THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM YORK COUNTY
Court of Common Pleas
Post Conviction Relief

Walton J. McLeod, IV, Circuit Court Judge

Lower Court Case No.: 2020-CP-46-03437

Carly Blumenstein #382062,..... Petitioner

vs.

State of South Carolina, ...Respondent.

NOTICE OF APPEAL

The Petitioner, Carly Blumenstein #382062, appeals the Order of Dismissal signed by the Honorable Walton J. McLeod, IV on April 17, 2023 and filed on April 25, 2023. A timely Motion for Reconsideration was filed on May 2, 2023. An Order Denying Motion to Alter or Amend Pursuant to Rule 59, SCRCP was signed by the Honorable Walton J. McLeod, IV on May 6, 2024 and filed May 13, 2024. Appellant received written notice of this order on May 14, 2024.

Respectfully submitted.

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June 5, 2024

STATE OF SOUTH CAROLINA COUNTY OF YORK	)	IN THE COURT OF COMMON PLEAS FOR THE SIXTEENTH JUDICIAL CIRCUIT
Carly Blumenstein, SCDC #382062, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2020-CP-46-03437 **ORDER OF DISMISSAL**

I. INTRODUCTION

The matter before this Court is an action for post-conviction relief (PCR) commenced by Carly Blumenstein (Applicant) on November 16, 2020. On December 9, 2022, a hearing into the matter was convened before the Honorable Walton J. McLeod, IV. Applicant was present and represented by Tommy A. Thomas, 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 hereby **DENIES** relief and dismisses this action with prejudice.

II. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections. During its September 2019 term, the York County Grand Jury indicted Applicant for trafficking methamphetamine, 100 grams or more, first offense (2019-GS-46-00734), and possession with intent to distribute heroin (2019-GS-46-00735). Applicant was represented by Christopher A. Wellborn, Esquire. Assistant Solicitor Austin Newman of the Sixteenth Circuit Solicitor's Office prosecuted the case.

On January 14, 2020, Applicant appeared before the Honorable Paul M. Burch, circuit court judge, and, pursuant to negotiations between the State and Applicant, pleaded guilty to the lesser included offense of trafficking methamphetamine, 28 grams or more, first offense and possession with intent to distribute

heroin. Additionally, pursuant to negotiations between the State and Applicant, Applicant waived presentment to a Grand Jury, and pleaded guilty to two counts of possession of methamphetamine (2018-GS-46-07792, -08594). In accordance with the negotiations, Judge Burch sentenced Applicant concurrently to fifteen years' each for trafficking methamphetamine and possession with intent to distribute heroin, and time served for both counts of possession of methamphetamine. Applicant did not file a direct appeal.

III. STATEMENT OF FACTS

Trafficking Methamphetamine and Possession with Intent to Distribute Heroin (2019-GS-46-00734, -00735)

On January 24, 2019, Applicant and a co-defendant were stopped on Interstate 77 for speeding. (GP Tr. p. 9). During the traffic stop, police canines conducted a free-air sniff of the vehicle and alerted to a substance on the passenger's side door. (GP Tr. p. 9). Inside the car police found a black computer bag on the floor of the passenger's side of the car which contained three plastic bags with 120.53 grams of methamphetamine, along with three digital scales, packaging materials, and other paraphernalia. (GP Tr. p. 9). Police additionally found a Mountain Dew can containing .19 grams of heroin, and .22 grams of methamphetamine, nineteen doses of Alazopram, and six doses of Clonazepam. (GP Tr. p. 9). Applicant claimed ownership of the drugs. Applicant's co-defendant informed police he was involved in a drug deal Applicant had arranged, and that this was the third drug deal that Applicant and her co-defendant had conducted together. (GP Tr. p. 9).

Possession of Methamphetamine (2018-GS-46-07792)

On November 3, 2018, Applicant was a passenger in a vehicle that was stopped on Eden Terrace in York County for failure to use a turn signal. (GP Tr. p. 8). Applicant was the owner of the vehicle, and gave consent for a search of the car. (GP Tr. p. 8-9). During the search, police found .07 grams of methamphetamine in Applicant's purse. (GP Tr. p. 9).

Possession of Methamphetamine (2018-GS-46-08594)

On November 13, 2018, Applicant was stopped by police on Hanley House Lane in York County for crossing over the center line multiple times. (GP Tr. p. 9). Applicant consented to a search of her purse, during which, officers found a syringe containing methamphetamine. (GP Tr. p. 9).

IV. CURRENT APPLICATION

Applicant timely commenced this PCR application on November 16, 2020. In her application, Applicant alleged she was entitled to relief based on the following grounds:

1. Ineffective Assistance of Counsel
2. Involuntary Guilty Plea

Pursuant to Rule 71.1, SCRCP, Applicant, through PCR counsel, amended her application to include the following allegations:

1. That the Applicant would further allege that she hired Christopher Wellborn as her trial lawyer. The purpose of hiring Mr. Wellborn was in order for him to try the case for which the Applicant was charged. However, just prior to trial, a plea offer was presented to her by counsel. This plea offer was a negotiated fifteen (15) years plea for two counts of Possession of Methamphetamine first offense, Trafficking in Methamphetamine 28 grams or more first offense and Possession with Intent to Distribute Heroin first offense. Plea counsel told the Applicant that she would be serving an 85% sentence, but she would eligible for parole.
2. That the Applicant's Mother, Terri Robinson Blumenstein contacted plea counsel when the Applicant learned from the South Carolina Department of Corrections, that she was not eligible for parole. Plea counsel advised Applicant's Mother that he would speak with the Attorney General's Office about this. Applicant's Mother was informed that plea counsel contacted the Attorney General's office and found out that she was not eligible for parole and submitted to Applicant's Mother that he had been wrong about Applicant's parole eligibility.
3. In addition, the Applicant believes that plea counsel seemed to not be fully invested in his representation. That often the Applicant would ask him to look into certain matters and he never did. Applicant believes that Plea counsel did not fully and properly investigate the case, did not advise her correctly regarding this case and encouraged her to enter into the plea based upon incorrect information.
4. Any and all other issues as they may arise from the PCR trial.

At the hearing, Applicant proceeded only on claims that were raised in the amended application.

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;

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), SCRCP. 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. ___, 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. The Court will now address the claims raised in the application and amended application, finding each 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.

A. Failure to Investigate[1]

Applicant contends Counsel was ineffective for failing to fully and properly investigate the case, including failing to investigate certain matters suggested by Applicant. Applicant further contends Counsel was not fully invested in his representation. This Court disagrees, and finds Applicant failed to present sufficient evidence or testimony indicating how a more thorough investigation would have affected Applicant's decision to plead guilty.

1. PCR Testimony

Applicant testified she met with Counsel "a handful, maybe five times" while she was detained in the York County Detention Center. (PCR Tr. p. 9). During these meetings, Applicant testified she would

[1] Claim 3

"pitch ideas...of possible routes we could take in trial" and that Counsel "was not following those avenues." (PCR Tr. p. 9; PCR Tr. p. 10). Specifically, she wanted Counsel to investigate the existence of evidence showing the drugs were not hers and to challenge the constitutionality of the K9 search. (PCR Tr. p. 17 – 18). Applicant testified she admitted to law enforcement the drugs were hers. (PCR. Tr. p. 18).

Counsel testified he initially represented Applicant on the two possession of methamphetamine charges, where, in both cases, drugs were found in her purse, pocketbook, or in her vehicle after a traffic stop and subsequent search. (PCR Tr. p. 23). While those cases were pending, Applicant was once more stopped in York County and a search of her vehicle was conducted. (PCR Tr. p. 24). After a K9 search of the vehicle, over 28 grams of methamphetamine were found. (PCR Tr. p. 24).

Counsel testified the first action he undertook in his representation of Applicant on the trafficking charge was to investigate the legality of the stop. (PCR Tr. p. 24). Counsel watched the videos of the traffic stop to determine whether the stop was "prolonged in a way that would render it illegal." (PCR Tr. p. 24). Applicant mentioned to Counsel certain actions by law enforcement "that should have been on the video that would have been helpful, potentially, to our cause in suppressing the evidence"; however, upon review of the videos, Counsel discovered those actions did not occur. (PCR Tr. p. 25, ll. 1-6). Thus, after investigating the legality of the stop, Counsel determined "the suppression of the search avenue was foreclosed." (PCR Tr. p. 25).

Counsel testified the first line of defense in this case was to argue the drugs did not belong to Applicant but instead belonged to the co-defendant. (PCR Tr. p. 24). Counsel testified this defense was problematic from the outset since Applicant gave a confession admitting the drugs were hers. (PCR Tr. p. 25). Despite the precarious nature of this defense, Counsel investigated videos from the highway patrol vehicle, where Applicant and co-defendant were detained shortly after the traffic stop, which Applicant mentioned contained statements made by her and co-defendant corroborating her defense. (PCR Tr. p. 26). Furthermore, Counsel testified he looked at body cams, dash cams, and at in-camera car footage; he looked at every single available video and those statements were not there. (PCR Tr. p. 35). After a thorough investigation of the videos, Counsel determined that conversation did not exist. (PCR Tr. p. 26).

After determining the suppression of the drugs and Applicant's defense she lacked ownership in the drugs would likely be unsuccessful, Counsel testified their strategy switched from one of preparing for trial to mitigation. (PCR Tr. p. 26). This strategy was agreed upon by Applicant and both her parents. (PCR Tr. p. 27). Counsel testified he had extensive communications with the Solicitor lasting several months in which he conveyed issues related to mitigation including information regarding Applicant's background, her counseling, and her medical history in order to obtain the best plea offer possible. (PCR. Tr. p. 44). Counsel testified these communications occurred over the phone, in person, at the courthouse, and over email. (PCR Tr. p. 44). Counsel testified that during plea negotiations he requested an offer for Applicant to plead to trafficking methamphetamine ten to fifteen grams. (PCR Tr. p. 34). Further, Counsel testified he argued Applicant would be an ideal candidate for drug court given her background. (PCR Tr. p. 34). Despite Counsel's best efforts both these suggestions were summarily rejected by the Solicitor. (PCR Tr. p. 34).

2. Discussion

This Court concludes Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland*). Counsel's credible testimony indicates he met with Applicant several times and thoroughly investigated the defenses Applicant suggested. Further, Applicant failed to present "any evidence of how additional preparation or communication would have resulted in a different outcome." *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012); *see Jackson v. State*, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998) (explaining that, where an applicant failed to present any evidence of what counsel could have discovered or what other defenses he would have requested counsel pursue had counsel more fully prepared for the trial, applicant failed to show his counsel's lack of preparation prejudiced him); *Harris v. State*, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (finding that, when there is evidence counsel met with a defendant in preparation for trial and there is no evidence additional preparation on the part of counsel would have

affected the outcome at trial, counsel cannot be said to have been ineffective), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018).

In sum, as made clear by the above summary of Counsel's testimony, Applicant's allegations regarding Counsel's failure to investigate possible defenses are refuted by Counsel's credible testimony.

First, Applicant alleges Counsel failed to investigate the legality of the traffic stop and K9 search. This Court finds Counsel adequately investigated the traffic stop and subsequent search. Counsel credibly testified he analyzed all the videos of the traffic stop available to ascertain the constitutionality of the traffic stop. Furthermore, Counsel testified he examined the videos for the specific actions Applicant indicated would be on the videos. Counsel credibly testified those actions were not on the videos. After sufficiently investigating the videos, Counsel determined the suppression of the drugs would likely be unsuccessful. Thus, this Court finds Counsel adequately and thoroughly investigated the legality of the K9 search, and accordingly, Counsel exercised reasonable professional judgment in determining the stop was legal and suppression of the drugs would be unlikely.

Next, Applicant alleges Counsel failed to properly investigate potential exculpatory evidence showing the drugs belonged to her co-defendant. This Court finds Counsel adequately investigated and prepared for this defense. Counsel's credible testimony evinces his investigative acts, including reviewing video from the highway patrol that Applicant claimed contained exculpatory statements made by her and her co-defendant. Furthermore, Counsel credibly testified he reviewed all other videos available to him, including footage from body cameras and dashboard cameras, to see if any exculpatory evidence existed. Again, Counsel credibly testified that evidence simply did not exist. Moreover, Applicant testified she made a statement to law enforcement claiming ownership over the drugs making this defense even more untenable. Thus, this Court finds Counsel adequately investigated and prepared for this defense, and Counsel exercised reasonable professional judgment in determining this defense would likely be unsuccessful.

Applicant's allegation Counsel was not fully invested in his representation is refuted by the credible testimony of Counsel. As discussed above, Counsel thoroughly investigated this case including all potential

defenses. Counsel negotiated extensively with the Solicitor, over the course of several months, seeking to obtain the best plea deal possible. For the purpose of mitigation Counsel investigated Applicant's background in the hopes it would lead to a more favorable plea deal. Despite the worthy efforts of Counsel, it is clear from Counsel's testimony that the Solicitor was not going to acquiesce from the plea offer of fifteen years. Counsel then advised Applicant the best solution was to plead guilty to the negotiated offer of fifteen years for trafficking methamphetamine, 28 grams or more, first offense.

The Court finds Applicant failed to present evidence of a viable defense, investigative tactic, or alternate strategy Counsel should have explored which would have helped Applicant's case or affected her decision to plead guilty. Accordingly, Applicant's claims pertaining to Counsel's failure to investigate and prepare Applicant for trial are **DENIED.**

B. Plea Counsel Erroneously Advised Applicant Her Sentence Was Parole Eligible and Applicant Relied On This Misinformation In Making Her Decision to Plead Guilty [2]

Applicant also contends Counsel was ineffective for erroneously advising Applicant she would be eligible for parole if she pleaded guilty to trafficking in methamphetamine. This Court disagrees, and finds that Counsel's credible testimony; Counsel's communication via email with the Solicitor, which was made part of the record; and the plea waiver form signed by Applicant refute this allegation.

1. PCR Testimony

At the PCR hearing Applicant testified that her intent in hiring Counsel was to prepare for a trial. (PCR Tr. P. 10). Applicant testified she decided to start considering a plea because she had been in County Detention for over a year and was losing hope in her case due to Counsel not investigating certain avenues. (PCR Tr. p. 11). Applicant testified Counsel informed her she would be pleading to a violent crime, but it would be parole eligible. (PCR Tr. p. 11). Applicant testified Counsel told her she would have to complete thirty percent of her time before she would be eligible for parole. (PCR Tr. p. 11). Applicant testified Counsel went through the math with her and determined she would have to serve five years before becoming eligibe for parole. (PCR Tr. p. 11-12). Applciant testified she pleaded guilty based on the parole eligibility

[2] Claims 1 and 2

of the offense. (PCR Tr. p. 13). Applicant testified she was informed by her mother over the phone that she was not eligible for parole.

At the PCR hearing, Applicant's mother, Terry Blumenstein, testified she would talk with Counsel regularly about the case. (PCR Tr. p. 21). Applicant's mother testified that Counsel informed her that Applicant would be serving a fifteen year sentence, but Applicant would only have to serve four years before becoming parole eligibile. (PCR Tr. p. 21). Applicant's mother further testified she found out Applciant was not parole eligible when looking at Applicant's profile on the South Carolina Department of Corrections website. (PCR Tr. p. 21).

Counsel testified he then began plea negotiations with the Solicitor on behalf of Applicant. (PCR Tr. p. 28). After extensive communications with the Assistant Solicitor, Counsel testified they received a negotiated plea offer of fifteen years' imprisonment. (PCR Tr. p. 28). Counsel testified he explained to Applicant she had the choice of accepting the offer or rejecting the offer and proceeding to trial. (PCR Tr. p. 29).

Counsel testified he informed Applicant she would be serving 85% of her sentence. (PCR. Tr. p. 31). Counsel testified there was correspondence with the solicitor to that effect. (PCR Tr. p. 31). The State then admitted a copy of the email into the record without objection. (PCR Tr. p. 32), *See* State's Exhibit 1. Counsel testified that after receiving the email he believes he would have informed Applicant she was pleading to a non-parole eligible offense even though he cannot remember the exact words he used. (PCR Tr. p. 33). Counsel testified he told Applicant the sentence was "in the eighty five percent category." (PCR Tr. p. 34). Counsel testified he has no memory of informing Applicant she would be parole eligible after four years and "that wouldn't have made any sense." (PCR Tr. p. 36-37). Regarding conversations between Counsel and Applicant's mother, Counsel testified he remembers telling her that Applicant would have to do eighty-five percent. (PCR Tr. p. 36). Counsel testified he remembered a phone call between himself and Applicant's mother where they discussed a possible mistake regarding Applicant's time served, however, Counsel did not recall a conversation with Terry concerning parole eligibility. (PCR Tr. p. 36).

2. Discussion

"[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced." *Reed v. Becka*, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). Accordingly, because a criminal defendant waives several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Pittman v. State*, 337 S.C. 597, 524 S.E.2d 623 (1999). 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; *see also United States v. Smith*, 440 F.2d 521, 528–529 (7th Cir.) (Stevens, J., dissenting) (explaining that voluntariness relates to the trustworthiness of the admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

The test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, *Brady*, 397 U.S. at 750–53, or by increasing the risks of punishment on those who do not. *Alford*, 400 U.S. at 37 (1970); *cf. United States v. Cox*, 464 F.2d 937, 942 (6th Cir. 1972) ("It is well established that a guilty plea is not rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment." (citing *Brady*, 397 U.S. 742)). An applicant who enters a plea on the advice of counsel may "only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the [applicant] would not have pled guilty, but would have insisted on going to trial." *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing *Hill*, 474 U.S. 52).

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights she is waiving; 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. Additionally, the defendant "must be aware of 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).

Parole eligibility is collateral consequence of sentencing which a defendant need not be specifically advised before entering a guilty plea. *Griffin v. Martin*, 278 S.C. 620, 300 S.E.2d 482 (1983). *See Brown v. State*, 306 S.C. 381, 412 S.E.2d (1991) (guilty plea is not rendered involuntary if the defendant is not informed of the collateral consequences of his sentence). "However, if trial Counsel actively misinforms the defendant about parole eligibility, the defendant must prove [she] relied on the misinformation to receive PCR". *Frasier v. State*, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

This Court finds Applicant's allegation she pleaded guilty due to Counsel's misinformation regarding parole eligibility is without merit. Applicant testified she would not have pleaded guilty had she been aware the charge was a non-parole eligible offense. This Court finds that Applicant's testimony regarding her reliance on the parole eligibility of the offense is not credible based on extensive evidence presented to the contrary.

Specifically, this allegation is refuted by the credible testimony of Counsel. Counsel credibly testified multiple times that he informed Applicant she would be serving eighty five percent of her sentence for trafficking methamphetamine. Counsel credibly testified it does not make any sense he would have advised Applicant she would only have to serve four years. This directly refutes Applicant's testimony that Counsel informed her she would become parole eligible after serving four years. Furthermore, Counsel testified he believed he would have informed Applicant she was pleading to a non-parole eligible offense after receiving an email from the Solicitor confirming this. *See* State's Exhibit 1.[3] Counsel credibly testified

[3] This Court finds it incredulous that after *months* of plea negotiations Applicant would claim that Counsel advised her she would be pleading to an offense that would be parole eligible after four years. This is especially difficult to believe considering the original offense charged carried a mandatory term of imprisonment of 25 years.

he remembers telling Applicant's mother she would be serving 85% of her sentence. Counsel credibly testified he does not recall discussing parole eligibility with Applicant's mother.

Furthermore, this Court has before it a plea waiver form signed by Applicant and filed on November 23, 2020.[4] The plea waiver form explains the consequences of the offense Applicant plead to. The form explains trafficking methamphetamine 28 grams or more 1st offense is violent, serious, and *no parole.* Applicant initialed near the box checked *no parole.* This form directly refutes Applicant's allegation she was unaware she was pleading to a non-parole eligible offense. Accordingly, this Court finds Applicant was not actively misinformed regarding the parole eligibility of the offense.

This Court again finds applicable the strong presumption that trial counsel rendered adequate assistance and exercised reasonable professional judgment in his representation of Applicant at all stages of the proceedings. *Ard*, 372 S.C. at 331, 642 S.E.2d at 596; *Strickland*, 466 U.S. at 689. Counsel's credible testimony, his correspondence with the Solicitor, and the plea waiver form demonstrate Applicant was aware she was pleading to non-parole eligible offense; thus, she did not rely on any misinformation regarding her parole eligibility when giving her plea. Accordingly, Applicant's claims pertaining to Counsel's alleged misinformation of Applicant's parole eligibility and her subsequent reliance on that misinformation 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 her 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,

[4] The plea waiver form was included in the Clerks Records.

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 17 day of APRIL, 2023.

Walton J. McLeod, IV
Presiding Judge
Sixteenth Judicial Circuit

Lexington, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF YORK,)	SIXTEENTH JUDICIAL CIRCUIT
)	
Carly Blumenstein #382062,)	NO.: 2020-CP-46-03437
Applicant,)	
)	**ORDER DENYING MOTION TO ALTER OR AMEND PURSUANT TO RULE 59, SCRCP**
vs.)	
)	
State of South Carolina,)	
)	
Respondent.)	
)	

This matter is before the Court by way of a post-conviction relief ("PCR") action commenced by Carly Blumenstein ("Applicant"). This Court held an evidentiary hearing on December 9, 2022. Applicant was present at the hearing and represented by Tommy A. Thomas, Esq., and Assistant Attorney General T. Cruise Mitchell represented the State. An Order of Dismissal in this matter was signed on April 17, 2023. Applicant filed a Motion for Reconsideration pursuant to SCRCP Rule 59 on May 2, 2023. For the reasons set forth herein, Applicant's Motion to Alter or Amend and for Reconsideration pursuant to Rule 59(e), SCRCP, is **DENIED.**

Applicant argues that reconsideration of the Order of Dismissal is necessary and appropriate due to the inclusion of information regarding a plea waiver. Applicant acknowledges that information referring to a plea waiver signed by Applicant and included in the clerk's records was provided to her counsel prior to the merits hearing. However, Applicant argues that the waiver itself was not entered into evidence, nor was testimony or argument presented regarding its existence. Applicant thus asserts that the Court should reconsider any consideration of the existence of the plea waiver in the Order of Dismissal.

The State asserts, and this Court agrees, that this argument is without merit. "The voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the entry of the guilty plea, and also from the record of the post-conviction relief hearing." *Harris v. Leekes*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). "When determining issues relating to guilty pleas, this Court will consider the entire record, including the transcript of the guilty pleas and the evidence presented at the PCR hearing." *Roddy v. State*, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000).

There is no dispute that the guilty plea waiver form is a part of the record before this Court. The Court can consider any evidence contained in the record to determine the voluntariness of the guilty plea. This includes the guilty plea waiver form, along with evidence and testimony presented at the evidentiary hearing in determining the voluntariness of Applicant's guilty plea.

After careful consideration of the record in this case and the submissions of counsel, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered.

IT IS THEREFORE ORDERED that Applicant's Motion to Alter or Amend and for Reconsideration pursuant to Rule 59(e), SCRCP, is **DENIED.** Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

This Court hereby advises Applicant he must file and serve a notice of appeal within thirty days of the service of this Order to secure appellate review. *See* Rule 203, SCACR. Applicant's attention is directed to Rule 227, SCACR, for the procedures following the filing and service of the notice of appeal.

IT IS SO ORDERED.

WALTON J. MCLEOD, IV
Presiding Judge
Sixteenth Judicial Circuit

May 6, 2024