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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY

Common Pleas

The Honorable Kristi F. Curtis, Circuit Court Judge

Lower Court Case No. 2021-CP-02-00665

John Green, #384642,

Appellant,

vs.

State of South Carolina,

Respondent.

Of Whom John Green is the Appellant

NOTICE OF APPEAL

John Green appeals the order of the Honorable Judge Curtis, dated January 13, 2025.
Appellant's attorney received written notice of the entry of this order on January 16, 2025.

February 11, 2025

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STATE OF SOUTH CAROLINA)
 COUNTY OF AIKEN)
)
)
 John Green, SCDC #384642,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE SECOND JUDICIAL CIRCUIT

Case No. 2021-CP-02-00665

ORDER OF DISMISSAL

STATE OF SOUTH CAROLINA
 COUNTY OF AIKEN
 I, Robert J. Harte, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

JAN 13 2025

Robert J. Harte
 C.C.P. & G., Aiken County, S.C.
Charla Peoubbe
 Deputy Clerk

FILED January 13 20 25
Robert J. Harte 1240
 C.C.P. & G.S.
Charla Peoubbe amp
 Deputy Clerk

INTRODUCTION

The matter before this Court is an action for post-conviction relief (PCR) commenced by John Green (“Applicant”) on April 5, 2021. On January 30, 2024, a hearing into the matter was convened before the Honorable Kristi F. Curtis at the Aiken County Courthouse. Applicant was present and represented by Kimberly Y. Brooks, Esquire. Assistant Attorney General T. Cruise Mitchell represented the State. At the evidentiary hearing, testimony was taken from Applicant, Barry L. Thompson, II, (“Counsel Thompson”) and M. Chace Hawk, Esquires (“Counsel Hawk”).

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.

PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections. During the May 2019 term, the Aiken County Grand Jury indicted Applicant for attempted murder (2019-GS-02-00837). Applicant was originally represented by Assistant Public Defender Barry Thompson of the Second Circuit Public Defender’s Office. Applicant moved to have Mr. Thompson relieved,

which was granted, and thereafter, Applicant was represented by Marion Chace Hawk, Esquire. Assistant Solicitor Ashley Hammack of the Second Circuit Solicitor's Office prosecuted the case.

Applicant was evaluated for competency to stand trial and criminal responsibility by the South Carolina Department of Mental Health. Following a hearing on April 16, 2020, Honorable Clifton Newman, Circuit Court Judge, found Applicant competent to stand trial and criminally responsible.

On December 7, 2020, Applicant, alongside counsel, appeared before Judge Newman and pleaded guilty as indicted. Following a colloquy with Applicant, Judge Newman found the plea was knowing, voluntary, and intelligent, and accepted the plea. At Applicant's request, Judge Newman deferred sentencing until later in the week to allow family members to be present.

On December 11, 2020, the parties reconvened before Judge Newman for a sentencing proceeding. At that time, Counsel Hawk presented testimony from Dr. Holt as to Applicant's mental health conditions, particularly as related to the incident giving rise to these charges. Pursuant to a recommendation by the State for a sentence to not exceed twenty years of imprisonment, Judge Newman sentenced Applicant to twelve years of imprisonment.

On December 22, 2020, Counsel Hawk filed a notice of appeal at Applicant's request. In his Rule 203(b), SCACR, explanation, counsel stated he did not believe there were any sufficient grounds for an appeal but was filing an appeal at his client's request. By order filed January 11, 2021, the South Carolina Court of Appeals dismissed the appeal based on a failure to timely serve the notice of appeal. The remittitur was issued on February 2, 2021.

STATEMENT OF FACTS

The following summary was taken, verbatim, from the Solicitor's recitation of the facts at

Applicant's guilty plea:

Your Honor, on November 16th of 2018, officers with the Aiken Department of Public Safety responded out to the 300 block of Florence Street. It's here in downtown Aiken. It's not far from behind Second Baptist Church. When they arrived, they found a whole group of people in the parkways that divides the road by a grassy area.

They spoke with two individuals... They just returned home from work that morning - - this was about nine o'clock in the morning - - when they heard a woman screaming for help. They ran outside and saw the Defendant on top of the victim in that grassy area in between the two sides of the road and he was stabbing her with a knife. The brothers were able to get - - knock the Defendant off of victim and subdue him until law enforcement could arrive. Law enforcement actually arrived while the brothers were still on the line with 911.

When they got there, they were able to speak with Ms. Alberta Johnson. She indicated that she is the biological daughter of the Defendant. They had been estranged. She did not know that he was her father until about three years prior to this happening. Once she found out that he was her biological father, she attempted to have a relationship with him. She would take him to church, doctor appointments. They started going to family functions together. Just trying to make up for all the time of not knowing that he was her father.

She stated that he had been angry with her because he had an altercation with his brother the day before this incident and wanted her to intervene and kind of smooth things over and she declined.

She stated that on November 16th, he called her asking her to come take him to the hospital. She needed to get to work. She works at J.D. Lever Elementary School here in Aiken County. But she told him she would come take him before she went to work. When she picked the Defendant up, he asked her to come into the house. She told him she didn't have time, that she had to go to work. He said, okay, well just take me to the hospital. She stated that she told him to put on his seatbelt. And at that point, when he reached across his body to put on his seatbelt, she stated he then came across and started stabbing her in the face, neck, chest and abdomen. She was wearing a coat that blocked some of those strikes. Law enforcement did document several slashes and cuts to her jacket and shirt where he cut through her clothes.

She was able to get out of her jacket and exited the vehicle and began running down Florence Street, screaming for help. She stated that the Defendant pursued her, stating, quote, Bitch, I'm going to kill you. She stated that she fell, got back up, attempted to continue running when he caught her from behind and knocked her to the ground. She

stated that as she was on the ground on her back, he began stabbing her again about the face and neck.

She stated as he was stabbing her, she was actually able to grab the blade of the knife out of her hand and she sustained several lacerations to her hand where she was gripping the knife trying to keep him from stabbing her further. At that point, Orland and Brandon Williams came in, intervened and were able to rescue Ms. Johnson.

Law enforcement noted several injuries to her body. In addition to the defensive wounds on her hands from catching that knife, she also had a laceration from her nose going across her face and upper jaw line towards her eye. She had a laceration and punctures to her left jaw. She had a laceration from her chin going along her jaw line, ultimately, extending up to her ear lobe. She had multiple lacerations to her chin directly below her mouth. She also had bruising and abrasions to her knees and legs from falling and fighting with the Defendant.

Law enforcement was able to recover the knife from the scene. They also obtained a statement from the Defendant wherein he admitted to stabbing the victim. It really wasn't under question as there were multiple eyewitnesses, but he did admit to stabbing the victim.

(Gp. Tr. pp.10–13).

CURRENT APPLICATION

Applicant timely commenced this PCR application on April 5, 2021. In his application Applicant alleged he was entitled to relief based on the following grounds:

1. "Insufficient counsel...Chase Hawk worked with Barry Thompson who was fired from my case for working with the victim against me. Chase railroaded me and did not advisement of what I was pleading guilty to."

At the evidentiary hearing, Applicant raised the allegation that Counsels Thompson and Hawk failed to review discovery with him. Before this Court are the records of the Aiken County Clerk of Court regarding the underlying conviction, the plea transcript, Applicant's records from the South Carolina Department of Corrections, the records from Applicant's direct appeal, and the records of this post-conviction relief action.

INEFFECTIVE ASSISTANCE OF COUNSEL, GENERALLY

In a PCR action, Applicant bears the burden of proving the allegations in his application by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985); Rule

71.1(e), SCRCF. Where , the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 687; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its “reasonableness under prevailing professional norms.” *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; see also *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel's performance need not be optimal to be reasonable.”).

Second, counsel's deficient performance must have prejudiced Applicant such that “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 (quoting *Strickland*, 466 U.S. at 694). “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696–97.

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)).

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 proceeds to the claims raised in the application and finds each 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 Hawk Improperly Worked with Counsel Thompson Who Was Fired For Working With Victim

Applicant contends Counsel Hawk was ineffective for working with Barry Thompson who was fired from his case for working with the victim against him. This Court disagrees, and finds Counsel was not ineffective in this regard. This Court finds credible and persuasive the testimony of Counsel Hawk, who presented well-recollected testimony of his workings with Counsel Thompson and the victim.

1. PCR Testimony

Applicant testified Counsel Thompson got the victim tied up in his case. Applicant explained that Counsel Hawk was also in “cahoots” with victim and that Counsel Hawk wanted to make sure Applicant got some time. Applicant then accused Counsel Hawk of paying \$1,500 to the mental health evaluation doctor to say untrue things about Applicant to ensure he would get some time.

Counsel Thompson testified he had Applicant evaluated by the Department of Mental Health who found him competent to stand trial. Counsel Thompson testified he spoke with the victim over the phone and his investigator spoke with her in person. Counsel Thompson noted that Applicant was unhappy about what the victim told Counsel Thompson. Counsel Thompson explained it was required of him to speak to the victim, a key witness, in order to conduct a diligent investigation.

Counsel Hawk testified he had Applicant reevaluated for competency by Dr. Holt. Although Dr. Holt made findings regarding Applicant's delusions and victimization, he ultimately found Applicant competent to stand trial. Counsel Hawk explained he did use those findings in his mitigation. Counsel Hawk testified he spoke with victim regarding Applicant's mental health history as part of his investigation into a mental health defense. Counsel Hawk denied paying Dr. Holt to make certain findings about Applicant and merely requested Dr. Holt to conduct an independent investigation.

2. Discussion

This Court finds Counsels were not ineffective in speaking with the victim as part of their investigation in this case. This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [her] case." *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland*). "[W]hen Counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." *Smith v. State*, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010).

Counsels Thompson and Hawk both articulated valid reasons for speaking with the victim. This Court finds Counsel Thompson's communication with the victim was not only proper, but

necessary, to conduct a diligent investigation in this case. This Court finds Counsel Hawk properly spoke with the victim, who is the Applicant's biological daughter, to further investigate Applicant's mental health. Therefore, this Court finds both Counsels in this case were not deficient in speaking with victim as part of their investigations.

Furthermore, Applicant has produced no evidence, besides his own self-serving testimony, that either Counsel Thompson or Counsel Hawk colluded with victim to ensure Applicant was sentenced in this case. Therefore, Applicant has failed to prove prejudice as to this allegation.

Accordingly, this allegation is **DENIED**.

Counsels Thompson and Hawk Failed to Consult with or Review Discovery with Applicant

Applicant alleges Counsels Thompson and Hawk failed to review discovery with him. This Court disagrees and finds Counsels were not ineffective in this regard.

1. PCR Testimony

Applicant testified neither Counsel Thompson nor Hawk reviewed discovery with him. Applicant further explained Counsel Hawk possessed evidence of self-defense, but he never presented it at court.

Counsel Thompson testified he had multiple discussions with Applicant regarding this case and whether he wanted to plead guilty or proceed to trial. Counsel Thompson advised Applicant it was likely he would be found guilty at trial and pleading guilty was the best option. Counsel Thompson noted he saw no viable defenses in this case. Counsel Thompson explained they went in front of Judge Newman to plead guilty, but Applicant backed out and asked for Counsel Thompson to be relieved, which was granted. This ended Counsel Thompson's representation in this case.

Counsel Hawk testified he met with Applicant several times, both in person and over the phone. Counsel Hawk explained he spent a lot of time reviewing the evidence and discovery with Applicant. Counsel Hawk informed Applicant pleading guilty was absolutely his best option. However, Counsel Hawk stated he did not coerce Applicant to plead guilty and was merely giving his opinion based on the evidence. Counsel Hawk testified he explained to Applicant his charge, potential sentence, the current plea offer, and the pros/cons of pleading guilty versus going to trial.

2. Discussion

This Court finds Counsels Thompson and Hawk were not ineffective in consulting or reviewing discovery with Applicant. Applicant suggests a failure to adequately meet with him prior to the plea. Additionally, Applicant contends Counsel failed to review discovery with him. This Court finds Counsels' credible testimony refutes these allegations. 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”). Both Counsels Thompson and Hawk testified they met with Applicant several times during the course of their respective representations wherein they discussed Applicant’s case, any potential plea offers, and reviewed the State’s evidence with him. This Court finds this testimony credible. Thus, this Court finds Counsels were not deficient in consulting or reviewing discovery with Applicant prior to his plea. This Court further finds Counsels properly advised Applicant of the benefits and risks of pleading guilty and, after those discussions, Applicant made the decision to plead guilty freely and voluntarily.

Applicant further fails to specify what Counsel did not disclose to him from materials provided in discovery, or what, if anything, could have been achieved had Counsel spent more time with him in consultation regarding the contents of his discovery. *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**.

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. This Court finds Applicant freely, knowingly, and voluntarily pleaded guilty. 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 30th day of Dec, 2024.



THE HONORABLE KRISTI F. CURTIS
Presiding Judge
Second Judicial Circuit

Sumter, South Carolina