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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT
APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
The Honorable J. Derham Cole, PCR Action Judge
2022-CP-07-02323

ANTHONY BEST, #264066,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Anthony Best appeals the denial of his post-conviction relief application. The post-conviction relief action was heard and denied by the Honorable J. Derham Cole, circuit court judge, on May 6, 2024, and was denied by written order issued filed on August 13, 2024. Applicant received notice of the judgement on August 22, 2024.

/s Chelsey F. Marto
Chelsey F. Marto, Esquire
Attorney for the Applicant
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Columbia, SC, 29211-1549

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	The FOURTEENTH JUDICIAL CIRCUIT
	)	
Anthony Best, SCDC #264066,	)	
	)	
Applicant,	)	
v.	)	**ORDER OF DISMISSAL**
	)	
The State of South Carolina,	)	Civil Action No. 2022-CP-07-02323
	)	
Respondent.	)	

This matter is before the Court on application for post-conviction relief ("PCR") filed by Anthony Best ("Applicant") on January 4, 2023. On May 6, 2024, an evidentiary hearing convened before Circuit Judge J. Derham Cole. Applicant was present and represented by Chelsey F. Marto, Esq. Assistant Attorney General Bryan T. Hall represented Respondent. At the hearing, Applicant testified on his own behalf and called as witnesses Colin Hamilton, Esq., and Claire Schulmeister, Esq. Following a thorough review of the plea transcript and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet his burden of proof. The Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections ("SCDC") serving a fifteen (15) year sentence. In November 2020, the Beaufort County Grand Jury indicted Applicant for two (2) counts of Arson 3rd degree (2019-GS-07-02062 - 02063). These charges arose from an incident in which Applicant was seen on surveillance video setting the victim's car on fire. On August 23, 2022, Applicant pled guilty before Circuit Judge Carmen T. Mullen. Assistant Circuit Solicitor Samantha Molina prosecuted the case. Applicant was represented by

Colin Hamilton, Esq. ("Counsel"). Following the State's recommendation of a thirteen (13) to fifteen (15) year range, Applicant was sentenced to fifteen (15) years imprisonment.

On September 6, 2022, a notice of appeal was filed on Applicant's behalf. On November 18, 2022, the South Carolina Court of Appeals dismissed the Applicant's appeal for failure to provide a sufficient explanation as to why an appeal from his guilty plea should proceed, pursuant to Rule 203(d)(1)(B)(iv), SCACR. *State v. Best*, S.C. Ct. App. Order dated Nov. 18, 2022.

CURRENT APPLICATION

Applicant timely commenced this PCR action on January 4, 2023, alleging he is being held in custody unlawfully for the following reasons:

Ineffective Assistance of Counsel

a. Failure to Investigate

Involuntary Plea

On August 1, 2023, Respondent filed its Return and moved for a more-definite statement on Applicant's claims. On April 25, 2024, Applicant amended his application to raise additional allegations as follows:

Ineffective Assistance of Counsel

a. Failure to object to the State recommending a thirteen to fifteen-year sentence when Applicant was in the middle of entering an open plea.
b. Failure to get Applicant credit for time served on GPS monitoring.

Involuntary Plea

a. Applicant's plea was unknowingly, unintelligently, unfreely, and involuntarily entered when the State recommended a thirteen to fifteen-year sentencing range when Applicant thought he was entering an open plea and did not agree to plead to the recommendation.

On November 13, 2023, Applicant amended his application a second time to raise additional allegations as follows:

Ineffective Assistance of Counsel

a. Failure to investigate the original plea offer and communicate it to Applicant.
b. Failure to object to the State commenting on Applicant's juvenile record.
c. "Brought" Applicant to plead before Judge Mullens, whom Applicant had previously appeared before.
d. Failure to object to the State's recommendation when it was an open plea.
e. Failure to "force" the solicitor to keep the initial plea offer open after a new solicitor took over the case.

Involuntary Plea
a. Applicant thought he would receive a much lesser sentence by pleading.
b. Due to Counsel's advice, Applicant was under the impression that he would not have to serve a lengthy sentence if he paid restitution.

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

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant's Testimony

At the evidentiary hearing, Applicant testified that his initial relationship with Colin Hamilton ("Counsel") was fine, and Applicant was satisfied with the conversations. Applicant testified that Counsel said Applicant's case was more of a probation or restitution case, and Counsel would talk to the solicitor. Applicant averred that his prior attorney, Claire Schulmeister ("Schulmeister"), also discussed probation and restitution but told him it could be prison time. Applicant averred Schulmeister communicated a plea offer of five (5) years suspended to three (3) years of probation but there were no more conversations about the offer. Applicant testified that Schulmeister thought restitution was a possibility but said the solicitor would not cooperate.

Applicant testified Counsel became his attorney after Schulmeister, and Counsel did not discuss the plea offer that Schulmeister received with Applicant until after he was arrested before

trial. Applicant testified that on the Friday before Applicant was to proceed to trial, Counsel informed Applicant that he found an email of the prior plea offer that was given to Schulmeister. On that Monday, Applicant testified they proceeded to pick a jury because Applicant was trying to avoid a fifteen (15) year sentence and that he later pled guilty because Counsel told Applicant he would not get fifteen (15) years. Applicant averred his guilty plea was involuntary because he did not think he would receive a fifteen (15) year sentence. Applicant testified his bond was revoked in January 2020 and later restated in August 2020 with GPS monitoring. Applicant further averred that Counsel did not request time served for the time Applicant spent on GPS monitoring and did not object to the solicitor's reference to Applicant's juvenile record.

Colin Hamilton's Testimony

Colin Hamilton ("Counsel") testified that he discussed the plea offer Counsel received, which was thirteen (13) to fifteen (15) years. Counsel testified that the initial offer Schulmeister received from the solicitor was off the table and was given by a different solicitor. Counsel testified that he tried to get the new solicitor to make the same offer, and the solicitor said she would consider it but was set on the thirteen (13) to fifteen (15) year range.

Counsel testified that he was prepared for trial and picked a jury but Applicant did not want a trial. Counsel testified that an offer was made for Applicant to plead with a recommended range of thirteen (13) to fifteen (15) years. Counsel testified that although the solicitor may have said a straight up plea, she recommended thirteen (13) to fifteen (15) years. Counsel testified he communicated the offer to Applicant and informed Applicant that he was facing a recommended range of thirteen (13) to fifteen (15) years. Counsel testified Applicant was not excited about pleading before Judge Mullen but Counsel does not get to pick the judge Applicant appears before. Counsel testified he discussed the possibility of restitution with Applicant a lot but does not recall

thinking that is what Applicant would receive. Counsel testified he objected to the solicitor's mention of Applicant's juvenile record. Counsel testified he did not request credit for time served on GPS monitoring because he did not believe Applicant was eligible because GPS monitoring does not restrict a defendant like house arrest.

Claire Schulmeister's Testimony

Claire Schulmeister testified that she was Applicant's first attorney. Schulmeister testified that she received an initial offer from the solicitor but tried to get him a better deal by asking the solicitor for a misdemeanor charge, which the solicitor rejected. Schulmeister testified Applicant's main goal was to get out of jail. Schulmeister testified that she had discussions with the solicitor when the solicitor suggested a plea to five (5) years suspended to three (3) years of probation but told the solicitor that she did not want to accept any offers without speaking to Applicant first. Schulmeister testified that she made a note of relaying the solicitor's suggestion to Applicant and believes she relayed that offer.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). An applicant alleging ineffective

assistance of counsel must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 441, 334 S.E.2d at 813. "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, 286 S.C. at 441, 334 S.E.2d at 813. An applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

To establish ineffective assistance of counsel, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland*, 466 U.S. at 687–88; *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. Applicant must prove prejudice by showing "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

Failure to Investigate the Case and the Previous Plea Offer

This Court finds Applicant failed to prove Counsel was ineffective for failing to investigate. In order 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. *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998). This Court finds credible Counsel's testimony that he was prepared for trial. Further, Applicant did not produce any evidence at the PCR hearing of what a further investigation would have uncovered and thus failed to prove prejudice in this regard.

This Court finds Applicant failed to prove Counsel was ineffective for failing to investigate the previous plea offer. This Court finds credible Counsel's testimony that when Counsel discovered the previous plea offer made by the previous solicitor to Schulmeister of five (5) years suspended to three (3) years of probation, Counsel attempted to get the solicitor to remake the offer although it had already expired. This Court also finds credible Schulmeister's testimony that she believed she relayed the previous offer to Applicant.

Additionally, this Court finds Applicant failed to prove Counsel was ineffective for failing to "force" the solicitor to keep the offer open because the solicitor has prosecutorial discretion to make or withdraw plea offers. *Reed v. Becka*, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999) (holding prosecutors have broad powers in the plea bargain process and can withdraw a plea offer when a defendant has neither pled guilty to the offer nor detrimentally relied on the State's offer by taking some substantial step or accepting serious risk of adverse result in accepting the offer).[1] Applicant has failed to meet his burden.

Failure to Object to Mention of Applicant's Juvenile Record

This Court finds Applicant failed to prove Counsel was ineffective for failing to object to the solicitor's mention of Applicant's juvenile record. At the plea hearing, when the solicitor mentioned Applicant's juvenile record (Tr. 18:5-7), Counsel informed the court that such comments were against the rules. (Tr. 18:24-19:2; 24:6-11). The plea judge responded by saying the juvenile charge would not be considered by the court. (Tr. 24:12-13). This Court finds the record reflects Counsel appropriately made an objection to the comment, and Applicant failed to prove prejudice since the plea judge did not consider the juvenile offense. Applicant failed to meet his burden.

[1] This Court finds Applicant did not rely on the previous offer to his detriment because there was no evidence presented of Applicant taking some substantial step or accepting serious risk of an adverse result.

Ineffectiveness for Bringing Applicant to Plead before Judge Mullen

This Court finds Applicant failed to prove Counsel was ineffective for bringing him to plead before Judge Mullen, whom Applicant had previously appeared before. Absent evidence of actual bias by a presiding judge, the simple fact that a judge previously ruled in favor of the State on a previous issue is insufficient to prove a defendant was denied his due process right to a fair trial. *State v. Langford*, 400 S.C. 421, 439, 735 S.E.2d 471, 480 (2012) (finding no evidence of prejudice and stating "[t]he contention that a judge was biased solely because he ruled against a defendant is untenable and insulting towards the court, and it would set a dangerous precedent were we to sanction it here"). This Court finds credible Counsel's testimony that he had no control over the judge Applicant appeared before and finds Applicant failed to prove prejudice. Applicant failed to meet his burden.

Failure to Object to the State's Recommendation of a Thirteen (13) to Fifteen (15) Years

This Court finds Applicant failed to prove Counsel was ineffective for failing to object to the State's recommendation of a thirteen (13) to fifteen (15) year sentencing range. Failing to object does not automatically constitute ineffective assistance of counsel. *See Millidge v. State*, 422 S.C. 366, 374, 811 S.E.2d 769, 800-01 (2018) (stating an applicant must prove both deficiency and prejudice to establish ineffective assistance of counsel for failing to preserve an issue).

This Court finds Counsel's conduct was reasonable under prevailing professional norms. This Court finds credible Counsel's testimony that he informed Applicant that the State made a plea offer with a recommendation of thirteen (13) to fifteen (15) years. This Court finds credible Counsel's testimony that although the solicitor may have said it was an open plea, the solicitor outlined the offer as a recommendation. The record reflects Applicant's Counsel informed the court that although the solicitor indicated on the sentencing sheets that the plea was without

negotiation or recommendation, the solicitor made a recommendation of thirteen (13) to fifteen (15) years. (Tr. 29:4-9). The plea judge, correcting the solicitor, remarked that the court would indicate the solicitor was making a recommendation. (Tr. 29:18-21). In response to the recommendation, Counsel asked the plea judge to consider a sentence below the recommended range. (Tr. 29:23-30:1).

This Court finds Applicant failed to prove that he would have insisted on going to trial but for Counsel's performance because this Court finds credible Counsel's testimony that Applicant did not want a trial. Accordingly, this Court finds Applicant failed to prove prejudice. Applicant failed to meet his burden.

Failure to Request Time Served for GPS Monitoring

This Court finds Applicant failed to prove Counsel was ineffective for failing to request time served credit for the time Applicant spent on GPS monitoring. A defendant who is incarcerated must be given credit for time served prior to trial and sentencing and *may* be given credit for time spent under house arrest unless the prisoner is an escapee or was already serving a sentence on one offense. S.C. Code Ann. § 24-13-40 (emphasis added); see *Allen v. State*, 339 S.C. 393, 529 S.E.2d 541 (2000) (holding an applicant was entitled to time served for time spent incarcerated). Where the terms of the statute are clear, the court must apply the terms according to their plain and ordinary meaning without resorting to forced construction to limit or expand its scope. *Id.* at 395, 529 S.E.2d at 542.

S. C. Code Ann. Section 24-13-40 provides in its pertinent part that:

> "The computation of time served by prisoners under sentences imposed by the courts of this State must be calculated from the date of the imposition of the sentence." "In every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing, and may be given for any time spent under monitored house arrest."

Applying the plain and ordinary meaning of the statute, this Court finds Counsel's failure to request time served credit for GPS monitoring cannot be deemed unreasonable under prevailing professional norms where the statute does not support the request. This Court finds credible Counsel's testimony that he did not request credit for the time Applicant spent on GPS monitoring because he did not believe Applicant was eligible under the statute since GPS monitoring does not restrict freedom in the same way incarceration or house arrest does. Applicant failed to meet his burden.

Involuntary Plea

"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).

To find a defendant entered a guilty plea knowingly and voluntarily, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. *Dalton*, 376 S.C. at 138, 654 S.E.2d at 874. This involves awareness of "the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers" and "the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citing *Boykin v. Alabama*, 395 U.S. 238 (1969)). Statements made during a guilty plea should be considered conclusive unless the applicant presents valid

reasons why he should be allowed to depart from the truthfulness of his statements. *Dalton*, 376 S.C. at 137-38, 654 S.E.2d at 874.

This Court finds Applicant failed to prove his guilty plea was entered involuntarily. This Court finds the record reflects Applicant pled with an awareness of the charges against him, the consequences, and his constitutional rights. The plea judge explained to Applicant that he was pleading guilty to two (2) counts of arson in the third degree, which carried up to fifteen (15) years in prison. (Tr. 2). Counsel indicated to the plea judge that he explained to Applicant, and Applicant understood, the charges against him, the possible punishment, and his constitutional rights. (Tr. 4). Applicant indicated he understood that by pleading guilty, he was waiving his constitutional rights. (Tr. 5). Applicant indicated that he understood all of the information explained and still wished to plead guilty. (Tr. 5). This Court finds credible Counsel's testimony that he explained to Applicant that he was pleading guilty with a recommendation of thirteen (13) to fifteen (15) years.

This Court finds the record reflects Applicant pled guilty freely and voluntarily. Applicant indicated to the plea court that he was pleading guilty because he was guilty. (Tr. 5). Applicant indicated that no one pressured, threatened, or promised him anything to plead guilty. (Tr. 6). Further, this Court finds credible Counsel's testimony that Applicant did not want a trial. Additionally, this Court finds Applicant failed to present a valid reason why he should be allowed to depart from the truthfulness of his statements to the plea court. Thus, Applicant failed to meet his burden, and relief is denied.

CONCLUSION

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

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

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and

2. Applicant must be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED!

J. DERHAM COLE
Presiding Judge
Fourteenth Judicial Circuit

August 7, 2024
Spartanburg, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2022CP0702323

Anthony Dayon Best		**South Carolina State Of**	
PLAINTIFF(S)		**DEFENDANT(S)**	
Submitted by:		**Attorney for:** ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant	

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☒ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☒ Other: Application for PCR is Denied and Dismissed With Prejudice ☐ Rule 43(k), SCRCP (Settled);

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Other: _____ ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order ☐ Statement of Judgment by the Court:

ORDER INFORMATION

Order of Dismissal

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	**Judgment Against (List name(s) below)**	**Judgment Amount To be Enrolled (List amount(s) below)**

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

s/ J. Derham Cole	2053	8/7/2024
Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

This judgment was entered on **August 13, 2024**, and a copy mailed first class or placed in the appropriate attorney's box on **August 14, 2024**, to attorneys of record or to parties (when appearing pro se) as follows:

Anthony Dayon Best #264066 Macdougall Corr. Inst.
B-2/D-15A 1516 Old Gillard Rd Ridgeville, SC 29472
Chelsey Faith Marto PO Box 8795 Columbia, SC 29201

Danielle Dixon PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Jerri Ann Roseneau - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.