STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
Daniel J. Reed, #370810, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2023-CP-10-01413 **ORDER OF DISMISSAL**

This matter is before the Court by way of an application for post-conviction ("PCR") relief filed by Daniel J. Reed ("Applicant") on March 22, 2023. The Court convened for an evidentiary hearing on March 14, 2024, before the Honorable Walton J. McLeod. Applicant was present and represented by Christopher L. Murphy, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. At the hearing, Applicant testified on his behalf and called as a witness Public Defender Mary Ford (plea counsel). Following a thorough review of the records before this Court and the testimony and evidence presented at the hearing, this Court DENIES relief and dismisses this application with prejudice for the reasons set forth herein.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a cumulative thirty-five-year sentence. In December 2018, the Charleston County Grand Jury indicted Applicant for murder (2018-GS-10-6618), possession of a weapon during a violent crime (2018-GS-10-6619), failure to stop for a blue light (2018-GS-10-6617), and grand larceny (2018-GS-10-6620). These charges arose from the fatal shooting of Jesse Weathers in a hotel room around April 27-28, 2018.

On August 11, 2021, Applicant appeared before the Honorable Deadra Jefferson for an Immunity Hearing. On November 10, 2021, Judge Jefferson issued an order denying immunity. On May 9, 2022,

2018-GS-10-06618; 2018-GS-10-06619; 2018-GS-10-06620

Applicant appeared before the Honorable Jennifer B. McCoy and pled guilty as indicted pursuant to a negotiated sentence of thirty-five years. Public Defender Mary Ford represented Applicant, and Solicitor Scarlett A. Wilson and Assistant U.S. Attorney Christopher Lietzow represented the State. Judge McCoy sentenced Applicant concurrently to thirty-five years for murder, ten years for larceny, five years for the weapon charge, and three years for failure to stop for a blue light. Applicant did not appeal.

CURRENT APPLICATION

On March 22, 2023, Applicant timely commenced this PCR action alleging he is being held in custody unlawfully due to the following:

a. Ineffective assistance of counsel:

1. Counsel failed to convey a twenty-year plea offer.

2. Counsel failed to investigate Applicant's mental health.

b. Due process violation: Applicant was not competent to enter a plea, rendering his plea involuntary.

At the PCR hearing, Applicant relayed he was proceeding on the following grounds related to ineffective assistance of counsel: (1) Counsel did not convey any offers for less time and (2) Applicant did not understand he could present his self-defense claim to the jury at trial. Applicant also relayed he wanted credit for time-served.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Charleston County Clerk of Court records of the underlying convictions; Applicant's records from the South Carolina Department of Corrections; the plea transcript; and the records and testimony from this PCR action. After a careful review based on the *Strickland* standard set forth below, this Court finds Applicant failed to carry his burden of proof. Below are this Court's findings of facts and conclusions of law pursuant to S.C. Code Ann. § 17-27-80.

I. INEFFECTIVE ASSISTANCE OF COUNSEL

To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice because of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Cherry v. State*, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "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). To prove prejudice, the applicant must show "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).

a) Failed to convey plea offer

Applicant first contends counsel was ineffective for not conveying a plea offer of less time. Specifically, he avers counsel did not convey a twenty-year offer. This Court finds Applicant did not prove this claim.

"[D]efense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused," and the failure to do so may constitute deficiency. *Bell v. State*, 410 S.C. 436, 441, 765 S.E.2d 4, 6 (Ct. App. 2014), overruled on

other grounds by *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). A defendant alleging counsel was ineffective for failing to convey a plea offer must prove actual prejudice, which is analyzed using "a case-by-case approach . . . of assessing whether but for counsel's deficient performance a defendant would have accepted the State's proposed plea bargain and that he would have benefitted from the offer." Id. At 442-43, 76 5S.E.2d at 7.

At the PCR hearing, Applicant testified he met with plea counsel more than ten times and they discussed the evidence "somewhat." When asked whether he understood the State's evidence, Applicant responded, "Not fully but yes, sir." Applicant testified plea counsel informed him the State wanted to seek life without parole. Plea counsel went on to testify that the State offered a straight-up plea to voluntary manslaughter on April 22, 2022, and she relayed this offer to Applicant the following day. She stated that at that time, Applicant did not want to accept a plea where he could be sentenced to thirty years. Plea counsel stated she attempted to negotiate a sentence with the solicitor, but they were unable to agree. Plea counsel testified she met with Applicant on May 5, 2022, and at that time, he relayed he would not accept a plea with a sentence greater than twenty years.

Plea counsel testified that shortly before trial, the solicitor discovered incriminating text messages on Applicant's phone. Specifically, the messages indicated Applicant had planned to rob the victim, which was damaging to their self-defense strategy. After the solicitor discovered those messages, she was no longer willing to allow Applicant to plead to voluntary manslaughter. Counsel testified the solicitor ultimately offered a choice of a cap of forty years or a negotiated active sentence of thirty-five years. Counsel testified she relayed those options to Applicant, and he elected to accept the thirty-five-year negotiated sentence.

Based on counsel's foregoing testimony, which this Court finds credible, this Court finds counsel's advice was reasonable under prevailing professional norms and not deficient. Likewise,

counsel's attempt at negotiating a plea was reasonable under prevailing professional norms and not deficient. This Court finds counsel relayed the voluntary manslaughter plea offer to Applicant, but he declined to accept it because he did not want a sentence of more than twenty years. This Court finds credible counsel's testimony that once the State discovered the incriminating text messages, it was no longer willing to allow Applicant to plead to voluntary manslaughter. Applicant has not proven the existence of a twenty-year offer that was not conveyed to him. Ultimately, counsel's actions in negotiating and relaying a plea offer were reasonable under prevailing professional norms and not deficient. Based on counsel's credible testimony that Applicant initially would not accept a plea with a potential sentence over twenty years, this Court finds Applicant did not prove prejudice, and this claim is denied.

b) Failed to investigate mental health

Applicant next contends counsel was ineffective for not investigating his mental health. At the PCR hearing, Applicant testified counsel told the plea court that Applicant had been in DSS custody as a child. He stated he used to see a psychiatrist, and counsel should have further investigated that for mitigation. This Court finds Applicant did not prove this claim.

Based on counsel's testimony, Applicant entered a negotiated thirty-five-year sentence. Thus, counsel's decision to not further investigate Applicant's mental health for mitigation was reasonable under prevailing professional norms and not deficient. Likewise, counsel credibly testified she had no concerns with Applicant's competency, making her decision to not request a competency evaluation reasonable under prevailing professional norms. Finally—and critically—Applicant did not introduce any evidence of what counsel would have discovered upon a further investigation of his mental health. Thus, Applicant did not prove deficiency or prejudice, and this claim is denied.

c) Failed to advise Applicant he could present self-defense at trial

At the outset of the hearing, Applicant relayed he was proceeding on a claim that he did not understand he could present self-defense to the jury. During direct testimony, however, Applicant testified he understood he could argue self-defense at a jury trial. Counsel further testified at the hearing that she discussed this with Applicant, and they reviewed what his testimony would be had they proceeded to trial. Based on the foregoing, this Court finds Applicant was aware he could present self-defense to the jury but ultimately chose to waive that defense and plead guilty. This Court finds Applicant did not prove deficiency or prejudice in this regard, and this claim is denied.

II. INVOLUNTARY PLEA

In his application, Applicant asserts he was incompetent to plead guilty, in violation of due process. The Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. *Boykin v. Alabama*, 395 U.S. 238 (1969). To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. *Brady v. United States*, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant's choice. *Id.* at 755. Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he is waiving, including the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. *Boykin*, 395 U.S. at 243. In determining whether a guilty plea was voluntarily entered, the reviewing court must consider the entire record, including the transcript of the guilty plea. *Harres v. Leeke*, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

This Court finds Applicant pled guilty voluntarily, knowingly, and intelligently. Counsel testified that she explained to Applicant the charges, sentences, and constitutional rights he was waiving. The plea court also explained the potential sentences and the constitutional rights Applicant was waiving,

and Applicant indicated he understood. Based on the foregoing, Applicant pled guilty voluntarily, knowingly, and intelligently, and this claim is denied.

III. SENTENCING CREDIT FOR TIME-SERVED

Although Applicant relayed he had an allegation related to credit for time-served in pretrial detention, he did not present any testimony or argument on this issue at the hearing. To the extent Applicant has concerns with the calculation of his sentence, that is an issue that should be handled through the administrative law process.[1] *See Al-Shabazz v. State*, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000) ("PCR is a proper avenue of relief only when the applicant mounts a collateral attack challenging the validity of his conviction or sentence as authorized by Section 17–27–20(a). . . . A claim regarding sentence-related credits or other condition of imprisonment does not fall into this category."); *Id.* at 368-69, 527 S.E.2d at 749-50 ("We previously have held that the issues of solitary confinement and downgrading of custody status are not properly raised in a PCR proceeding. Today we add credits-related issues and other conditions of imprisonment to the list of administrative matters." (internal citations omitted)); id. at 369, 527 S.E.2d at 750 ("[A]n inmate may seek review of Department's final decision in an administrative matter under the APA.").

CONCLUSION

Based on the foregoing, this Court concludes Applicant has not established any constitutional violations 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 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.

[1] Applicant has not alleged his sentence is expired. Further, based on the sentencing sheets, the plea court gave Applicant credit for 1,472 days of time served.

Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). If 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 shall be remanded to and remain in the custody of the State.

IT IS SO ORDERED.

WALTON J. MCLEOD, IV
Presiding Judge
Ninth Judicial Circuit

THIS 8TH day of APRIL, 2024

Lexington, South Carolina