



Solicitor Jenna H. McLeod, Esq. of the Thirteenth Circuit prosecuted the case.

On December 6, 2022, Applicant pled guilty to voluntary manslaughter and was sentenced to the maximum sentence of thirty (30) years by the Honorable Alex Kinlaw. At the time of the plea hearing, Applicant had spent 738 days in jail. Judge Kinlaw applied 738 days of as credit for time served.

Applicant filed a timely direct appeal. Applicant's appeal was dismissed on February 23, 2023, due to failure to provide explanation pursuant to Rule 203 of the South Carolina Appellate Court Rules. The Remittitur was issued on March 13, 2023. Applicant filed his application for post-conviction relief on May 8, 2023.

#### *Claims Raised*

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

(1) Plea counsel was ineffective in the following regards:

- a. "Plea counsel failed to adequately review discovery with Applicant and advise him accordingly."
- b. "Plea counsel failed to explain the nature of the charges as well as the consequences or implications that would result from the imposition of his plea sentence."
- c. "Plea counsel failed to adequately explain any plea offer's terms and the relative advantages and disadvantages of pleading guilty as opposed to proceeding to trial."
- d. "Plea counsel failed to sufficiently advise Applicant of trial rights waived by way of his guilty plea, specifically of the waiver of the defendant's right to present a defense to the charges, submit evidence in support thereof, call supporting witnesses to testify, etc."
- e. "Plea counsel failed to adequately investigate the facts of the case, potential defenses and legal theories available to applicant prior to advising him to plea guilty."

Applicant asserts that plea counsel's errors and omissions directly impacted his decision to enter

a guilty plea, rendering his guilty plea unlawful as he did not enter it knowingly, intelligently, or voluntarily. Applicant also asserts in the alternative, that plea counsel was ineffective during the sentencing stage and failed to present an argument for mitigation purposes at his sentencing. As requested relief, Applicant requests a “new trial or in the alternative, resentencing.”

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

In addition to carefully considering the record and the arguments presented by counsel, this Court has also had the opportunity to consider the testimony presented at the PCR evidentiary hearing and has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. §17-27-80 (2003).

#### *Relevant Law*

The two-part *Strickland v. Washington*<sup>1</sup> test applies to challenges to guilty pleas based on ineffective assistance of counsel. *Hill v. Lockhart*, 474 U.S. 58, 106 S. Ct. 370, 88 L. Ed. 2d 203 (1985). In the context of guilty pleas, the first half of the *Strickland* test is nothing more than a restatement of the standard of attorney competence. *Id.* The second, or “prejudice,” requirement, on the other hand, focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process. *Id.* In other words, in order to satisfy the “prejudice” requirement, the defendant 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. *Id.* Thus, an applicant must show both error and prejudice to receive relief in a PCR proceeding. *Roscoe v. State*, 345 S.C. 16, 546 S.E.2d 417 (2001) (citing *Scott v. State*, 334 S.C. 248, 513 S.E.2d 100 (1999)). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. *Suber v. State*, 371 S.C. 554, 640 S.E.2d 884 (2007) (citing *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)).

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<sup>1</sup> 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

Applicant testified on his own behalf at the evidentiary hearing and Respondent called plea counsel, Ryan Beasley Esq., to give testimony regarding his representation of Applicant. After considering the record, arguments presented by counsel, and the controlling case law, this Court finds that Applicant failed to meet his burden of proof.

*General Summary of Relevant Facts from Trial*

On May 21, 2020, Officers responded to a primary and secondary incident location due to a homicide in Greenville County. Applicant and victim, Andre Dunbar, orchestrated a meeting via text message for the victim to purchase a gun from Applicant. The Applicant and victim arrived at the primary incident location. Applicant got into the back seat of the victim's vehicle, and they began arguing about the purchase price of the gun. The victim's cousin was also present in the vehicle. The victim refused to give Applicant any money to purchase the gun. Applicant exited the vehicle and fired two shots at the victim striking him through the seat in his back. Subsequently, the victim proceeded to speed across Augusta Road to the secondary incident location where he crashed through two fences. The victim died nearly immediately from his injuries. (GP. Tr. 8-9).

*Ineffective Assistance of Plea Counsel Claims*

*Plea Counsel failed to Review Discovery and Advise Accordingly*

As to Applicant's claim that plea counsel "failed to adequately review discovery with him and advise him accordingly," after considering the testimony at the evidentiary hearing and the record before the Court, this Court finds that Applicant has failed to establish that plea counsel acted deficiently and has additionally failed to show prejudice as a result.

Applicant testified that plea counsel misinformed him that he had no chance of prevailing on self-defense theory at trial. Applicant testified that he believed plea counsel did not go

through his case thoroughly and that he would have wanted to proceed to trial if plea counsel had not misinformed him of his chances.

Plea counsel testified that he reviewed the discovery with Applicant and met with Applicant numerous times prior to entering his guilty plea. He testified that after he reviewed the discovery, he advised Applicant that he believed he would lose a self-defense claim at trial and be convicted of murder. He further testified that he believed Applicant should enter a straight up plea to manslaughter and attempt to mitigate his sentence by discussing facts regarding Applicant's health. Plea counsel testified that he did not believe Applicant had a sufficient claim for self-defense, as there was no gun found at the scene with the victim and additional evidence that would contradict their self-defense theory.

This Court finds plea counsel's testimony to be credible, and that plea counsel adequately reviewed discovery and advised Applicant appropriately considering the circumstances and evidence regarding his case. Applicant has not shown that plea counsel's advice was not within the range of competence demanded of attorneys in criminal cases." *Bennett v. State*, 371 S.C. 203, 638 S.E.2d 675 (2006). Further, satisfying the prejudice prong, "ordinarily requires more than simply a defendant's assertion that but for counsel's deficient purpose he would have pled [guilty] but would have gone to trial. *Stalk v. State*, 383 S.C. 559, 681 S.E.2d 592 (2009). Therefore, Applicant has failed to meet his burden regarding this claim.

*Plea Counsel Failed to Explain the Nature of the  
Charges, Consequences, and Implications of a Guilty Plea*

As to Applicant's claim that plea counsel "failed to explain the nature of the charges as well as the consequences or implications that would result from the imposition of his plea sentence," this Court finds that Applicant has failed to establish his burden of plea counsel deficiency and resulting prejudice.

Applicant testified that plea counsel told him he could serve a sentence of two (2) to thirty (30) years for manslaughter but that thirty (30) years would be overboard and unlikely to happen. Applicant testified that he plead guilty because plea counsel told him that was his best option. Applicant testified that had plea counsel not misinformed him, he would have proceeded to trial and asserted a self-defense claim.

Plea counsel testified that he reviewed the elements and charges along with the minimum and maximum sentencing parameters with Applicant when discussing Applicant's case with him. He testified that it was clear that Applicant wanted to enter a guilty plea in fear of being convicted of murder at trial. He also testified that he did not promise Applicant a particular sentence but discussed using Applicant's health as a mitigating factor for his sentence. Further, the record shows that the Court colloquy informed Applicant of the consequences of the imposition of his guilty plea.

The Court: You understand I can give you up to 30 years on this offense?

Mr. Brisbane: Yes, Your Honor.  
(GP. Tr. at 5).

Upon cross examination, Applicant testified that he was not forced to plead guilty but that he wants a reduced sentenced. A guilty plea entered because of *belief* that judge will impose certain sentence is not involuntary. *Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997) (fact that defendant "hoped" and "expected" to get reduced sentence does not render plea invalid); *Harres v. Leeke*, 282 S.C. 131, 318 S.E.2d 360 (1984) (fact that defendant "thought" judge would give lighter sentence not ground for relief). Further, satisfying the prejudice prong, "ordinarily requires more than simply a defendant's assertion that but for counsel's deficient purpose he would have pled [guilty] but would have gone to trial. *Stalk v. State*, 383 S.C. 559, 681 S.E.2d 592 (2009). Therefore, this Court finds that Applicant has not established deficiency, nor has he

demonstrated more than mere assertion that he would have proceeded to trial if not for counsel's deficiency.

*Plea Counsel Failed to Explain  
Advantages and Disadvantages of Pleading Guilty*

As to Applicant's claim that plea counsel "failed to adequately explain any plea offer's terms and the relative advantages and disadvantages of pleading guilty as opposed to proceeding to trial," this Court finds that plea counsel credibly testified as to advising and informing Applicant of advantages and disadvantages of entering a guilty plea instead of proceeding to a jury trial.

Applicant testified that he believes plea counsel misinformed him on his chances for a self-defense claim at trial. Applicant testified that he would have gone to trial and asserted a self-defense claim had plea counsel not misadvised him. Applicant testified as to the circumstances of the case, confirming that he exited the vehicle and shot the victim from the outside of the vehicle during the sale of a gun. Applicant testified that he did not think the firearm would discharge when he shot it.

Plea counsel testified that considering the facts of the case, he did not believe Applicant's claim of self-defense would succeed at trial. He noted that no guns were found at the scene and there was no evidence to support a self-defense claim. Plea counsel testified that he discussed a self-defense claim with Applicant and the risk that he would be convicted of murder. He testified that he advised Applicant that he should plead straight up to voluntary manslaughter and use his health as a mitigating factor for sentencing. Plea counsel testified that he informed Applicant of the sentencing range for voluntary manslaughter but did not promise a particular sentence.

Again, mere assertion of proceeding to trial rather than pleading guilty does not establish counsel deficiency, and Applicant has not shown that plea counsel's advice was not within the

range of competence demanded of attorneys in criminal cases.” *Bennett v. State*, 371 S.C. 203, 638 S.E.2d 675 (2006). Therefore, this Court finds plea counsel’s testimony to be credible, and that Applicant has failed to show that plea counsel did not adequately inform him about the advantages and disadvantages of pleading guilty and foregoing a trial.

*Plea Counsel Failed to Advise of Waiver of Constitutional Rights*

As to Applicant’s claim that plea counsel “failed to sufficiently advise Applicant of trial rights waived by way of his guilty plea, specifically of the waiver of the defendant’s right to present a defense to the charges, submit evidence in support thereof, call supporting witnesses to testify, etc.,” this Court finds that Applicant has not satisfied his burden of proof and has failed to prove deficiency of plea counsel’s representation.

At the evidentiary hearing, plea counsel testified that he discussed Applicant’s constitutional right to proceed with a jury trial. The Court also discussed those rights at the guilty plea hearing. He further testified that Applicant wanted to go forward with his plea to voluntary manslaughter and forego a trial due to the risks. The record shows that the Court discussed Applicant’s constitutional rights and that Applicant understood that he was waiving those rights. “A defendant’s knowing and voluntary waiver of the constitutional rights which accompany a guilty plea may be accomplished by colloquy between the Court and the defendant, between the Court and defendant’s counsel, or both.” *Dalton v. State*, 376 S.C. 130, 654 S.E.2d 870 (Ct. App. 2007) (citing *Pittman v. State*, 337 S.C. 597, 600, 524 S.E.2d 623, 625 (1999)). Here, the record reflects the colloquy of Applicant’s waiver of constitutional rights between the Court and Applicant.

The Court: Did he go over the elements of what the State would have to prove if this matter went to trial?

Mr. Brisbane: Yes, Your Honor.

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The Court: All right. Did he also have discussion with you, the fact that once you come before the Court and enter a knowing and intelligent decision to plea guilty, you give up certain constitutional protections?

Mr. Brisbane: Yes, Your Honor.

The Court: You give up your right to a trial, You're not afforded an opportunity to have a trial once you plead guilty. You understand that?

Mr. Brisbane: Yes, Your Honor.

The Court: You give up your right to remain silent. You understand that?

Mr. Brisbane: Yes, Your Honor.

The Court: Thirdly, you give up your right to confront any witnesses that the State may have against you as it related to this indictment. You understand –

Mr. Brisbane: Yes, Your Honor.

The Court: Lastly, you give up your right to assert any defenses that you may have as it relates to this indictment. So any defenses that you may have, you no longer have them when you decide to plead guilty. You understand that?

Mr. Brisbane: Yes, Your Honor.

The Court: Do you understand all my questions?

Mr. Brisbane: Yes, Your Honor.

The Court: All right. So your decision to waive those constitutional protections, is that your decision?

Mr. Brisbane: Yes, Your Honor.

(GP Tr. 5-6).

Further, Applicant testified that plea counsel reviewed his constitutional rights with him and that the Court also discussed the rights he was waiving by pleading guilty. Applicant testified that he still chose to proceed. This Court finds that plea counsel credibly testified that he informed Applicant of his constitutional rights, and that the record demonstrates that the Court

also conveyed the rights Applicant surrendered by entering a guilty plea. *Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997) (holding that even if trial counsel gave inaccurate advice, the Court's colloquy with the defendant can cure the misconception). Therefore Applicant, has failed to meet his burden proving plea counsel's deficiency regarding this claim.

*Plea Counsel Failed to Adequately Investigate*

As to Applicant's claim that plea counsel "failed to adequately investigate the facts of the case, potential defenses and legal theories available to applicant prior to advising him to plead guilty," this Court finds that Applicant has not met his burden of proof.

Applicant and plea counsel testified that they discussed a self-defense theory. Plea counsel testified that he advised Applicant to plead guilty to voluntary manslaughter, because there was not sufficient evidence to confidently pursue a self-defense claim. Additionally, plea counsel testified that he discussed with Applicant that he believed his health issues would mitigate his sentencing and plea counsel testified that Applicant wanted a plea. Applicant testified that he felt plea counsel did a good job explaining his health issues and how those health issues contributed to the shooting. Plea counsel testified that he was unaware of the cell phone video that was discussed at Applicant's sentencing, and that he felt Applicant would not have received the maximum had that not been discussed.

Based on the circumstances and facts of this case, this Court finds that plea counsel provided the Court with an extensive history of childhood circumstances and health concerns to mitigate Applicant's sentencing. (GP. Tr. 18-23). It is apparent that plea counsel investigated the facts of the case, as well as provided the Court with information regarding Applicant's unique health circumstances. Further, plea counsel testified that he considered a self-defense theory as

well as an involuntary manslaughter plea but concluded that pleading guilty to voluntary manslaughter and mitigating the sentencing was the most beneficial option for Applicant.

Therefore, this Court finds that Applicant has failed to meet his burden of proof. Applicant has not established deficiency of plea counsel, and even if he could, he has failed to 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.

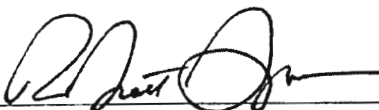
### CONCLUSION

For the above stated reasons, this Court finds that Applicant failed to carry his burden of proof. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

### IT IS THEREFORE ORDERED:

1. Applicant's application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant is remanded to the custody of Respondent for completion of his sentence.

AND IT IS SO ORDERED this 28 day of March, 2024.

  
\_\_\_\_\_  
R. SCOTT SPROUSE  
Presiding Judge

ATTORNEY GENERAL'S OFFICE

RECEIVED 4/16/24

ADMINISTRATIVE INSTRUCTIONS

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Brice Garrett COC GUL SC

ALAN WILSON  
ATTORNEY GENERAL

April 16, 2024

The Honorable Brice Garrett  
Greenville County Clerk of Court  
305 E. North Street  
Greenville, South Carolina 29601

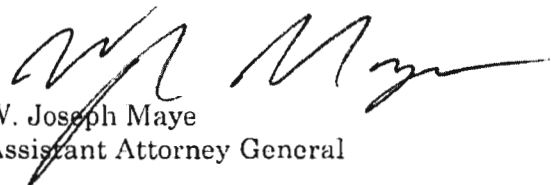
Re: Tyquez Gytrell Brisbane v. State of South Carolina  
Case No. 2023-CP-23-2296

Dear Ms. Garrett:

Enclosed please find the original Order of Dismissal signed by the Honorable R. Scott Sprouse in reference to the above-mentioned case for filing in your office.

Thank you for your assistance in this matter, and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,



W. Joseph Maye  
Assistant Attorney General

/abb  
Enclosure

cc: William G. Yarborough, III, Esquire (with copy of enclosure)