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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Common Pleas

The Honorable Michael G. Nettles, Circuit Court Judge

Case No.: 2022-CP-10-00770

Derrick Ancrum ..... Appellant

v.

State of South Carolina ..... Respondent

NOTICE OF APPEAL

Derrick Ancrum appeals the order of the Honorable Michael G. Nettles, filed November 12, 2024, and served on his counsel November 19, 2024, that dismisses the PCR action. The Defendant/Appellant requests that the order be reversed, and he be granted a new trial. Defendant/Appellant received proper notice of the entry of the written order on November 14, 2024.

January 9, 2025

/s/Christopher L. Murphy  
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STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
) )  
Derrick Ancrum, SCDC #319659, )  
) )  
Applicant, )  
v. )  
) )  
State of South Carolina, )  
) )  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2022-CP-10-00770

**ORDER OF DISMISSAL**

FILED  
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JULIE J. ARMSTRONGS  
CLERK OF COURT

This matter is before the Court pursuant to an application for post-conviction relief (“PCR”) filed by Derrick Ancrum (“Applicant”) on February 16, 2022. On September 13, 2024, an evidentiary hearing convened before the Honorable Michael G. Nettles. Applicant was present and represented by Christopher L. Murphy, Esquire. Assistant Attorney General Bryan T. Hall represented Respondent. At the hearing, Applicant testified on his own behalf. Respondent called as witnesses Grant Smaldone, Esquire, and Ryan Schwartz, Esquire. Following a thorough review of the trial transcript and the testimony and evidence presented at the evidentiary 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 South Carolina Department of Corrections (“SCDC”) serving a twenty-five (25) year sentence. In February 2016, the Charleston County Grand Jury indicted Applicant for trafficking cocaine, 200g or more (2016-GS-10-01091), trafficking crack cocaine (2016-GS-10-01092), and manufacturing crack cocaine (2016-GS-10-01094). These charges arose from an August 2015 incident in which law enforcement performed an undercover buy with man who agreed to take the buyer to the seller’s house. Officers observed the man return from the home with crack cocaine. Upon obtaining and executing a search warrant, law

enforcement found drugs and materials used to manufacture and distribute cocaine inside of a room in the house which also contained Applicant's belongings.

On October 16-18, 2017, Applicant proceeded to a jury trial before the Honorable Roger Couch. Grant Smaldone, Esquire, ("Counsel") and Ryan Schwartz, Esquire, represented Applicant. Assistant Solicitors Laurel Frierson and Stephanie Linder represented the State. Applicant was convicted as indicted, and Judge Couch sentenced Applicant to a concurrent sentence of twenty-five (25) years for each charge.

Applicant filed a timely notice of appeal and was represented by Appellate Defender Laura Caudy, who filed a brief raising the following issue:

Did the trial judge err by denying Appellant's motion to suppress the drug evidence seized during the execution of a search warrant at his mother's residence where the affidavit in support of the search warrant failed to provide the magistrate with a substantial basis upon which to conclude that probable cause existed?

Following briefing and without oral argument, the Court of Appeals affirmed Applicant's convictions, determining the affidavit contained sufficient underlying facts for the magistrate court to determine probable cause existed. *State v. Ancrum*, Op. No. 2021-UP-017 (S.C. Ct. App. filed Jan. 27, 2021).

#### **CURRENT APPLICATION**

Applicant timely commenced this PCR action on February 16, 2022, alleging he is being held in custody unlawfully for the following reasons:

##### **Ineffective Assistance of Counsel**

- a. Failure to object to law enforcement's use of a stale search warrant.

On October 12, 2023, Respondent filed a Return. At the evidentiary hearing, Applicant added the following allegations:

**Ineffective Assistance of Counsel**

- b. Failure to communicate
- c. Failure to prepare for trial
- d. Failure to prepare and have a backup plan for trial court's denial of motion to suppress drugs seized.

Before this Court are the Charleston County Clerk of Court records of the subject conviction; Applicant's records from SCDC; the appellate records; the trial 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 he retained Grant Smaldone ("Counsel") who met with him in an initial meeting. Applicant testified he was out on bond and met with Counsel numerous times to go over the case. Applicant testified that his trial defense was that he was running a daycare center at the home in which the drugs were found, and there were other people living in the home. Applicant testified that he believed if he won the motion to suppress the drugs found, he would win at trial. Applicant testified the State offered him a plea offer of fifteen (15) years but was not told that he would be eligible for parole if he took the plea offer. Applicant averred Counsel did not tell him about the plea offer. Applicant testified that he talked about parole eligibility with Counsel but did not know he was ineligible for parole until he went before the parole board. Applicant averred if he knew he would be ineligible for parole, he would have accepted the plea offer.

Applicant was recalled as a witness and testified that he did not discuss any plea offers with Counsel before trial, only during trial. Applicant averred Counsel did not discuss his chances of prevailing at trial or on appeal. Applicant contended that his daughters did not tell him to accept the plea offer, and Applicant testified that he never spoke to them about it. Applicant averred he

did not discuss the 85% max-out on the plea. Applicant testified that if he knew he would be ineligible for parole, he would have accepted the plea offer.

### *Grant Smaldone's Testimony*

Grant Smaldone ("Counsel") testified that he has tried between twenty-five (25) to thirty (30) trials, and he took over Applicant's case from Peter McCoy. Counsel testified that in preparation, he reviewed discovery, viewed the area of the crime scene, and researched case law. Counsel testified that law enforcement found over 100g of cocaine and crack paraphernalia in a room that contained Applicant's belongings. Counsel testified law enforcement executed the search warrant within the ten (10) day statutory deadline. Counsel testified that Applicant was a bright guy and was involved in his defense. Counsel testified that Applicant's trial defense was mere presence: Applicant was present at the home, but the drugs were not his.

Counsel testified Applicant received an offer of fifteen (15) years before trial, the offer was conveyed to Applicant, and Applicant rejected the offer. Counsel testified that Applicant was not really interested in pleading. Counsel testified that he could not remember whether an offer was made after trial began. Counsel testified that he would have explained parole eligibility to Applicant. Counsel testified that he discussed with Applicant that he faced a twenty-five (25) year sentence if convicted at trial.

Counsel testified that he explained to Applicant that the motion to suppress was within the discretion of the trial judge. Counsel testified that he thought Applicant had a chance of prevailing at trial even after the trial court denied the motion to suppress but he explained to Applicant the likelihood of being unsuccessful at trial. Counsel testified that he explained to Applicant that the motion to suppress was his best chance of being successful. Counsel testified that at trial, Applicant took the stand, and Counsel thought he did well. Counsel testified that Applicant was relying on

an appeal after the motion to suppress was denied.

***Ryan Schwartz's Testimony***

Ryan Schwartz testified that he assisted Counsel with Applicant's trial. Schwartz testified that he researched the warrant issue and was concerned about the timing of the search warrant, but found the warranted was executed within the statutory deadline. Regarding plea negotiations, Schwartz testified that numbers were thrown out and offers were rejected before Schwartz became involved in the case. Schwartz testified that after he became involved in the case, the State made an offer of fifteen (15) years, which Applicant's daughters tried to convince him to take but Applicant did not want to plea. Schwartz testified that he does not recall the fifteen (15) year offer being conveyed prior to trial but the offer had been rescinded, and Schwartz and Counsel begged the solicitor to remake the offer; the solicitor said no. Schwartz testified that Applicant was not interested in a plea. Schwartz testified that Applicant wanted an appeal and knew that if he pled guilty, he would not be able to pursue the warrant issue on a direct appeal. Schwartz testified that he would have told Applicant the issue was unlikely to win on appeal. Schwartz testified that he does not recall discussing the 85% sentence max-out for the plea offer but would have discussed it with Applicant.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the trial 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 (2017).

### **Ineffective Assistance of Counsel**

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). 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 Communicate***

This Court finds Applicant failed to prove Counsel was ineffective for failing to communicate. “[B]revity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation.” *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Applicant must show evidence of how additional preparation or communication would have

resulted in a different outcome. *Id.*; *See Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998). This Court finds *credible* Applicant's testimony that while he was out on bond, he met with Counsel numerous times. This Court finds *credible* Counsel's testimony that Applicant was involved in preparing his defense. This Court finds Applicant failed to prove Counsel's communication was deficient under prevailing professional norms. Further, this Court finds Applicant failed to prove he was prejudiced because Applicant failed to present evidence of how additional communication would have resulted in a different outcome.

To the extent that Applicant alleges Counsel was ineffective for failing to communicate a plea offer, this Court finds Applicant failed to prove Counsel was ineffective in that regard. This Court finds *credible* Counsel's testimony that before trial, he conveyed to Applicant the State's offer of fifteen (15) years, and Applicant rejected the offer. This Court also finds *credible* Schwartz's testimony that he was aware of other plea offers that Applicant had rejected before Schwartz became involved, which supports a finding that other offers were communicated to Applicant.

This Court finds Applicant failed to prove he was prejudiced by any uncommunicated plea offers because Applicant failed to demonstrate a reasonable probability that he would have accepted the earlier offer but for Counsel's failure to convey. This Court finds *credible* Counsel and Schwartz's testimonies that Applicant was not interested in pleading guilty. *See Missouri v. Frye*, 566 U.S. 134 (2012) (Holding to show prejudice where a plea offer has lapsed or been rejected because of counsel's deficient performance, defendants must demonstrate a reasonable probability they would have accepted the earlier offer but for counsel's performance). Thus, Applicant failed to meet his burden.

### ***Failure to Prepare***

This Court finds Applicant failed to prove Counsel was ineffective for failing to prepare for trial and failure to have a backup plan in the event the trial court denied Applicant's motion to suppress the drugs seized. In order to prevail upon a claim that counsel did not adequately prepare a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop if counsel had more fully prepared. *Jackson*, 329 S.C. at 353-54, 495 S.E.2d at 772. The applicant must present evidence demonstrating how additional preparation and the discoverable matters or defenses would have resulted in a different outcome. *Harris v. State*, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (holding applicant's allegation that counsel's preparation was inadequate was merely speculative, and applicant failed to prove he was prejudiced by counsel's preparation), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018)).

This Court finds Counsel's preparation was reasonable under prevailing professional norms. This Court finds *credible* Counsel's testimony that in preparation, he reviewed discovery, viewed the area of the crime scene, and researched case law. This Court finds *credible* Schwartz's testimony that he assisted Counsel in Applicant's case and conducted legal research. This Court finds *credible* Counsel's testimony that he prepared a mere presence defense for Applicant's trial, and Applicant was involved in defense preparation. Further, this Court finds Applicant failed to present evidence to demonstrate how additional preparation would have resulted in a different outcome or what other defenses Counsel could have developed if he was more fully prepared.

This Court finds Applicant failed to prove Counsel was ineffective for failing to prepare and have a backup plan in the event the trial court denied Applicant's motion to suppress the drugs. This Court finds *credible* Counsel's testimony that he was prepared for trial if the trial court denied the motion. This Court finds *credible* Counsel's testimony that although he explained to Applicant

the motion to suppress was his best chance of being successful. This Court finds *credible* Counsel's testimony that he explained to Applicant the likelihood of being unsuccessful at trial if the trial court denied the motion. Further, this Court finds Applicant failed to present evidence to demonstrate how additional preparation would have resulted in a different outcome in the motion hearing. Thus, Applicant failed to meet his burden.

***Failure to Object to the Warrant***

This Court finds Applicant failed to prove Counsel was ineffective for failing to object to the search warrant. This Court finds *credible* Counsel's testimony that he argued a motion to suppress the drugs seized from the search warrant obtained in Applicant's case. This Court finds the record established that Counsel argued the motion extensively before the trial court. (R. 4-70; 90). This Court finds Counsel's performance was reasonable under prevailing professional norms and thus, not deficient. Thus, Applicant failed to meet his burden.

***Failure to Adequately Advise Applicant Regarding the State's Plea Offer***

Although not raised in his pleadings, Applicant averred at the evidentiary hearing that he would have not gone to trial and would have accepted the fifteen (15) year plea offer to the but for Counsel's failure to advise him that he would be parole-eligible and would have to serve 85% of the sentence. This Court finds Applicant failed to prove Counsel was ineffective in this regard.

To prove prejudice for rejecting a favorable plea offer, a defendant must show that but for counsel's ineffective advice, there is a reasonable probability that (1) the plea offer would have been presented to the court (i.e. that the defendant would have accepted the offer and the prosecution would not have withdrawn it in light of intervening circumstances); (2) that the court would have accepted its terms; and (3) that the conviction or sentence, or both, under the offer's terms would have been less severe than the judgment and sentence that was imposed. *Lafler v.*

*Cooper*, 566 U.S. 156 (2012); *see also Frye*, 566 U.S. at 147 (Holding to show prejudice where a plea offer has lapsed or been rejected because of counsel's deficient performance, defendants must demonstrate a reasonable probability they would have accepted the earlier offer but for counsel's performance).

This Court finds Applicant failed to prove he was prejudiced by Counsel's advice because Applicant failed to prove there's a reasonable probability that he would have accepted the State's fifteen (15) year plea offer if Counsel had advised him that he would be parole eligible and would have to serve 85% of the sentence. This Court finds *credible* Counsel and Schwartz's testimonies that Applicant was not interested in pleading guilty. This Court finds *credible* Schwartz's testimony that Applicant's daughters tried to convince him to take the offer, but Applicant did not want to plea. This Court finds *credible* Schwartz's testimony that Applicant was not interested in a plea because Applicant wanted an appeal. This Court finds *credible* Counsel's testimony that Applicant was relying on an appeal to challenge the search warrant issue. This Court finds *credible* Schwartz's testimony that he explained to Applicant that he was unlikely to win on appeal.

This Court finds, based on the *credible* testimony of Counsel and Schwartz, that the determinative factor in Applicant's decision to reject the plea offer was preserving his right to a direct appeal for purposes of challenging the trial court's denial of the motion to suppress the search warrant. Based on the credible testimonies of Counsel and Schwartz, this Court finds Applicant was not concerned about not his parole or sentence consequences when making the decision to reject the plea offer offered before trial, proceed to trial, and reject the subsequent plea offer made during trial. Therefore, this Court finds that Applicant would have rejected the plea offer regardless of Counsel's advice regarding parole eligibility and service of 85% of the sentence in the plea offer.

Although Counsel and Schartz testified that while they do not specifically recall whether they discussed parole eligibility and the 85% sentence with Applicant, this Court finds *credible* their testimonies that they would have discussed it with Applicant. This Court need not address whether Counsel's performance was deficient for failing to advise Applicant on his parole-eligibility or whether Applicant would have to serve 85% of the sentence because Applicant failed to prove prejudice. *Strickland*, 466 U.S. at 670 (Stating a court need not first determine whether counsel's performance was deficient before examining prejudice resulting from the alleged deficiencies; if it is easier to dispose of the ineffectiveness claim on the ground of lack of prejudice, that course should be followed). Thus, Applicant failed to meet his burden.

*[Space left blank intentionally. Conclusion and signature follow on next page.]*

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. Thus, this application is denied and dismissed with prejudice.

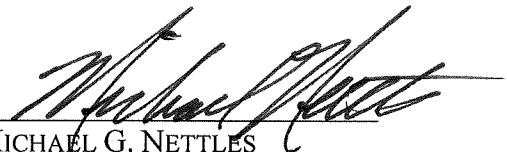
Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty (30) days of receipt by counsel of written notice of entry of judgment. *See* Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. *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), SCRCR. 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 THIS 21 day of Oct, 2024.

, South Carolina

  
MICHAEL G. NETTLES  
Presiding Judge  
Ninth Judicial Circuit



ALAN WILSON  
ATTORNEY GENERAL

November 5, 2024

The Honorable Julie J. Armstrong  
Clerk of Court - Charleston County  
100 Broad Street, Suite 106  
Charleston, South Carolina 29401

**Re: Derrick Ancrum, #319659 v. State of South Carolina**  
**Case No.: 2022-CP-10-00770**

Dear Ms. Armstrong:

Enclosed please find the original Order of Dismissal signed by the Honorable Michael G. Nettles, in the above-captioned case, for filing in your office. Please forward a time-stamped copy back to our office for our file.

Sincerely,

Bryan T. Hall  
Assistant Attorney General

BTH/vh  
Enclosure

cc: Christopher L. Murphy, Esquire