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JUL 26 2024
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

Joseph S. Wadford, Jr., #378918)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 2019-CP-08-2008

ORDER OF DISMISSAL
WITH PREJUDICE

2024 JUL 15 PM 3:56
LEAH GUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY, SC
FILED HR

This matter comes before the Court by way of Applicant Joseph S. Wadford, Jr.'s post-conviction relief (PCR) application, which was filed on August 13, 2019, and received by the South Carolina Attorney General's Office on January 24, 2020. The State of South Carolina (Respondent) served its Return to the application filed on December 2, 2020, and requested an evidentiary hearing for the claims of ineffective assistance of counsel. An evidentiary hearing was convened before this Court on June 21, 2022, at the Berkeley County Courthouse. Applicant was present and represented by Christopher Reginald Geel, Esquire. Respondent was represented by Assistant Attorney General Samantha J. Weidauer.

After a thorough review of all records and evidence before this Court, this Court finds Applicant has not met his requisite burden of proof establishing he is entitled to post-conviction relief and hereby denies and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. In February of 2019, Applicant was indicted for Assault and Battery of a High and Aggravated Nature (2019-GS-08-00254) and Assault and Battery, Third Degree (2019-GS-08-00255). Applicant waived presentment to the

grand jury on both indictments. Julie Marie Shivers, Esquire (Plea Counsel), represented Applicant. Assistant Solicitor Kamila Szymczynska-Sas prosecuted the case.

On January 23, 2019, Applicant appeared before the Honorable R. Markley Dennis, Jr. and pled guilty to all the charges. Judge Dennis sentenced Applicant to imprisonment for thirty (30) days with credit for fifteen (15) days' time served for the Assault and Battery and fifteen (15) years imprisonment, suspended upon the service of eight (8) years, for the Assault and Battery of a High and Aggravated Nature. Applicant did not appeal his convictions or sentences.

SUMMARY OF FACT PRESENTED AT THE GUILTY PLEA HEARING

The facts for this indictment were articulated by the State at Applicant's plea hearing as follows:

Your Honor, on October 26, 2017, law enforcement was dispatched to the Bonneau area of Berkeley County to an elderly man who was the victim on an assault and battery third, being assaulted by this defendant. That victim was apparently picking up some tin cans in the community and had prior permission from one of the residents. This defendant approached him and said he didn't have permission and punched him in the face causing laceration to the right side of his face. Another person witnessed the incident, assisted that victim, and also later helped to identify this defendant. Law enforcement arrived, first talked to the elderly victim and then located this defendant. When they approached him, asking if he knew who punched the victim, he admitted that he did. At that time, the defendant was told to put his hands behind his back and that he was under arrest for the assault on the victim. He resisted, grabbed and pushed the officer, was throwing punches and trying to basically dig the officer's eyes out, your Honor. He was able to throw the officer on the ground when the officer was trying to place him in a headlock, and he got on top of the officer. At that point, he was jamming his thumbs into the officer's eyes. There was another individual who got involved and tried to assist the officer and was able to distract this defendant and the officer was able to get away. He drew his weapon at the defendant. At that point, the defendant actually grabbed the weapon, Your Honor, and was told to let go. At some point he did. The backup arrived and he was placed in custody. The officer and the other victim were both transported for

treatment. The officer was treated for a shoulder injury and eye injury. He had a rotator cuff surgery at some point. The eye injury was identified as a traumatic hemorrhage in his eye. He went through several treatments. I think at this point the doctor gave him some options for surgical intervention. He is choosing not to proceed with that at this point.

(Plea Tr. pp. 8-10).

CURRENT PROCEEDING

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

1. Ineffective Assistance of Counsel
 - a. Plea Counsel failed to present mitigating evidence of Applicant's medical issues.

As relief, Applicant seeks a "new trial."

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act¹ (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based on 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[.]

¹ S.C. Code Ann. §§ 17-27-10 to -160.

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. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). 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).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. Strickland v. Washington, 466 U.S. 668 at 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; 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 "[without 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)).

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 range of 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. at 58-59. 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.

This inquiry "focuses on a defendant's decision making" 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. 357, 367 (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)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of Plea Counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility.

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), SCRPC (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

Accordingly, set forth below are the relevant findings of facts and conclusions of law as required by § 17-27-80 of the South Carolina Code:

INITIAL FINDINGS

As a matter of general impression, this Court finds Plea Counsel's testimony at the evidentiary hearing credible and persuasive, where she presented well-recollected testimony of relevant background, facts, and discussions leading up to and during the plea hearing. This Court further finds applicable the strong presumption that at all stages of Plea Counsel's representation of Applicant, she rendered adequate assistance and exercised reasonable professional judgment in

his representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689, 104 S.Ct. 2052; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

This Court makes the following findings from the record: 1. Applicant advised the plea court Plea Counsel had explained the charges to him and possible punishment (Plea Tr. p. 4; 6-7); 2. Applicant understood the judge could sentence him to twenty years (Plea Tr. pp. 4-5); 3. Applicant understood he was pleading to a violent offense (Plea Tr. p. 5); 4. Applicant understood he was pleading to a serious offense and that he would receive a strike (Plea Tr. p. 5); 5. Applicant understood that he would have to serve eighty-five percent of any sentence the plea court imposed (Plea Tr. p. 5); 6. Applicant understood he would have to serve a two-year community supervision program after his sentence was served (Plea Tr. p. 5); 9. Applicant indicated he was satisfied with his attorney (Plea Tr. p. 6-7); 10. Plea Counsel discussed the State's recommended sentence of a cap of ten-year active time with Applicant prior to his plea (Plea Tr. pp. 7-8); 11. Plea Counsel advised Applicant of his rights and the consequences of a plea (Plea Tr. p. 8); 12. Applicant confirmed the truth of what Plea Counsel advised the plea court. (Plea Tr. p. 8); 13. Applicant indicated to the plea court he waived his rights to a jury trial, to remain silent, and to confront the witnesses against him (Plea Tr. p. 8); 14. No threats or promises were made to Applicant in exchange for his plea (Plea Tr. p. 8); 15. Applicant agreed with the State's recitation of the facts giving rise to his plea and stated he did assault the police officer (Plea Tr. p. 11); 16. Applicant clearly indicated to the plea court he had answered all the plea court's questions truthfully and understood the plea court's questions (Plea Tr. pp. 11-12); 17. Applicant was not under the

influence of alcohol or medication at his plea (Plea Tr. p. 12); 18. The plea court found there was a factual basis for the plea and that Applicant's plea was entered with the benefit of competent counsel with whom Applicant was satisfied (Plea Tr. p. 12); 19. Plea counsel advised the plea court of Applicant's various health issues and provided the plea court with a letter from Applicant's nephrologist (Plea Tr. pp. 12-15); 20. The plea court read Applicant's letter from his nephrologist (Plea Tr. pp. 15-16).

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS ON THE MERITS

Allegation 1a: Plea Counsel failed to present mitigating evidence concerning Applicant's health at the plea hearing.

Applicant alleges Plea Counsel was ineffective for failing to present mitigating evidence at Applicant's sentencing hearing. Specifically, Applicant alleges Plea Counsel failed to present pertinent and helpful mitigating evidence at Applicant's sentencing hearing concerning his prior back surgery and certain aspects of his dialysis treatment. This Court finds this allegation is without merit.

"[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Strickland, 466 U.S. at 691. "The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Id. Counsel is not required to investigate or submit every conceivable line of mitigating evidence, but a decision not to investigate must be reasonable. Von Dohlen v. State, 360 S.C. 598, 602 S.E.2d 738 (2004); Cf. Wiggins v. Smith, 539 U.S. 510, 522 (2003) ("counsel's failure to uncover and present voluminous mitigating evidence at sentencing could not be justified as a tactical decision ... because counsel had not 'fulfill[ed] their obligation to conduct a thorough investigation of the defendant's background'" (quoting Williams v. Taylor, 529 U.S. 362, 396 (2000))).

In determining prejudice, an applicant must show that but for counsel's deficiency in not presenting the mitigating evidence, he would have received a different sentence. Porter v. McCollum, 558 U.S. 30, 41(2009); See Wiggins, 539 U.S. at 536 (finding that had the jury been confronted with considerable mitigating evidence regarding the "sordid details of [Petitioner's] life history," there was "a reasonable probability that it would have returned with a different sentence"). The inquiry is not limited to cases where no or little mitigation was presented, and courts assess whether the new mitigating evidence "would barely have altered the sentencing profile presented" to the decisionmaker. Sears v. Upton, 561 U.S. 945, 954(2010), quoting Strickland, 466 U.S. at 700.

Relevant Excerpts from the Guilty Plea Hearing

The record reflects that prior to Applicant's sentencing, Plea Counsel advised the plea court of the following in mitigation:

Thank you, Your Honor. Mr. Wadford is 52 years old. He'll actually be 53 on Monday of next week. He is a 1983 graduate from St. Stephens High School. He's been married for 14 years; however, he is separated for the last three years when his wife moved in with her new boyfriend. He does not have any children. He was a truck driver for 25 years prior to being medically disabled. He currently suffers from cataracts on his eye, which he has appointments on February 11th because he needs a cataract surgery; but more significantly than that, he suffers from kidney failure and has since 2012. He is required three times a week as a life-saving measure to go to dialysis, and he's been on dialysis since 2012. I do have a letter from his nephrologist that I asked for him to prepare if I could pass that forward... He has been on the kidney transplant list since 2012. According to the nephrologist, it apparently takes five to seven years generally to receive a kidney. He's currently past that time frame; however, he has not received one yet. I asked specifically of the nephrologist what would be the result if he were to go to an active prison sentence. And, certainly, as I suspected and as the letter will indicate, he will be removed from the kidney transplant list and would not be eligible to be back on the list until he's released from prison. And then, obviously, the five to seven-year clock would run thereafter. He's certainly very remorseful. He knows this officer.

It's a small town. He's known him for many years. He understands that he was completely and utterly in the wrong. He did ask the officer not to grab on him; however, he responded in the worst way humanly possible. He certainly feels terrible about what happened and he understands the gravity of the charge, the consequences that he's facing, and he is very remorseful for his actions. He certainly has a prior history from 2002, but he's not -- he does not have an extensive history. I understand that -- and I've talked to him about the likelihood of him going to prison. We would humbly ask Your Honor to consider an alternative to that. I have spoke with him at length about the possibility, and that would I be asking Your Honor to consider a significant house arrest sentence. The reason being based on his health. I'm hopeful that he would be able to stay on the kidney transplant list. I've talked to him about how it's certainly much easier for him to go in and do the time and just be done and how difficult house arrest is. He does not work. The only thing he does is go to dialysis three times a week and sees his medical doctors. So we would ask Your Honor to consider a significant house arrest sentence with an order that he not be able to leave, other than for his medical appointments. And that is what he's asking for today, Your Honor.

(Plea Tr. pp. 12-15).

Additionally, the record reflects that the plea court addressed Applicant concerning the evidence presented in mitigation, as follows:

Mr. Wadford, I read a letter from Dr. Broader, dated January 4, 2019. And it says that you have been on life-sustaining treatment since July 2012, five years before this incident occurred. And I understand that what I'm about to do -- and I don't derive any significant pleasure out of this. This is probably a death sentence to you, and I'm sorry. But there is no way in the world we can allow somebody who is in that situation to do what you did without punishment. And there is -- there is nothing that justifies what you did. I don't care if the officer -- if you thought the officer didn't have any reason to do anything. One thing we know is -- we learn that you have to say, yes, sir, and you challenge that at another time and place. But to do what you did? No, sir, not a chance that I'm going to let you walk out of this courtroom. And the fact that you have the consequence of losing your spot on the -- for a kidney transplant, I'm sorry. You initiated that; I didn't.

(Plea Tr. pp. 15-16)

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Testimony Presented at Evidentiary Hearing
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On direct examination, Applicant testified he met with Plea Counsel for the first time about a month after his arrest, and at that time, he had issues with his back and was undergoing dialysis three times a week. (PCR Tr. p. 9). Applicant testified he was undergoing dialysis due to kidney failure, and he has had issues with his kidneys since 2011. Id. Applicant testified that his doctor had discovered he had a walking disc in his back that needed to be replaced, and this issue had been bothering him for a couple of years. (PCR Tr. pp. 9-10). Applicant testified he did not have back surgery until after his arrest. (PCR Tr. p. 10). Applicant testified he was put on dialysis in 2015 by his nephrologist. (PCR Tr. p. 11).

Applicant testified Plea Counsel represented him the entire time, and he informed Plea Counsel about his various medical issues in their initial meetings. Id. Applicant testified he told Plea Counsel everything he testified to at the evidentiary hearing. Id. Applicant testified he continued his treatment while out on bond. (PCR Tr. pp. 11-12). Applicant testified he informed Plea Counsel of the following concerning his treatment for his various health issues. (PCR Tr. p. 12). Specifically, Applicant testified he informed Plea Counsel about his artificial disk replacement. (PCR Tr. pp. 12-13). Applicant testified he and Plea Counsel discussed pursuing house arrest and probation based on his various medical issues. (PCR Tr. pp. 13-14). Applicant testified he was on the kidney transplant list from 2015 to 2019, and he was informed that if he went to prison, he would be taken off the transplant list. (PCR Tr. pp. 14-15). Applicant testified he was taken off the transplant list. (PCR Tr. p. 15). Applicant testified he advised Plea Counsel about this fact. Id.

Applicant testified he discussed presenting this evidence to the plea court with Plea Counsel, and Plea Counsel did not mention anything to the plea court until after he was sentenced.

(PCR Tr. pp. 15-16). Applicant testified the treatment in SCDC is inadequate, and he believes that if Plea Counsel had presented this mitigating evidence to the plea court, he would have received a lesser sentence. (PCR Tr. pp. 16-17).

On cross-examination, Applicant testified Plea Counsel did not bring up his health issues to the plea court until after he was sentenced. (PCR Tr. p. 19). Applicant testified his reason for pleading guilty was based on his understanding that Plea Counsel had discussed getting house arrest with the judge and solicitor. (PCR Tr. p. 21). Applicant testified he understood prior to his plea that he could get a larger sentence. (PCR Tr. pp. 21-22). Applicant testified he did not recall Plea Counsel advising the plea court that an active sentence would mean Applicant would be taken off the transplant list. (PCR Tr. pp. 22-23). Applicant testified he provided Plea Counsel with a letter from his nephrologist stating he would be taken off the transplant list if he went to jail. (PCR Tr. p. 23).

On direct examination, Plea Counsel testified Applicant's inclination was to plea, and most of their discussions concerned mitigation with the solicitor. (PCR Tr. p. 29). Plea Counsel testified that the focus was to mitigate Applicant's risk as much as possible and that the solicitor would only come down to a cap of ten years because the officer Applicant attacked was insistent on significant time. (PCR Tr. pp. 29-30). Plea Counsel testified she provided the solicitor with Applicant's medical condition and worked hard to get the solicitor to make an offer. (PCR Tr. pp. 30-31). Plea Counsel testified she had numerous discussions with the solicitor prior to them offering a plea. (PCR Tr. p. 31). Plea Counsel testified the solicitor did not recommend ten years active but a cap of ten years because she knew Plea Counsel intended to ask for probation. Id.

Plea Counsel, referencing her notes, testified Applicant signed a waiver an acknowledgment of waiver of his rights, indicated he understood the offer, what the maximum

exposure was, and disclosed that he was on blood pressure medication and kidney medication. (PCR Tr. p. 32; State's Exhibit 1). Plea Counsel testified this was disclosed to the plea court. Id. Additionally, Plea Counsel testified she went over background information with Applicant that morning and asked Applicant what information he believed was important for Plea Counsel to advise the plea court of. (PCR Tr. p. 33).

Plea Counsel testified that Applicant indicated he wanted Plea Counsel to advise the plea court of the following:

And I actually have my paper so I can go over exactly what it was. That he's 52 years old. He would be 53 the following Monday, the following week. He graduated high school in 1983 from St. Stephens High School. He had been married for 14 years but had separated for the last three years after his wife moved in with her boyfriend. He had no children. He was a truck driver for 25 years. And the medical issues that he disclosed to me the day of the plea that he wanted the Judge to know about was that he had cataracts on his eyes and that he had a pre-op appointment on February 11th for the cataracts because they were going to require surgery. In addition to that he had been suffering from kidney failure since 2012. Lifesaving measures required dialysis three times a week and he's been doing that since 2012 up and until the point I would assume still today but up to the point of the plea.

(PCR Tr. pp. 33, 1. 4 – 34, 1. 1; State's Exhibit 1). Plea Counsel then testified to all the evidence she presented to the plea court, which is reflected in the record of Applicant's plea hearing. (PCR Tr. pp. 34-35; Plea Tr. pp. 12-15).

Plea Counsel testified that in their initial meeting in January of 2018, Applicant disclosed his various medical issues, including dialysis for renal failure, his quadruple bypass in 2011, his back issues, and the fact he was on the kidney transplant list. (PCR Tr. pp. 35-36). Plea Counsel testified she believed the most mitigating factor was the kidney transplant issue, and she presented Applicant's letter from the nephrologist to the plea court. (PCR Tr. p. 37).

Plea Counsel testified she advised Applicant of the consequences of an active prison sentence and that the plea court could still sentence Applicant to prison time. Id. Plea Counsel testified that upon advising Applicant of this, Applicant giggled and said, "If the State wants to pay for my dialysis treatment, then so be it." (PCR Tr. pp. 37; 38, ll. 1-2). Plea Counsel testified that Applicant asked him about appealing his sentence after the deadline to appeal had passed, and Plea Counsel responded and reminded Applicant that he knew the consequences of pleading guilty. (PCR Tr. p. 38).

On cross-examination, Plea Counsel testified that Applicant's case was a mitigation case. (PCR Tr. p. 40). Plea Counsel testified she did not mention the back surgery in mitigation before the plea court because she was not aware of it. (PCR Tr. pp. 41-42). Plea Counsel testified that had she known about the back surgery, she would have presented it to the plea court. (PCR Tr. p. 42). Plea Counsel testified she only had an initial note indicating Applicant has back issues. Id.

Findings

As an initial matter, this Court notes that the cited caselaw addresses counsel's failure to present mitigation evidence where defendants were sentenced to death resulting from a jury trial. However, based on the circumstances in Applicant's case, namely that an active prison sentence would result in Applicant being removed from the kidney transplant list, and Plea Counsel's testimony that this was a mitigation case, the cases are relevant in assessing Plea Counsel's performance in representing Applicant at his guilty plea hearing.

This Court finds Applicant failed to establish Plea Counsel was deficient in failing to present relevant mitigation evidence prior to his sentencing, and Applicant failed to show resulting prejudice flowing from Plea Counsel's performance. The combination of the record and Plea Counsel's credible testimony establishes Plea Counsel conducted a thorough investigation of

Applicant's background, presented mitigation to the solicitor during plea negotiations, and presented extensive mitigation evidence to the plea court prior to a sentence being imposed. Plea Counsel presented the plea court with Applicant's extensive medical history, including the letter from Applicant's nephrologist stating Applicant would be taken off the kidney transplant list if given an active sentence. Additionally, Plea Counsel advised the plea court of Applicant's age, marital status, education, and employment.

Concerning Plea Counsel's failure to present evidence of Applicant's back surgery to the plea court, Plea Counsel credibly testified Applicant did not advise her of his back surgery when she questioned Applicant concerning what he would like her to present to the plea court the morning of his plea. Strickland, 466 U.S. at 691 ("The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions."). Plea Counsel cannot be deemed deficient for failing to present evidence Applicant failed to provide her with upon inquiry.

Further, Applicant cannot establish prejudice as it is clear from the record the plea court would not have imposed a lesser sentence had Plea Counsel advised the plea court of Applicant's back surgery. The most relevant mitigating evidence was the nephrologist's letter confirming Applicant would be removed from the kidney transplant list if given an active prison sentence. Upon reading the letter, the plea court advised Applicant that while even considering prison time constituted a death sentence to Applicant, the plea court would not consider giving Applicant no prison time. Clearly, presenting the plea court with evidence of Applicant's back surgery would not have altered the sentencing Applicant received. See Sears, 561 U.S. at 954. Considering all of this, Plea Counsel's performance was more than effective.

Therefore, this Court finds testimony of Plea Counsel credible and that Applicant failed to meet his burden, and finds no deficiency on the part of Plea Counsel nor prejudice therefrom in regard to this allegation. Accordingly, Applicant's request for relief by way of this allegation is denied and dismissed with prejudice.

ALLEGATIONS RAISED DURING THE EVIDENTIARY HEARING

Allegation: Failure to review discovery.

Applicant alleges Plea Counsel was ineffective for failing to review discovery with him prior to his plea. This Court finds this allegation is without merit.

Testimony Presented at Evidentiary Hearing

On cross-examination, Applicant testified Plea Counsel did not review discovery with him prior to this plea. (PCR Tr. p. 20).

On direct examination, Plea Counsel testified she reviewed discovery with Applicant several times. (PCR Tr. p. 26). Plea Counsel testified she reviewed the following evidence with Applicant:

He essentially, what the evidence was there was an elderly man that was in the neighborhood who was picking up some type of nuts off a tree on the ground. And he would testify that Mr. Wadford became upset and asked him to leave. And when he refused, his testimony now obviously this is different from Mr. Wadford's version just to be clear, his testimony would be that Mr. Wadford punched him in the face. And that was the basis for the original ABHAN charge to him. He called police. Mr. Wadford was back at his residence and the police officer arrived on scene and then attempted to arrest Mr. Wadford at which point Mr. Wadford was upset because of he has a familial, not familial; he has a familiar relationship with the officer and he was upset because the officer knew that he had some health conditions. But the officer was attempting to arrest him. Then the officer would testify he began to assault the officer. They ultimately ended up based on the officer's testimony in a situation where one was on top of the other. And at one point the officer drew his weapon and Mr. Wadford reached for the weapon and grabbed the

officer's weapon and then put his fingers inside the officer's eyeballs. And then eventually Mr. Wadford was just like okay, I'm done and then he kind of allowed himself to be arrested. And then the officer had to seek treatment through Lowcountry Eye Specialists I believe for the eye injury. And they provided medical records for the injury to the officer and that would be I believe the extent of what the testimony would be. I do believe there was another officer present as well that may have been a witness.

(PCR Tr. pp. 27, l. 13 – 28, l. 23). Plea Counsel testified to the differences in Applicant's version of the events and the State's. (PCR Tr. pp. 28-29).

Findings

The Court finds Plea Counsel's testimony credible and Applicant's contrary testimony not credible as to this issue. The Court finds Plea Counsel adequately provided and explained the discovery materials to Applicant prior to his plea; therefore, Plea Counsel's performance was not deficient. In addition, to prove prejudice from failure to review discovery, a PCR applicant must present some new evidence or defenses that could have been discovered by counsel's further review of the discovery. Harris v. State, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by Smalls, 422 S.C. 174, 810 S.E.2d 836. Furthermore, an applicant must also show how the new evidence or defenses would have resulted in a different outcome. Id. (citing David v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel, or any prejudice flowing therefrom. Thus, this allegation must be denied and dismissed.

Allegation: Failure to discuss possible defenses.

Applicant alleges Plea Counsel was ineffective for failing to discuss possible defenses with him prior to his plea. This Court finds this allegation is without merit.

To prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris, 377 S.C. at 75–76, 659 S.E.2d at 145–46 (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Harris, 377 S.C. at 75–76, 659 S.E.2d at 145–46.

Testimony Presented at Evidentiary Hearing

On direct examination, Applicant testified that the assault with the officer resulted because the officer snatched him, and he blacked out and hurt the officer, but he did not mean to. (PCR Tr. pp 8-9).

On cross-examination, Applicant testified Plea Counsel did not discuss possible defenses to the charges against him prior to his plea. (PCR Tr. p. 20).

On direct examination, Plea Counsel testified Applicant advised her that he had not punched the elderly man, but had open hand slapped him. (PCR Tr. p. 29). Additionally, Plea Counsel testified Applicant advised her that he did not recall parts of the assault of the officer because he had blacked out, but he did not contest the officer's account. Id. Plea Counsel testified that Applicant understood that if a jury were to hear the officer's testimony, he would be facing significant time, and their conversations revolved around pleading and mitigation. (PCR Tr. p. 29).

Findings

This Court finds 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). Plea Counsel credibly testified to discussions with Applicant concerning his version of the facts, and that Applicant did not contest the officer's account. Plea Counsel credibly testified Applicant did not want to go to trial, but to plea, and that the focus was on mitigating his risk in negotiations. Applicant's testimony at the evidentiary hearing does not contest his guilt, but merely justifies his actions due to his back issues. Clearly, Applicant discussed this with Plea Counsel.

Additionally, Applicant did not desire to go to trial, but to plea, and cannot establish prejudice even where Plea Counsel had not discussed possible defenses. Applicant failed to present evidence to show what available defenses Plea Counsel could have advised him on and how it would have affected his decision to go to trial rather than plea.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel, or any prejudice flowing therefrom. Thus, this allegation must be denied and dismissed.

Allegation: Involuntary Guilty plea because of Plea Counsel's failure to advise Applicant of his rights.

Applicant alleges Plea Counsel was ineffective for failing to discuss possible defenses with him prior to his plea. This Court finds this allegation is without merit.

For a plea to be valid, the applicant must have been aware of the nature and crucial elements of the offense, the maximum and minimum penalties, and the rights he is waiving

by accepting the plea. Boykin v. Alabama, 395 U.S. 238 (1969); Roddy v. State, 339 S.C. 29 (2000). A plea is not knowing or voluntary if a defendant "lacks knowledge of material evidence in the prosecution's possession." Gibson v. State, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (1999).

In the context of a guilty plea, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. Hill, 474 U.S. at 59. Applicant's right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent solemnity and truthfulness included in the guilty plea process. See Blackledge v. Allison, 431 U.S. 63, 74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975)).

A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. at 34, 528 S.E.2d at 421 (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at

the time of the entry of the guilty plea and the record of the post-conviction hearing.'" Dalton, 376 S.C. at 138, 654 S.E.2d at 874 (quoting Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)). Further, "guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including the claims of a violation of a constitutional right prior to the plea." Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981).

Testimony Presented at Evidentiary Hearing

On cross-examination, Applicant testified Plea Counsel did not discuss possible defenses to the charges against him prior to his plea. (PCR Tr. p. 20). Applicant testified he recalled indicating to the plea court that he understood he was waiving his right by pleading guilty. (PCR Tr. p. 21).

On direct examination, Plea Counsel testified Applicant signed an acknowledgement of rights given up by entering a guilty plea, and the acknowledgement went over all of Applicant's rights. (PCR Tr. p. 32; State's Exhibit 1). Plea Counsel testified she and Applicant signed the form on January 23, 2019, before his plea. Id.

Findings

This Court finds Applicant has failed to establish how his plea was not freely and voluntarily entered. During Applicant's plea hearing, Plea Counsel advised the plea court that she had advised Applicant of his rights and the consequences of pleading guilty, and Applicant confirmed this as true. (Plea Tr. p. 8). Additionally, the plea court advised Applicant of the rights he was waiving in exchange for his plea, and Applicant indicated to the plea court he understood he was waiving those rights. Id. Moreover, Plea Counsel credibly testified that she advised Applicant of his rights the morning of his plea, and Applicant signed an acknowledgment of his rights that morning.

The combination of the record and Plea Counsel's credible testimony reveals Applicant's plea was freely, voluntarily, and intelligently entered into. Applicant has failed to show that, but for Plea Counsel's performance, he would have proceeded to trial. Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel, or any prejudice flowing therefrom. Thus, this allegation must be denied and dismissed.

CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations which would require this Court to grant the relief requested in his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notifies the Applicant that he must file and serve a notice of appeal within thirty days from post-conviction relief counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 9th day of July, 2024.

Sumter, South Carolina

Kristi F. Curtis
THE HONORABLE KRISTI F. CURTIS
Presiding Circuit Court Judge
Fourteenth Judicial Circuit



^{HR}
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2024 JUL 15 PM 3: 56
LEAH GUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY, SC

ALAN WILSON
ATTORNEY GENERAL

July 12, 2024

The Honorable Leah Guerry Dupree
Clerk of Court - Berkeley County
Post Office Box 219
Moncks Corner, South Carolina 29461-0219

Re: Joseph S. Wadford, Jr., #378918 v. State of South Carolina
Case No.: 2019-CP-08-02008

Dear Ms. Dupree:

Enclosed please find the original Order of Dismissal with Prejudice signed by the Honorable Kristi F. Curtis, in the above-captioned case, for filing in your office. In addition, please forward a time-stamped copy back to our office for our file.

Sincerely,

Danielle Dixon
Assistant Attorney General

DD/vh

cc: Christopher R. Geel, Esquire