

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Paul M. Burch, Circuit Court Judge

Case No. 2022-CP-38-00708

Brandon D. Wilson #387042.....Applicant/Appellant

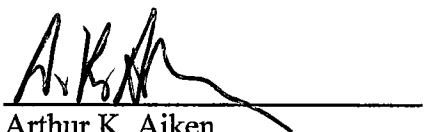
v.

State of South Carolina.....Respondent/Respondent

NOTICE OF APPEAL

This is a post-conviction relief case. Appellant appeals from the Order of Dismissal entered in this case. Appellant received written notice of the entry of the Order of Dismissal on April 5, 2024. A copy of the Order of Dismissal appealed from is attached.

May 6, 2024



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STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

Brandon Wilson, SCDC #387041,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)
_____)

S.C. SUPREME COURT
IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2022-CP-38-00708

ORDER OF DISMISSAL

This matter is before the Court pursuant to an application for post-conviction relief (“PCR”) filed by Brandon Wilson (“Applicant”) on May 16, 2022. On February 7, 2024, an evidentiary hearing convened before the Honorable Paul M. Burch. Applicant was present and represented by Arthur K. Aiken, Esquire. Assistant Attorney General Bryan T. Hall represented Respondent. At the hearing, Applicant testified on his own behalf. Respondent called as a witness Belinda M. Davis Branch, Esquire (“Counsel”) and Thomas R. Sims (“Sims”), Sr., Esquire. Following a thorough review of the plea transcript and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections (“SCDC”). In April 2019, the Orangeburg County Grand Jury indicted Applicant for assault and battery of a high and aggravated nature (“ABHAN”) (2018-GS-38-0825) and possession of a weapon during the commission of a violent crime (2018-GS-38-0826). In July 2021, the

Orangeburg County Grand Jury indicted Applicant for assault and battery in the second degree (2021-GS-38-01249) from a separate incident.

On January 24, 2022, Applicant proceeded to a jury trial before the Honorable Maite Murphy. Pursuant to Counsel's motions, the court convened a pre-trial stand your ground hearing¹ and a *Jackson v. Denno*² hearing. Judge Murphy denied both motions, and shortly thereafter the jury was selected, Applicant pled guilty to the indictments. Judge Murphy sentenced Applicant to ten (10) years provided upon the service of five (5) years active, followed by three (3) years of probation for ABHAN; five (5) years active for possession of a weapon during the commission of a violent crime; and three (3) years active for assault and battery in the second degree.

On February 9, 2022, a notice of intent to appeal was filed on Applicant's behalf by Belinda Davis-Branch, Esquire. On February 17, 2022, the South Carolina Court of Appeals dismissed the appeal for failure to timely serve. *State v. Wilson*, S.C. Ct. App. Order dated Feb. 17, 2022. The Remittitur was sent on March 7, 2022.

CURRENT APPLICATION

Applicant timely commenced this PCR action on May 16, 2022, alleging he is being held in custody unlawfully for the following reasons:

- 1) Ineffective Assistance of Counsel
 - a. Counsel did not understand the plea bargain.
 - b. Failure to explain the charges Applicant was pleading to.
- 2) Involuntary Plea

¹ Pursuant to the Protection of Persons and Property Act, S.C. Code Ann. § 16-11-410 *et seq.*

² *Jackson v. Denno*, 378 U.S. 368 (1964).

- a. Counsel informed Applicant he was pleading to unlawful carrying of a firearm, ABHAN, and assault and battery second degree.
- b. Counsel informed Applicant he would have a six (6)-year cap but would only serve two and half (2 ½) years.
- c. Applicant would not have pled guilty if he had known possession of a firearm during the commission of a violent crime carried a mandatory five (5)-year sentence.

Respondent filed a return. Applicant amended his application to add the following allegations:

1) Ineffective Assistance of Counsel

- a. Failure to discuss all potential defenses with Applicant.
- b. Failure to discuss the advantages and disadvantages of trial versus a plea so Applicant could make an informed choice.
- c. Failure to investigate Applicant's case.
- d. Failure to explain to Applicant possible penalties for his offenses.
- e. Failure to explain to Applicant the elements of the offenses to which he was pleading guilty.
- f. Failure to present a more favorable plea offer before it expired.

2) Involuntary Plea

- a. Guilty plea was not intelligently made.
- b. Counsel did not adequately prepare for Applicant's case, and Applicant was left with no choice but to plead guilty.

Before this Court are the Orangeburg County Clerk of Court records of the subject conviction; Applicant's records from SCDC; appellate records; the plea transcript; and the records of the current PCR action.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant averred he would have proceeded to trial if he was pleading guilty to possession of a weapon during the commission of a violent crime charge, which carries a mandatory minimum of five (5) years. Applicant testified he believed he was pleading instead to unlawful carrying of a pistol. Applicant testified Counsel told him he would

receive a cap of six (6) years but would only serve two and a half (2 ½) years. Applicant testified he believed he would be eligible for parole but learned that ABHAN is a no parole-eligible sentence. Applicant testified Counsel never informed him a plea deal from the solicitor for six (6) months, and Applicant found out about it months later. Applicant testified Counsel did not understand what Applicant was pleading to. Applicant further testified Counsel did not explain the elements of the charges and the possible penalties. Applicant testified he asked Counsel for an appeal and was told an appeal was “out of the window.”

Belinda Davis-Branch (“Counsel”) testified she met with Applicant numerous times, at least seven (7) to eight (8) times. Counsel testified that she and Applicant reviewed discovery together, which included reviewing statements by several witnesses and a statement by Applicant that was damaging to the case. Counsel testified that three (3) witnesses identified Applicant as the shooter and there was 911 audio. Counsel testified she did not recall Applicant asking her to investigate anything, but she would have investigated anything she thought was helpful. Counsel testified she discussed potential defenses with Applicant, which included self-defense. Counsel testified she believed Applicant had a solid case for trial and thought a stand your ground hearing would be successful.

Counsel testified that Applicant’s girlfriend, who was a key witness for Applicant, changed her testimony during the stand your ground hearing, which damaged Applicant’s case. Counsel testified Counsel testified that she conveyed the plea offer to Applicant. Counsel testified that after the jury was selected, Applicant made the decision to plead guilty and the decision was based on a key witness changing her testimony. Counsel testified that before Applicant pled, she explained to Applicant the charges he was facing, possible penalties, and

constitutional rights including the right to remain silent, confront witnesses, and right to a jury trial. Counsel testified she never told Applicant he would serve two and a half (2 ½) years. Counsel testified that Applicant never asked her to file an appeal but she did so on her own “just in case.”

Thomas Sims, Sr. (“Sims”) testified he assisted Counsel on Applicant’s case as second chair. Sims testified Applicant’s girlfriend changed her testimony, and Applicant decided to plead guilty as a result. Sims testified Counsel explained all charges Applicant was pleading guilty to. Sims testified he never heard Counsel tell Applicant he would only serve two and a half (2 ½) years.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the plea transcript in its entirety and has heard the testimony at the PCR hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony. After a careful review based on the *Strickland* standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court’s findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). An applicant alleging ineffective assistance of counsel must prove “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 441, 334 S.E.2d at 813. “The

test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases.” *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, 286 S.C. at 441, 334 S.E.2d at 813. An applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

Failure to Adequately Prepare

This Court finds Applicant failed to prove Counsel was ineffective for failing to adequately prepare. Applicant bears the burden of proving counsel did not adequately prepare and must prove prejudice by showing what other defenses could have been developed that would have resulted in a different outcome. *See Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (determining applicant failed to prove prejudice by presenting evidence of what other defenses counsel have pursued had counsel been more fully prepared for trial). This Court finds credible Counsel’s testimony that she met with Applicant numerous times, reviewed discovery,

and prepared the defense of self-defense for Applicant's trial. Further, this Court finds **credible** Counsel's testimony that she pursued and discussed with Applicant applicable legal defenses. Thus, Applicant failed to meet his burden.

Failure to Investigate

This Court finds Applicant failed to prove Counsel was ineffective for failing to investigate. At the PCR hearing, Counsel testified she did not recall Applicant asking her to investigate anything but would have investigated anything she thought was helpful. This Court finds **credible** counsel's testimony that she reasonably investigated the information Applicant provided to her. Further, this Court finds Applicant failed to produce any evidence at the PCR hearing of what a further investigation would have uncovered and thus failed to prove prejudice in this regard. *Cf. Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995) (providing an applicant must produce witnesses at a PCR hearing to support a claim that counsel was ineffective for failing to interview or call potential witnesses). Thus, Applicant failed to meet his burden.

Failure to Convey a Favorable Plea Offer

Applicant contends Counsel was ineffective for failing to timely convey a plea offer from the solicitor. Defense counsel has a duty to communicate formal plea offers from the prosecution that may be favorable to the accused. *Missouri v. Frye*, 566 U.S. 134 (2012). This Court finds **credible** Counsel's testimony that she timely conveyed to Applicant the plea offers received. Further, the plea transcript reflects that Counsel conveyed a plea offer to Applicant, which he declined. (Tr. 156:9-16). Applicant indicated to the plea judge that Counsel had conveyed to him a plea offer from the state, and Applicant declined that offer. (Tr. 156:24-157:6). Thus, Applicant

failed to meet his burden.

Failure to File an Appeal

At the evidentiary hearing, Applicant alleged Counsel told him an appeal was “out of the window” when Applicant asked her to file a direct appeal. Following a guilty plea, there is no constitutional requirement that counsel to inform a defendant of the right to appeal following a guilty plea, and counsel is not required to initiate an appeal unless there is reason to think a rational defendant would want to appeal or the defendant reasonably demonstrated an interest in appealing. *Turner v. State*, 380 S.C. 223, 670 S.E.2d 373 (2008). This Court finds credible Counsel’s testimony that Applicant never asked her to file an appeal, but she filed a notice of appeal on her own accord “just in case.” Thus, Applicant has failed to meet his burden.

Involuntary Plea

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(e), SCRPC; *Butler*, 286 S.C. 441, 334 S.E.2d 813. “To be knowing and voluntary, a plea must be entered with an awareness of its consequences.” *Holland v. State*, 322 S.C. 111, 113, 470 S.E.2d 378, 379 (1996). “To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him.” *Dalton*, 376 S.C. at 138, 654 S.E.2d at 874. Counsel is presumed to have rendered competent advice at the time their clients considered pleading guilty. *Padilla v. Kentucky*, 559 U.S. 356, 372 (2010).

This Court finds Applicant pled guilty knowingly and intelligently. This Court finds credible Counsel’s testimony that prior to the plea, she explained to Applicant his constitutional rights including the right to remain silent, right to a jury trial, and right to confront witnesses.

This Court finds **credible** Counsel's testimony that she explained to Applicant the charges he was facing and the possible penalties for each charge. This Court finds **credible** Counsel's testimony that she did not tell Applicant that he would only serve two and a half (2 ½) years for his charges. Further, this Court finds Applicant has not overcome the presumption that Counsel rendered competent advice before he pled guilty.

The plea judge explained to Applicant that he was pleading guilty to ABHAN, which carries up to twenty (20) years in prison. (Tr. 161). The plea judge explained to Applicant that he was pleading guilty to possession of a weapon during the commission of a violent crime, which carries five (5) years. (Tr. 161). The plea judge explained to Applicant that he was pleading guilty to assault and battery in the second degree, which carries up to three (3) years. (Tr. 161-162). The plea judge further explained to Applicant that although the State recommended a cap of up to six (6) years, the judge could give him the maximum sentence on each of those charges. (Plea Tr. 161). Knowing all of that, Applicant indicated he understood and wanted to plead guilty. (Tr. 162). Thus, Applicant failed to meet his burden.

This Court finds Applicant failed to prove his guilty plea entered involuntarily. This Court finds Applicant's statements made during the guilty plea conclusive as Applicant failed to present a valid reason why he should be allowed to depart from his statements. *Dalton*, 376 S.C. at 137-38, 654 S.E.2d at 874 ("[S]tatements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements"). Applicant indicated to the plea judge that he was not under the influence of drugs, alcohol, or medication at the time of the plea. (Tr. 160). Applicant informed the plea judge that Applicant did not suffer from any physical, emotion, or nervous

problem that would have prevented him from understanding the plea. (Tr. 160). Further, Applicant informed the plea judge that no one had threatened, coerced, or promised him anything to plead guilty. (Tr. 168-69). Based on the foregoing, this Court finds Applicant failed to meet his burden.

[Space left blank intentionally. Conclusion follows on next page.]

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty (30) days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCP. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED ON THIS 27th day of March, 2024.



PAUL M. BURCH
Presiding Judge
First Judicial Circuit



, South Carolina