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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Post Conviction Relief

Walton J. McLeod, IV, Circuit Court Judge

Lower Court Case No.: 2020-CP-10-05001

Daeshaun Forrest #346850,...................................... Petitioner,

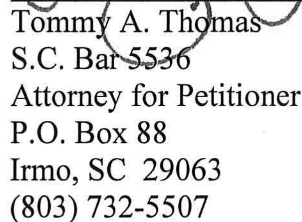
vs.

State of South Carolina, ...Respondent.

NOTICE OF APPEAL

The Petitioner, Daeshaun Forrest #346850, appeals the Order of Dismissal signed by the Honorable Walton J. McLeod, IV on May 2, 2024 and filed on May 9, 2024. Applicant received a copy of this Order of Dismissal on May 9, 2024.

Respectfully submitted.



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May 29, 2024

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Daeshaun Forrest, SCDC #346850,	)	Case No. 2020cp1005001
Applicant, v.	)	**ORDER OF DISMISSAL**
State of South Carolina,	)	
Respondent.	)	

FILED
2024 MAY -9 PM 12:30
JULIE J. ARMSTRONG
CLERK OF COURT

This matter is before the Court pursuant to an application for post-conviction relief ("PCR") filed by Daeshaun Forrest ("Applicant") on November 13, 2020. On March 12, 2024, an evidentiary hearing convened before the Honorable Walton J. McLeod, IV. Applicant was present and represented by Tommy A. Thomas, Esq. Assistant Attorney General Bryan T. Hall represented Respondent. At the hearing, Applicant testified on his own behalf and called as witnesses Veronica Forrest Brown and Desiree Jordan. Respondent called as a witness Melisa W. Gay, Esq. 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"), serving an eighteen (18) year sentence. During its November 2015 term, the Charleston County Grand Jury indicted Applicant for attempted murder (2015-GS-10-06030), possession of a weapon during the commission of a violent crime (2015-GS-10-06031), and discharging firearms into a dwelling (2015-GS-10-06032). These charges arose from an incident in which a masked shooter, identified as Applicant, shot into a hotel room occupied by Applicant's relative.

On October 13, 2017, Applicant pled guilty under *Alford*[1] before the Honorable R. Markley Dennis. Assistant Solicitor Edward R. Corvey, III, prosecuted the case. Melisa W. Gay, Esq., ("Counsel") represented Applicant. On October 18, 2017, Judge Dennis sentenced Applicant to thirty (30) years provided upon the service of eighteen (18) years for attempted murder, ten (10) years for discharging into a dwelling, and five (5) years for possession of a weapon during the commission of a violent crime.

On October 30, 2017, Counsel filed a notice of appeal on Applicant's behalf. The South Carolina Court of Appeals dismissed the appeal for failure to provide sufficient explanation of an issue that can be appealed from the guilty plea. *State v. Forrest*, S.C. Ct. App. Order Filed Dec. 18, 2017. The Remittitur was sent on May 18, 2018.

On November 13, 2020, Applicant untimely filed this PCR action. On October 29, 2021, the State filed its Return and moved to dismiss Applicant's application for failure to comply with the statute of limitations. On December 6, 2021, the Honorable Roger M. Young issued a Conditional Order of Dismissal, granting Applicant twenty (20) days from the date of the Order to provide a sufficient reason for why the application should not be dismissed. On December 20, 2021, Applicant filed a response arguing he was entitled to equitable tolling of the statute of limitations based on an affidavit from Tricia Blanchette, Esq. stating Applicant believed a PCR application was timely filed by William Thrower, Esq. On November 4, 2022, a virtual hearing on the State's motion was held before the Honorable Diane S. Goodstein. On May 25, 2023, Judge Goodstein denied the State's motion to dismiss, finding Applicant was entitled to equitable tolling.

[1] *North Carolina v. Alford*, 400 U.S. 25 (1970).

CURRENT APPLICATION

In his current PCR application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1) Ineffective Assistance of Counsel
2) Involuntary Plea: coerced to plead guilty.

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

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

a) Applicant's Testimony

At the evidentiary hearing, Applicant averred he pled guilty because he was scared. Applicant averred he believed he could have "beaten" his charges at trial. Applicant testified that his bond was previously revoked and when he came to court on the day of the plea, Applicant believed and hoped he was going to court for a bond hearing. Applicant testified he was previously represented by Mark Archer, but Counsel was retained ninety (90) days before the plea and visited him once at the detention center. Applicant testified he did not have an opportunity to fully discuss the charges with Counsel and talked to her seventy-two (72) hours before the plea. Applicant testified he did not review discovery with Counsel, but saw the Rule 5 packets.

Applicant testified he did not see the videos in evidence but he saw one (1) of the videos when he went to plead. Applicant testified the State claimed Applicant shot at his uncle from outside of a hotel, and the State's evidence included the victim's statements against him. Applicant testified the surveillance video of the shooting showed a man in black clothing and a bandana but did not identify Applicant as the shooter. Applicant testified he did not discuss the videos with Counsel when deciding whether to plead. Applicant testified Counsel informed him that the State

would not accept a plea to anything other than attempted murder. Applicant testified Counsel discussed the plea with his mother and girlfriend and told them he was offered twenty (20) years, to which Applicant declined.

Applicant further testified that he was informed if he did not plead guilty to the Charleston County charges, then Sumter County would not offer him a plea deal. Applicant testified he knew that he was facing life without parole ("LWOP") for the charges in other counties if he did not plead guilty. Applicant testified he did not tell Counsel to reach out to other counties but Counsel did so on her own and arranged a plea with Charleston and two (2) other counties. Applicant testified the agreement with other counties was for the charges to run concurrent, but Applicant testified that he did not consider that a special deal.

Applicant testified that Counsel spoke to his mother and girlfriend and told them Applicant had to decide in the moment whether to plead. Applicant testified that Counsel informed him he was facing LWOP in for the charges in other counties if he did not plead. Applicant he testified he was scared, crying, and pled guilty based on emotions. Applicant testified he thought he was pleading to an offer of zero (0) to twenty (20) years and did not understand he was entering an open plea. Applicant testified that he did not understand what an *Alford* plea was and did not understand what the plea judge explained to him regarding the benefit of the plea. Applicant testified the plea judge chastised the solicitor for a potential *Brady* violation.

b) Veronica Forrest Brown's Testimony

Veronica Forrest Brown, Applicant's mother, testified she was present at the meeting between Applicant and Counsel. Brown testified Applicant was waiting to get his bond back. Brown testified Counsel could not get a video from the solicitor but thought the video received hurt Applicant. Brown testified she did not want Applicant to accept a plea, and Brown reviewed

the surveillance video in the State's evidence and knew that it was not her son in the video. Brown testified that Counsel explained to Applicant that an *Alford* plea meant Applicant would admit the State had enough evidence to convict at trial. Brown testified Applicant did not have enough time to make a rational decision and the courtroom looked like a bullying contest. On cross-examination, Brown testified that she did not want Applicant to plead guilty initially but after Counsel "drilled" them and said Applicant would get over thirty (30) years, Brown told Applicant to plead.

c) Desire Jordan's Testimony

Desire Jordan, Applicant's girlfriend, testified that she was at the courthouse when Applicant plead guilty and heard conversations Applicant had with Counsel. Jordan testified Counsel told Applicant it was his choice to plead guilty. On cross-examination, Jordan testified she was not present at every meeting between Applicant and Counsel.

d) Counsel's Testimony

Melisa W. Gay ("Counsel") testified she does not recall how many times she and Applicant met but, in her opinion, the time was sufficient to review the issues. Counsel testified Applicant was represented by a prior attorney who represented him longer, and the case was already on the trial docket with Counsel received it. Counsel testified that she explained to Applicant the charges against him and possible penalties. Counsel testified that she explained to Applicant he was facing LWOP in other counties due to serious violent charges pending. Counsel testified that a conviction could subject him to LWOP on the other charges.

Counsel testified that she discussed evidence with Applicant and reviewed a surveillance video with Applicant and his family. Counsel testified there were two surveillance videos in question: the first was damaging for the shooter; the second was used for identification. Counsel

testified Applicant's family recognized Applicant in the second video, and the jury could conclude Applicant was the shooter based on the video which depicted a person wearing the same clothes and putting on a mask shortly before the shooting. Counsel testified she advised Applicant there was a strong likelihood of him being convicted at trial, and the surveillance video evidence was received late.

Counsel testified that if Applicant did not plead, there was a jury panel waiting, and Applicant would have proceeded to trial. Counsel testified that it was difficult to get Applicant to understand that although he did not want to plead guilty or go to a trial, he had to make a decision. Counsel testified Applicant's mother and girlfriend told him that he should plead due to the sentence exposure. Counsel further testified that although the State had new evidence last minute, she was prepared for trial. Counsel testified that she did not pressure Applicant to plead but gave him options, and Applicant chose to plead. Counsel testified that Applicant pled to avoid receiving an LWOP notice in his pending cases in other counties. Regarding the plea judge's explanation of a benefit received for pleading under Alford, Counsel testified the benefit to Applicant was avoiding the potential penalties of potentially receiving LWOP or consecutive sentences for the pending charges in other counties.

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), SCRCP; *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. Applicant must prove prejudice by showing "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.

"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). To prove prejudice following a guilty plea, the applicant "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." *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). 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). Additionally, the burden is on the applicant to convince the court that rejecting a plea or plea bargain would have been rational under the circumstances. *Id.*

This Court finds Applicant failed to prove Counsel was ineffective in advising him prior to pleading guilty. This Court finds credible Counsel's testimony that prior to the plea, Counsel explained to Applicant the charges against him and possible consequences including potential LWOP or a consecutive sentence for pending charges in other counties. This Court further finds credible Veronica Forrest Brown's testimony that Counsel explained an *Alford* plea to Applicant. Counsel indicated to the plea judge that she explained an *Alford* plea to Applicant. (Tr. 15, Oct. 13, 2017).

Counsel's testimony that Applicant made the decision to plead guilty to avoid being exposed to LWOP or a consecutive sentence for the pending charges in other counties. This Court finds credible Counsel's testimony that she was prepared to go to trial if Applicant chose to do so. This Court finds credible Counsel's testimony that she believed there was a strong likelihood of Applicant being convicted at trial based on a surveillance video in which Applicant's family identified him, and based on this video, a jury could conclude Applicant was the shooter. Based on the State's evidence, Applicant failed to convince this Court that rejecting the plea would have been rational under the circumstances. This Court further finds Applicant failed to overcome the presumption that Counsel rendered adequate advice before he pled guilty. Thus, Applicant did not meet his burden.

Involuntary Plea

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). "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. This involves awareness of "the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers" and "the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citing *Boykin v. Alabama*, 395 U.S. 238 (1969)). Statements made during a guilty plea should be considered conclusive unless the applicant presents valid reasons why he should be allowed to depart from the truthfulness of his statements. *Dalton*, 376 S.C. at 137-38, 654 S.E.2d at 874.

This Court finds, based on the record, Applicant pled guilty under *Alford* with a full understanding of the charges against him, the consequences of the plea, and his constitutional rights. Applicant indicated to the plea judge that Counsel explained to him the charges and possible punishments to each charge. Counsel credibly testified that a conviction to the Charleston charges could subject him to LWOP for the pending charges in other counties. The plea judge further explained to Applicant that he was charged with discharging firearms into a dwelling; possession of a weapon during the commission of a violent crime, which carries up to five (5) years; and attempted murder, which carries up to thirty (30) years in jail. The plea judge explained to

Applicant that by pleading he was waiving his right to a jury trial, right to confront witnesses, and right to remain silent. Thus, this Court finds Applicant pled guilty knowingly and intelligently.

This Court finds Applicant failed to prove his plea was involuntary. This Court finds credible Counsel's testimony that she did not pressure Applicant into pleading guilty and that she advised Applicant of his options, and Applicant chose to plead guilty. At the plea hearing, when asked by the plea judge whether this was the case of his lawyer forcing him to plead guilty, Applicant indicated that it was not. Applicant indicated to the plea judge that he wanted to plead guilty.

Applicant indicated to the plea judge that he was not under the influence of alcohol, drugs, or medication. Applicant indicated he was previously treated for depression but was not suffering from any long-term consequences of that depression at the time he pled. Applicant indicated that no threats were made to him for him to plead. Applicant also indicated that no promises were made to him to plead. This Court finds Applicant has failed to present a valid reason for why he should be allowed to depart from the truthfulness of his statements at the plea hearing. Thus, Applicant did not meet his burden.

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.

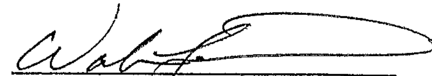
Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty (30) days of receipt by counsel of written notice of entry of judgment. *See* Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. *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.

IT IS SO ORDERED THIS 2 **day of** MAY **, 2024.**



WALTON J. MCLEOD, IV
Presiding Judge
Ninth Judicial Circuit

Lexington, South Carolina