STATE OF SOUTH CAROLINA COUNTY OF CLARENDON	)	IN THE COURT OF COMMON PLEAS FOR THE THIRD JUDICIAL CIRCUIT
Wallace Demery, Jr., SCDC #388733, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2023-CP-14-00209 **ORDER OF DISMISSAL**

I. INTRODUCTION

The matter before this Court is an action for post-conviction relief (PCR) commenced by Wallace Demery Jr. ("Applicant") on June 8, 2023. On July 23, 2024, a hearing into the matter was convened before the Honorable Grace Gilchrist Knie at the Sumter County Courthouse. Applicant was present and represented by Timothy L. Griffith, 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 denies relief and dismisses this action with prejudice.

II. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Clarendon County Clerk of Court. During its February 2017 term, the Clarendon County Grand Jury indicted Applicant for murder (2017-GS-14-00037). The case was prosecuted by Third Circuit Solicitor Ernest A. Finney, III. Applicant was represented by J. David Weeks, esquire.

On August 15, 2022, Applicant pleaded guilty to the lesser included offense of voluntary manslaughter before the Honorable Kristi F. Curtis. Judge Curtis sentenced Applicant to twenty (20) years' imprisonment for voluntary manslaughter. Applicant did not file a direct appeal.

III. STATEMENT OF FACTS

Victim went to a truck wash in Clarendon County at approximately 5:30 pm on August 19, 2016. Victim came back to car wash approximately two hours later. At approximately 7:30 pm, a witness saw Victim get out of his vehicle and run inside the office at the truck wash where an altercation occurred between Victim and Applicant. Applicant beat Victim to death with a hammer and a wrench in an office inside the truck wash. Victim died on the scene.

(Gp. Tr. pp. 12–14).

IV. CURRENT APPLICATION

Applicant commenced this PCR application on June 8, 2023. In his application Applicant alleged he was entitled to relief based on the following grounds:

1. Ineffective Assistance of Counsel
    a. Counsel failed to "consult avenues with me or my supporters. He would not return nor speak with us."
    b. "My attorney failed to mention the plea he led me into was for 20 years without parole."
    c. Counsel "failed to obtain a mental evaluation or investigate a self defense or blackout defense."
    d. Counsel "failed to investigate missing evidence in which was vital information to my case."
    e. Counsel erroneously "advised that my plea was for 0-5 with probation."
    f. Counsel "was advised of the medication Seroquel I was taken and under the influence of that he failed to acknowledge."
    g. Counsel "failed to conduct a reasonable pre-trial investigation."
2. *White v. State* Claim
    a. Counsel "was contacted and asked to file a written appeal, he said no and denied my request."

V. INEFFECTIVE ASSISTANCE OF COUNSEL, GENERALLY

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.

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. *See Blackledge v. Allison*, 431 U.S. 63, 73–74 (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."). Statements made during a guilty plea should be considered conclusive, unless an applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. *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)).

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. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in this action incorporated by way of the State's return, this Court finds Applicant's claims 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.

Counsel Erroneously Advised Applicant His Plea Was for 0-5 Years

Applicant contends Counsel was ineffective for erroneously advising him he would be sentenced to 0-5 years with probation if he pleaded guilty. This Court finds the credible testimony of Counsel coupled with the record of Applicant's guilty plea refutes this allegation.

At the evidentiary hearing, Applicant testified he had a plea offer of two years for voluntary manslaughter. Counsel testified there was never a 0-5 year offer and he never advised Applicant of such. Counsel explained he was ready to go to trial and never pressured Applicant to plead guilty. Based on Counsel's credible testimony, this Court finds Counsel never informed Applicant he would be sentenced to 0-5 years in exchange for his guilty plea. This Court finds Counsel properly advised Applicant he was facing a potential sentence of 30 years by pleading guilty. Therefore, Counsel was not deficient in advising Applicant of his potential sentence.

Even supposing Counsel affirmatively misadvised Applicant regarding sentencing, any misadvise on the part of Counsel was cured by information conveyed at the guilty plea hearing. "Defendant's knowing and voluntary waiver of statutory or constitutional right must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both". *State v. Ray*, 310 S.C. 431, 427 S.E.2d 171 (1993). Any possible misconceptions regarding sentencing on a defendant's part can be "cured by the colloquy during the actual guilty plea hearing." *Wolfe v. State*, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997). "In considering an allegation on post-conviction relief (PCR) that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." *Stalk v. State*, 375 S.C. 289, 652 S.E.2d 402 (Ct. App. 2007), *aff'd as modified*, 383 S.C. 559, 681 S.E.2d 592 (2009) (citing *Wolfe*, 326 S.C. at 165).

At the outset of the guilty plea hearing, the Plea Court engaged in the following colloquy with Applicant:

> The Court: Again, Mr. Demery, I'm Judge Curtis. Sir, I understand that you're here today to plead guilty to voluntary manslaughter. That offense carries up to 30 years. Is that your understanding?
>
> The Defendant: Yes, ma'am.

(Gp Tr. p.4).

Applicant affirmed, under oath, that he understood he was facing a potential sentence of 30 years by pleading guilty. Therefore, any misconception Applicant may have had regarding his potential sentence was cured by information conveyed at the guilty plea. Thus, Applicant has failed to prove he was prejudiced by any alleged deficiency.

Accordingly, this allegation is DENIED.

Failure to Request a Mental Health Evaluation/Competency Issue at Time of Plea

Applicant contends Counsel was ineffective for failing to request a mental health evaluation. Additionally, Applicant contends he was on the medication Seroquel at the time of the plea. This Court finds this allegation is without merit. At the evidentiary hearing, Applicant testified he never received a mental health evaluation. Applicant avers Counsel should have requested a mental health evaluation. Applicant testified he was on Seroquel at the time of his guilty plea. Counsel testified that, based on his interactions with Applicant, there was no indication Applicant was incompetent to stand trial.

This Court finds Applicant has failed to prove Counsel was ineffective for failing to request a mental health evaluation. As to the deficiency prong under *Strickland*, an attorney may reasonably rely upon his or her own perceptions of a defendant in determining whether or not their client should be mentally evaluated. *Jeter*, 308 S.C. at 233, 417 S.E.2d at 596. When establishing

Strickland prejudice in the context of counsel's failure to request a mental competency evaluation, the applicant must show a reasonable probability that he was incompetent at the time of the original proceeding. *Garren*, 423 S.C. at 12, 813 S.E.2d at 710 (citing *Ramirez v. State*, 419 S.C. 14, 21, 795 S.E.2d 841, 845 (2017)).

Here, Counsel credibly testified he did not perceive any mental health competencies based on his interactions with Applicant. Counsel properly determined a mental health evaluation was not necessary. The following colloquy from Applicant's guilty plea corroborates Counsel's testimony:

> The Court: You, Mr. Weeks, have had, I would imagine, numerous chances to communicate with Mr. Demery?
>
> Mr. Weeks: Yes, ma'am.
>
> The Court: Any concern at all about his mental health?
>
> Mr. Weeks: No, ma'am, not as relates to the plea. No, ma'am.
>
> The Court: And you've been able to communicate with him?
>
> Mr. Weeks: Yes, ma'am.
>
> The Court: You feel like he's understood all of your communications?
>
> Mr. Weeks: I think so, Your Honor.

(GP Tr. pp.6–7).

Based on Counsel's credible testimony and the record from Applicant's guilty plea, this Court finds Counsel properly determined a mental health evaluation was not necessary. Thus, this Court finds Counsel was not deficient for failing to request a mental health evaluation.

Furthermore, Applicant has failed to prove he was prejudiced by Counsel's alleged failure to request a mental health evaluation. Applicant presented no evidence at the evidentiary hearing

that he was incompetent at the time of his plea. Applicant alleges he was on Seroquel at the time of his plea; however, this issue was raised at his guilty plea hearing:

The Court: Are you under the influence today of any drugs or alcohol?

The Defendant: No. ma'am.

The Court: Are you taking any prescription medications?

The Defendant: I am, but it's not clouding my judgment.

The Court: If you'll speak up a little bit for me. If you'll come up right here to the microphone please. Okay, you're taking some prescription medications?

The Defendant: Yes. ma'am.

The Court: Can you tell me what you're taking?

The Defendant: I'm taking generic brand of Seroquel.

The Court: Okay. And have you had some mental health treatment in the past?

The Defendant: Yes. ma'am.

The Court: Are you currently under a physician's care for any mental treatment?

The Defendant: Yes, ma'am.

The Court: And can you tell me about that?

The Defendant: I'm scheduled over here Clarendon Behavioral Mental Health.

The Court: Uh-uh.

The Defendant: I'm going over there for depression and anxiety.

The Court: Okay. And how long have they been treating you over there?

The Defendant: For the past about six years now.

The Court: And do you feel the Seroquel helps those conditions?

The Defendant: Yes. ma'am.

The Court: Any adverse effects on you that keep you from thinking clearly?

The Defendant: No, ma'am.

(GP Tr. pp.6–7).

Applicant affirmed, under oath, the Seroquel he was taking at the time of his plea did not cloud his judgment and did not keep him from thinking clearly. Thus. based on Applicant's own admissions at the guilty plea hearing, he has failed to prove he was incompetent at the plea due to his medication. Furthermore, Applicant has produced no objective data about the nature and effect of Seroquel for this Court to consider whether such medication could have rendered him incompetent to enter a guilty plea. *See Garren v. State*, 423 S.C. 1, 813 S.E.2d 704 (2018) (holding that "a PCR court must consider objective data about the nature and effect of the medication the defendant had taken and evaluate whether such medication had the capability to produce a sufficient effect on his mental faculties to render him incompetent to enter a guilty plea.").

Accordingly, this allegation is DENIED.

Failure to Investigate

Applicant contends Counsel was ineffective for failing to adequately investigate his case. This Court finds this allegation is without merit.

At the evidentiary hearing, Applicant testified Counsel should have conducted a more diligent investigation in his case. Specifically, Applicant asserts Counsel should have investigated two pieces of missing evidence: a knife and a Smith and Wesson. Counsel testified he reviewed all of the discovery and the State's evidence with Applicant. Counsel explained he hired an investigator and was prepared to argue self-defense had Applicant's case gone to trial.

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 and present had counsel been more

prepared. *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)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. *Id.* (citing *Davis 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.

Here, Counsel's credible testimony demonstrates he properly investigated Applicant's case, was prepared for trial and prepared to argue self-defense. This Court finds Counsel was not deficient in his investigation of Applicant's case. Additionally, Applicant merely speculates that the discovery of a knife or Smith and Wesson would have somehow resulted in him proceeding to a trial rather than plead guilty. Applicant has failed to show how these items would have been relevant to any defense or how further investigation into these items would have resulted in a different outcome. Thus, Applicant has failed to prove he was prejudiced by Counsel's alleged lack of investigation.

Accordingly, this allegation is DENIED.

Failed to Adequately Consult with Applicant

Applicant contends Counsel was ineffective for failing to adequately consult with him. This Court finds this allegation is without merit.

Applicant suggests a failure to adequately meet with him or "his supporters" prior to the plea. This Court finds Counsel's credible testimony, and the record of Applicant's guilty plea, refutes this allegation. There is no established "minimum number of meetings between counsel and client prior to trial necessary to prepare an attorney to provide effective assistance of counsel." *United States v. Olson*, 846 F.2d 1103, 1108 (7th Cir.1988) (there is no constitutional minimum

number of meetings between attorney and client and observes that an experienced attorney may get more out of a single meeting than a neophyte); *Moody v. Polk*, 408 F.3d 141, 148 (4th Cir. 2005); *Campbell v. Polk*, 447 F.3d 270, 279, n.2 (4th Cir. 2006) ("we cannot conclude that the fact that Campbell's counsel only met with him five times before trial made them ineffective."). "'[B]revity of consultation time between a defendant and his counsel, alone,' 'cannot support a claim of ineffective assistance of counsel.'" *Davis v. State*, 44 So. 3d 1118, 1130 (Ala. Crim. App. 2009) (quoting *Murray v. Maggio*, 736 F.2d 279, 282 (5th Cir. 1984)); *White v. Godinez*, 301 F.3d 796, 800 (7th Cir. 2002) ("A brief consultation does not by itself establish that counsel's performance was inadequate."); *Chavez v. Pulley*, 623 F. Supp. 672, 685 (E.D. Cal. 1985) ("brevity of consultation time between a defendant and his counsel alone cannot support a claim of ineffective assistance of counsel," especially where the defendant "fails to allege what purpose further consultation with his attorney would have served and fails to demonstrate how further consultation with his attorney would have produced a different result"). Applicant testified Counsel only met with him a handful of times and failed to consult with his supporters. Applicant further testified Counsel would not answer his calls. Counsel testified he met with Applicant, reviewed discovery with Applicant, and was prepared for trial. This Court finds Counsel's testimony credible. Thus, this Court finds Counsel was not deficient in his consultations with Applicant.

Furthermore, Applicant has failed to specify what, if anything, could have been achieved had Counsel spent more time with him in consultation regarding his case. *See Smith v. State*, 404 S.C. 493, 500-01, 745 S.E.2d 378, 382 (Ct. App. 2012) (noting that an applicant must present evidence to show how additional time spent in consultation regarding discovery would have resulted in a different outcome; mere speculation as to how the alleged lack of preparation

prejudiced an applicant is not sufficient to support a grant of relief). Thus, Applicant has failed to meet his burden establishing prejudice as to this allegation.

Accordingly, this allegation is DENIED.

Failure to File a Direct Appeal

Applicant alleges Counsel failed to file a direct appeal on his behalf after being requested to do so. This Court finds this allegation is without merit.

Counsel has a constitutionally imposed duty to consult with a defendant about an appeal *only* when there is reason to think (1) that a rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. *Roe v. Flores-Ortega*, 528 U.S. 470, 471 (2000). These elements are much harder to establish when a conviction follows a guilty plea, because a plea both reduces the scope of appealable issues and indicates that the defendant sought an end to judicial proceedings. *Id.* In addition, to prove prejudice, an applicant must demonstrate a reasonable probability that he would have timely appealed but for counsel's deficiency. *Id.* Evidence that there were nonfrivolous grounds for appeal or that the defendant promptly expressed a desire to appeal is highly relevant to this determination. *Id.* at 472.

This Court finds Counsel had no duty under *Roe* to consult with Applicant about an appeal in this case. Although Applicant was facing a murder charge carrying a potential life sentence, with the assistance of Counsel he was able to obtain a plea deal in which he was allowed to plead to the lesser included offense of voluntary manslaughter. Applicant was sentenced to 20 years. No rational defendant would want to appeal such a favorable outcome. At the evidentiary hearing, Counsel testified Applicant did not ask him to file a direct appeal, nor did he see any meritorious reasons for appealing. Based on Counsel's credible testimony, this Court finds Applicant did not

express a desire to appeal. Additionally, Applicant failed to present any nonfrivolous ground for appeal at the evidentiary hearing. Thus, he has failed to prove both deficiency and prejudice as to this allegation.

Accordingly, this allegation is DENIED.

[Signature Page Follows]

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 his application for post-conviction relief. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. 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, 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 12 day of September, 2024.

THE HONORABLE GRACE GILCHRIST KNIE
Presiding Judge
Third Judicial Circuit

Spartanburg, South Carolina