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**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

Hon. Kristi F. Curtis, Circuit Court Judge

Case No. 2019-CP-08-1682

Casey Fickling, #363960,

Petitioner,

v.

State of South Carolina,

Respondent.

**NOTICE OF APPEAL**

Casey Fickling, Petitioner, appeals the attached Order of Dismissal issued by the Honorable Kristi F. Curtis on October 29, 2024. Petitioner, through counsel, received notice of the entry of the Order on October 29, 2024.

Date: November 11, 2024



**Christopher R. Geel**  
Geel & Gentry, LLC  
PO Box 21771  
Charleston SC 29413  
843-277-5080

STATE OF SOUTH CAROLINA )  
COUNTY OF BERKELEY )

COURT OF COMMON PLEAS )  
NINTH JUDICIAL CIRCUIT )

Casey Fickling, #363960, )

Case No.: 2019-CP-08-1682 )

Applicant, )

**ORDER OF DISMISSAL** )

v. )

State of South Carolina, )

Respondent. )

2024 OCT 29 AM 10:37  
LEAH GUERRY DUPREE  
CLERK OF COURT  
BERKELEY COUNTY, SC

*gpn*  
**FILED**

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Casey Fickling (Applicant) on April 14, 2022. On June 20, 2022, an evidentiary hearing convened before the Honorable Kirsti Curtis. Applicant was present and represented by Christopher R. Geel, Esquire. Assistant Attorney General Samantha J. Weidauer represented Respondent. At the hearing, the Court heard testimony from Applicant and Debra K. Littlejohn (plea counsel). After reviewing the records before this Court and the testimony presented at the hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

**PROCEDURAL HISTORY**

Applicant is presently confined in the Department of Corrections serving an aggregate fifteen-year-sentence. In April 2018, the Berkeley County Grand Jury indicted Applicant for unlawful conduct toward a child (2018-GS-8-687), resisting arrest with a deadly weapon (-686), and domestic violence of high and aggravated nature (DVHAN) (685). On August 9, 2018, Applicant appeared before the Honorable Jennifer McCoy and pled guilty as indicted. Applicant was represented by Deborah Littlejohn, Esquire. Judge McCoy sentence Applicant to concurrent terms of fifteen years for DVHAN and ten years each for unlawful conduct toward a child and

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resisting arrest. Applicant did not appeal.

### CURRENT APPLICATION

On January 23, 2020, Applicant filed this PCR application alleging the following:

- a. I was ineffectively represented by trial counsel: my trial counsel never made me aware of being able to plea to a lesser offense;
- b. I was not mentally evaluated prior to my guilty plea: My trial counsel never had me mentally evaluation prior to pela knowing I have mental issues.

As relief, Applicant requested “my case be reverse and remanded for resentencing; and/or a modification of sentence takin into consideration my mental state.”

On March 4, 2022, Applicant filed an amended application alleging:

Ineffective assistance of plea counsel<sup>1</sup>/Involuntary plea:

- a. Counsel failed to discuss Applicant’s trial rights with him and adequately advise Applicant of his right to a jury trial;
- b. Counsel failed to discuss the evidence and possible defenses with Applicant.

At the PCR hearing, Applicant proceeded only on the allegations of his amended application.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Charleston Count Clerk of Court records of the underlying convictions; Applicant’s records from the South Carolina Department of Corrections; the trial transcript, the records of Applicant’s direct appeal; and the records of this PCR application. This Court has further had the opportunity to observe the witnesses presented at the PCR hearing, closely pass upon their credibility, and weigh their testimony accordingly.<sup>1</sup> After a careful review based on the Strickland standard set forth below,

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<sup>1</sup> This Court will reference PCR testimony where relevant 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 (2017).

**Ineffective Assistance of Counsel / Involuntary Plea**

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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 v. Washington, 466 U.S. 668, 687-88 (1984). 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 guilty plea is voluntarily and knowingly entered into, 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. "[A] defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999).

*Failed to advise of constitutional rights, including right to a jury trial*

Applicant first contends counsel was ineffective for not advising him of his constitutional rights, including his right to a jury trial. He further contends his plea was involuntary because he did not understand he could have a jury trial. Applicant did not prove this ground.

At the PCR hearing, Applicant testified that when he arrived at Court, he was told to “sign this and sign that and I would step into the courtroom as a zero to 15 plea and they gave me 15 years.” He testified counsel did not tell him he was appearing for a guilty plea, and he did not know what he “was signing up for.” Applicant stated he expected to receive an eight-year sentence based on conversations he had with other inmates. He clarified he did not discuss with plea counsel his expectation that he would receive eight years. Applicant claimed he did not know he could have a jury trial, and counsel never discussed with him his right to a jury trial or the fact he could turn down the plea offer.

Plea counsel testified she discussed with Applicant the indictments, the elements of the offenses, and the sentences each charge carried. Although she did not specifically recall discussing his constitutional rights, she explained her common practice was to always discuss that. Counsel stated she typically advised clients they had a right to a trial where “12 people will sit and decide what the evidence is and if they believe it.”

This Court finds counsel’s foregoing testimony credible. This Court further finds Applicant was advised of his constitutional rights, including the right to a jury trial, both by counsel and the plea judge. Ultimately it was Applicant’s decision to waive his right to a jury trial and plead guilty, and this Court finds Applicant did so knowingly and voluntarily. Applicant thus did not prove counsel was ineffective in this regard or that his plea was involuntary, and this claim is denied.

*Failed to discuss evidence and possible defenses*

Applicant next contends counsel was ineffective for not discussing evidence and possible defenses, which rendered his plea involuntary. Applicant did not prove this claim.

At the PCR hearing, Applicant testified counsel did not discuss the evidence with him or his possible defenses, and he did not receive a copy of the discovery. However, he recalled counsel showed him a disk that “was supposed to have photos on it supposedly.” He stated he received discovery for the first time the day of his guilty plea—after he pled guilty. However, Applicant acknowledged he listened to the 911 call.

Plea counsel testified she met with Applicant and discussed discovery. She stated she also sent Applicant a letter dated June 8 discussing a plea offer and the discovery; in the letter she indicated the discovery had been reviewed previously. Counsel testified Applicant signed the letter and indicated he received the discovery on June 11.

This Court finds credible counsel’s foregoing testimony that she reviewed discovery with Applicant, and Applicant did not prove counsel was deficient in this regard. This Court further finds Applicant did not set forth any viable defense counsel could have raised and did not meet his burden in this regard. Applicant has not shown counsel was ineffective of that his plea was involuntary, and this claim is denied.

**CONCLUSION**

Based on the foregoing, this Court concludes Applicant has not established any constitutional violations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice. Should Applicant wish to appeal, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel’s assistance in seeking

review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCR. Attention is directed to Rule 243, SCACR, for appellate procedures.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant shall be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 16<sup>th</sup> day of October, 2024.

*Kristi Curtis*

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KRISTI CURTIS  
Presiding Judge  
Ninth Judicial Circuit

*Sumter*

\_\_\_\_\_, South Carolina



FILED

2024 OCT 29 AM 10:37

LEAH GUERRY DUPREE  
CLERK OF COURT  
BERKELEY COUNTY, SC

*ms*

ALAN WILSON  
ATTORNEY GENERAL

October 24, 2024

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

**Re: Casey Fickling, #363960 v. State of South Carolina**  
**Case No. 2019-CP-08-01682**

Dear Ms. Dupree:

Enclosed please find the original Order of Dismissal signed by the Honorable Kristi 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