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STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

Keldrekus Tauquan Oglesby, #369325,)
)
Applicant,)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2020-CP-23-542

ORDER OF DISMISSAL
(with prejudice)

This matter comes before the Court by way of an application for post-conviction relief filed by Applicant Keldrekus Tauquan Oglesby on January 28, 2020, as amended May 16, 2024. An evidentiary hearing was convened on Thursday, October 10, 2024, at the Greenville County Courthouse. Applicant was present with his retained counsel, Richard H. Warder, Esq. Melody J. Brown, Senior Assistant Deputy Attorney General, was present on behalf of Respondent. This Court received testimony from Applicant and former counsel, Aaron DeBruin, Esq., then at the conclusion of the hearing took the matter under advisement.

After consideration of the testimony given at the hearing, and after reviewing and considering the record, arguments, and the controlling case law, this Court advised the parties by email on October 28, 2024, that it would find that Applicant failed to carry his burden of proof to show deficiency in representation, and also requested that counsel for the State prepare a proposed order.¹ This Court now DENIES relief for the specific reasons set out in this order.

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¹ The proposed order was provided to counsel for Applicant prior to this Court’s acceptance. Applicant’s counsel was also allowed sufficient time to review the proposed order and while this Court made its own detailed review. *See Fishburne v. State*, 427 S.C. 505, 516, 832 S.E.2d 584, 589 (2019) (providing a “proposed order should be transmitted to opposing counsel” for review and that counsel “should ... alert preparing counsel and the PCR court as to any deficiencies in the proposed order.”).

General Procedural History

Applicant is presently incarcerated in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. During its August 2018 term, the Greenville County Grand Jury indicted Applicant for two counts of first-degree burglary (2017-GS-23-6718 and 6721), second-degree burglary (2017-GS-23-6724), and grand larceny (2017-GS-23-6719). Aaron DeBruin, Esq., represented Applicant on the charges. Assistant Solicitors William Douglas Richardson, Jr., and William Ryan Holloway, both of the Thirteenth Circuit Solicitor's Office, prosecuted the case. On March 27, 2019, Applicant appeared before the Honorable Letitia H. Verdin and pleaded guilty as indicted. In accordance with the State's sentencing recommendation, Judge Verdin sentenced Applicant to imprisonment for fifteen years for each of the first-degree burglary offenses, ten years for second-degree burglary, ten years for grand larceny, with all sentences running concurrently, and credit for time served.

Applicant did not appeal his convictions or sentences.

Current Allegations

Counsel amended the application on May 16, 2024, to assert the following claim of error:

On the transcript of the plea page 10, (enclosed) the Defendant was being questioned by the Court and when he was asked by the Honorable Letitia Verdin, if he thought his attorney had done what you asked him to do within reason the Defendant reply's was "no". The Judge then had Defendant step away from group of other Defendant's pleading guilty and talk to his attorney. His attorney told him if he didn't plea and agree to the State's recommendation of fifteen (15) years he would get a life sentence. Thereafter the Defendant plead guilty in belief he had no other choice but get a life sentence. The conversation with his attorney took place in the area in front of the holding cell outside of the courtroom door, After their conversation, Defendant went back in the courtroom and entered a guilty plea to avoid a life sentence.

(Amended App. at 1).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In addition to carefully considering the record and the arguments presented by counsel, this Court has also had the opportunity to consider the testimony presented at the PCR evidentiary hearing and has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance and Involuntary Plea Claims

For claims that trial counsel provided ineffective assistance, this Court is guided by the familiar test: To show a violation of the Sixth Amendment, an applicant must show that counsel's representation fell below an objective standard of reasonableness, and but for counsel's error, there is a reasonable probability that the outcome of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 694 (1984); *Simpson v. Moore*, 367 S.C. 587, 595–96, 627 S.E.2d 701, 706 (2006). “A reasonable probability is a probability sufficient to undermine confidence in the outcome” of the trial. *Strickland*, at 694. It is presumed that counsel made all decisions in exercise of reasonable judgment. *Strickland*, at 689. It is an applicant's burden to prove, by a preponderance of the evidence, an entitlement to relief. Rule 71.1 (e), SCRPC. *See also Speaks v. State*, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008) (“the burden of proof is on the applicant to prove the allegations in his application”). For a guilty plea, the analysis varies slightly as the issue is, at bottom, the voluntariness of the plea.

“Where, as here, a defendant is represented by counsel during the plea process and enters [the] plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel's advice ‘was within the range of competence demanded of attorneys in criminal cases.’ ” *Hill v. Lockhart*, 474 U.S. 52, 56 (1985) (quoting *McMann v. Richardson*, 397 U.S. 759, 771 (1970)). Indeed, “[a] defendant who enters a plea on the advice of counsel may only attack the voluntary

and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial." *Kolle v. State*, 386 S.C. 578, 588, 690 S.E.2d 73, 78 (2010) (quoting *Rolen v. State*, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009)); *Burket v. Angelone*, 208 F.3d 172, 189 (4th Cir. 2000) (same). This is the *Strickland* test as applied in the guilty plea context. See also *Taylor v. State*, 404 S.C. 350, 360, 745 S.E.2d 97, 102 (2013) ("In the context of a guilty plea, the deficiency prong inquiry turns on whether the plea was voluntarily, knowingly, and intelligently entered.").

Notably, the "prejudice prong ordinarily requires more than simply a defendant's assertion that but for counsel's deficient performance he would not have pled but would have gone to trial." *Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009). The Supreme Court has instructed: "Courts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies. Judges should instead look to contemporaneous evidence to substantiate a defendant's expressed preferences." *Lee v. United States*, 582 U.S. 357, 369 (2017). See also *Stalk*, at 563, 681 S.E.2d at 595; *Taylor v. State*, 404 S.C. 350, 362, 745 S.E.2d 97, 103 (2013) ("Despite Petitioner's assertions to the contrary, there is probative evidence in the Record before us that he would not have chosen to proceed to trial"); *Goins v. State*, 397 S.C. 568, 575, 726 S.E.2d 1, 4 (2012) ("Although Goins testified at the PCR hearing that he accepted the plea because of the erroneous advice on the suppression of the evidence, his testimony specifically was found not to be credible. We therefore find evidence to support the PCR court's finding that Goins failed to prove he was prejudiced by counsel's ineffective assistance because he has not demonstrated he would have gone to trial absent the erroneous advice.").

“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 v. State*, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007). “A defendant’s knowing and voluntary waiver of the constitutional rights which accompany a guilty plea may be accomplished by colloquy between the Court and the defendant, between the Court and defendant’s counsel, or both.” *Id.*, (quoting *Pittman v. State*, 337 S.C. 597, 600, 524 S.E.2d 623, 625 (1999)). “In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing.” *Suber v. State*, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007).

Further, statements made during a guilty plea should be considered true: “... accuracy and truth of an accused’s statements at ... his guilty plea ... are ‘conclusively’ established by that proceeding unless and until he makes some reasonable allegation why this should not be so.” *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975), *overruled on other grounds by United States v. Whitley*, 759 F.2d 327 (4th Cir. 1985); *Dalton v. State*, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (Ct. App. 2007) (same).

Applicant’s Allegation Lacks Merit

Considering the record of the plea proceeding in conjunction with the testimony received at the PCR hearing, this Court finds that Applicant’s PCR testimony that counsel gave him incorrect advice or pressured him in any way regarding the potential for a life sentence is not credible. This Court does find credible Applicant’s statement that he made a “difficult choice,” but that choice was based on his own circumstances and was not occasioned by failure or deficiency on counsel’s part. This Court credits Mr. DeBruin’s testimony which is consistent with the settled plea record and record of charges. Further, this Court finds that Mr. DeBruin was an

experienced attorney at the time of the plea and was prepared for trial. In fact, the plea transcript noted that the plea was “off the trial docket,” (Tr. 18), meaning that the case was going to be called for trial. In turn, that meant that Applicant had to take the plea or go to trial at that time. Hence, the Court credits as believable Applicant’s PCR testimony that he faced a “difficult choice.” However, this Court finds credible Mr. DeBruin’s testimony that he was prepared (or preparing) for trial; that he did not threaten or coerce his client into pleading guilty; that he did not tell Applicant to plead guilty, and, critically, that Applicant never wanted to go to trial at all – a fact that Applicant actually admitted in his plea, (Tr. 16). Contrary to Applicant’s assertions, the plea transcript does not at all undermine these facts, in particular counsel’s communications with him.

Applicant is correct that the plea transcript shows that he hesitated during the plea proceedings, and he answered “no” when asked if he was happy with his lawyer. (Tr. 9). The remainder of that portion of the plea is critical, though:

DEFENDANT OGLESBY: I’m happy with what he - - the plea that we’re doing - -

THE COURT: Okay. Can you speak up for me? I’m sorry.

DEFENDANT OGLESBY: I’m happy with the plea that we’re going through with. I thought you were saying was I happy with the whole thing.

(Tr. 9-10). But that is not the only “no” at issue. Judge Verdin tried to ask the question in a “different way,” and queried if defendant “had enough time to talk with him about this plea” and Applicant again responded, “no.” (Tr. 10). Judge Verdin at that point allowed him to “step back” and speak with counsel again. (Tr. 10 and 15). This was during a proceeding where the court addressed several defendants. Once another plea was completed, Judge Verdin return to Applicant and the following exchange took place:

THE COURT: ... Have you discussed this charge with your

lawyer?

DEFENDANT OGLESBY: Yes, ma'am.

THE COURT: And are you satisfied with what your lawyer's done for you?

DEFENDANT OGLESBY: Yes, ma'am.

THE COURT: Okay. You're sure about that?

DEFENDANT OGLESBY: Yes, ma'am.

(Tr. 15-16).

Judge Verdin acknowledged that Applicant "had some hesitation earlier," and specifically explored the possibility of complaints as follows:

THE COURT: Do you have any complaints to make against law enforcement as a result of this plea?

DEFENDANT OGLESBY: No, ma'am.

THE COURT: Do you have any complaint to make against your lawyer as a result of this plea?

DEFENDANT OGLESBY: No, ma'am.

THE COURT: Do you have any complaint to make against the prosecutor's office of the solicitor's office as a result of this plea?

DEFENDANT OGLESBY: No, ma'am.

THE COURT: Okay. Has anyone forced you to plead guilty.

DEFENDANT OGLESBY: No, ma'am. I just didn't want to go to trial, ma'am.

THE COURT: I got you. Has anybody promised you anything to get you to plead guilty?

DEFENDANT OGLESBY: No, ma'am.

(Tr. 16-17).

Moreover, Mr. DeBruin explained the “hesitation” at the plea itself, asserting that, while Applicant had always been pleasant to him, Applicant “didn’t get to choose” Mr. DeBruin as his counsel. Instead, Mr. DeBruin was appointed to represent Applicant. Mr. DeBruin asserted his belief that was the root cause of the “hesitation.” (Tr. 21). Counsel continued:

[PLEA COUNSEL]: ... he’s tried to - - to hire another attorney, or two other attorneys. But, you know, for whatever reason, it didn’t work out monetarily, maybe. And then kind of the clock ran out on him.

He’s wanted to plead from the very beginning. It’s just - - he wanted to see if he could get somebody else to find him a good - - a better deal. When that didn’t happen, obviously, we’re here today.

(Tr. 21).

Counsel also attempted to mitigate the facts of the crime which also demonstrates counsel knowledge of the case and supports his assertion at PCR that he was prepared for trial. (Tr. 21-22).² To be sure, there was no contest to the facts presented in support of the charges. The facts offered at the plea basically reflected a series of home break-ins with theft of guns among other things. (See Tr. 18-20). In one, a victim was in the home, but was able to hide and call 911 leading to the group’s capture. (Tr. 19). In other words, there were facts sufficient to convict – surely a significant fact for Appellant’s consideration. Notably, Applicant admitted to Judge Verdin:

... I accept full responsibility for what I have done. And I’m sorry for all the people I hurt. I was young and didn’t understand that what we was doing could take our life away from us and take us away from our kids and families for so long.

(Tr. 22).³

² This Court also finds that counsel credibly testified that he was concerned that a co-defendant would testify against Applicant should Applicant go to trial. That would logically be a significant concern with a co-defendant pleading before Applicant’s proceedings.

³ While this Court has primarily considered the record in regard to the credibility of testimony in analysis of Applicant’s single claim of ineffective assistance of counsel, the Court

The record here supports that the plea was a voluntary choice among alternatives as guided by counsel against which Applicant ultimately had no complaints at the time of the plea. The Court does not totally discount Applicant's *belief* that he faced a life sentence – there was not an agreement on terms or a negotiated plea, and the charges subjected him to *two* life sentences on the burglary first charges alone. (*See* Tr. 8). Further, Mr. DeBruin correctly advised that the State, if it decided to try the charges separately, could attempt to secure a life sentence under the recidivist statute, S.C. Code Ann. § 17-25-45 – a significant risk since Appellant already had one “strike” based on a prior conviction. (*See* Tr. 20).⁴ Indeed, Judge Verdin advised that the burglary charges would be “two of your three strikes,” which Appellant responded he understood. (Tr. 9). This Court also credits counsel's PCR testimony that he advised Applicant that he had never seen a life sentence imposed for this type of situation, but it was possible, given that counsel could not ignore that a life sentence was indeed possible. But this Court does not find credible Applicant's assertion that counsel threatened Applicant with a life sentence. Again, that was result of the circumstances – the charges he faced – and not some error or impropriety by counsel.⁵

further finds this admission weighty in finding no deficiency or prejudice. Simply, the fact of admission of guilt in open court weighs heavily in finding no basis to reverse as Applicant always intended to enter a plea, it was just a matter of what type of deal he could receive. *See generally State v. Wiley*, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct. App. 2010)(noting that when defendant “admitted his guilt in open court” there could be reversible error) (citing *State v. Sroka*, 267 S.C. 664, 665, 230 S.E.2d 816, 817 (1976) (with parenthetical, “holding appellant's guilt was conclusively shown by the record and any doubt about correctness of guilt was eliminated by the admission of appellant in open court, after conviction and during the pre-sentence inquiry by the trial judge, that the appellant had participated in the robbery”).

⁴ Appellant had a previous conviction for burglary second degree, a designated “serious offense.” *See* S.C. Code § 17-25-45 (C)(2).

⁵ This Court has reviewed the transcript as to whether there was a recommendation from the State for a 15-year sentence and can find none. However, counsel certainly underscored that a co-defendant previously plead guilty and received a 15-year sentence. (*See* Tr. 21). That would be the mandatory minimum for the charge. (Tr. 23). As noted above, counsel convinced Judge Verdin

“It is beyond dispute that a guilty plea must be both knowing and voluntary.” *Parke v. Raley*, 506 U.S. 20, 29 (1992). It is also clear the record should reflect that voluntary choice. *Boykin v. Alabama*, 395 U.S. 238 (1969) (“a guilty plea should only be accepted where the record evidences ‘an affirmative showing that it was intelligent and voluntary.’”). The record supports a voluntary plea. Applicant confirmed that he understood the charges and possible sentences; was properly advised of his trial rights; and had the assistance of counsel throughout. Applicant is not entitled to any relief.


CONCLUSION

For the above stated reasons, this Court finds that Applicant failed to carry his burden of proof. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

IT IS THEREFORE ORDERED:

Applicant’s application for post-conviction relief is denied and dismissed with prejudice.

AND IT IS SO ORDERED this 5th day of December, 2024.


THE HONORABLE PATRICK FANT, III
Presiding Judge

Greenwell, South Carolina.

Copy mailed to Attorney <u>General MB / Richard Warder</u> on <u>12 / 5 / 2024</u> .
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that a 15-year sentence was appropriate, and Applicant received a 15-year sentence. (Tr. 23). To receive only the mandatory minimum is itself a benefit to Applicant in these circumstances.