plead guilty to criminal sexual conduct – third degree, non-violent offense. Counsel testified he informed Applicant by pleading guilty it would likely trigger SVP proceedings. Counsel testified they discussed it several times as Applicant had previously been through an SVP action. Counsel testified Judge Cothran Jr. was originally going to preside over Applicant's guilty plea; however, Judge Cothran Jr. was the presiding judge during Applicant's previous SVP proceedings and could not hear Applicant's guilty plea. Counsel testified he discussed this in depth with Applicant.

## 2. Discussion

This Court finds Counsel ~~g~~ thoroughly advised Applicant regarding the potential consequence of a sexually violent predator commitment action by pleading guilty. Counsel's credible testimony indicates he discussed this several times with Applicant *prior* to the plea. Additionally, Applicant was previously committed pursuant to the Sexually Violent Predator Act and is familiar with the process, so this Court finds it incredible that Applicant would be wholly unaware of this consequence by pleading guilty. Furthermore, the record from Applicant's plea hearing demonstrates he was fully informed of this consequence by the Court, as indicated below:

The Court: Is it an offense that triggers the sexually violent predator?

Ms. Pearce: Yes, ma'am.

The Court: Have you discussed that with him?

Mr. Cutter: Yes, Your Honor.

The Court: Mr. Lawyer, you are aware this is considered a sexually violent offense; what that means is that if you are incarcerated, at the end of your incarceration, the State can institute a separate proceeding to have you declared a sexually violent predator, if a judge found there was probable cause. That would then trigger a hearing, mental evaluations, et cetera, to determine whether or not you could be held past the date of your incarceration and mental health facility; are you aware of that?

Mr. Lawyer: Yes, ma'am.

(Gp. Tr. p. 5).

It is clear Applicant was extensively advised of potential SVP proceedings by both Counsel and the Court at his plea hearing. Applicant's own testimony at his plea hearing demonstrates he was

informed of this by Counsel and understood this potential consequence. Therefore, this Court finds Counsel was **NOT INEFFECTIVE** in advising Applicant of the possibility of a sexually violent predator civil action.

Even supposing Counsel did not inform Applicant of this consequence, this allegation still fails as a matter of law. "A defendant need not be advised of all collateral consequences of his or her plea in order for the plea to withstand Constitutional scrutiny." *Williams v. State*, 378 S.C. 511, 515, 662 S.E.2d 615, 617 (Ct. App. 2008). A defendant must only be advised of direct consequences of his plea which "have a definite, immediate and largely automatic effect on the range of defendant's punishment." *Id.* Commitment pursuant to the Sexually Violent Predator Act is a collateral consequence that a defendant need not be advised prior to pleading guilty, because it "does not automatically flow from the conviction, rather a civil proceeding occurs where the defendant is evaluated before confinement is certain." *Hamm v. State*, 403 S.C. 461, 465, 744 S.E.2d, 503, 504 (2013). Thus, Counsel could not be found ineffective for failing to advise Applicant he could be subjected to civil proceedings pursuant to the Sexually Violent Predator Act. Accordingly, this Court finds this allegation is **DENIED**.

## VII. 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 his application for post-conviction relief. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. This Court finds Applicant freely, knowingly, and voluntarily pleaded guilty. Therefore, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

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

**IT IS THEREFORE ORDERED:**

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 9<sup>th</sup> day of February, 2024.



EDGAR W. DICKSON  
Presiding Judge  
Third Judicial Circuit

Orangeburg, South Carolina