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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM SPARTANBURG COUNTY

Court of Common Pleas

HONORABLE PERRY H. GRAVELY

2024-CP-42-00456

TRAVIS JESSUP, SCDC# 281842

APPELLANT,

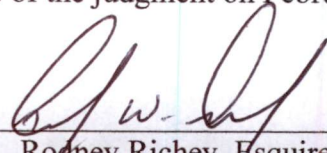
vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

Travis Jessup appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable Perry H. Gravelly, Circuit Judge on November 18, 2024 an Order issued on December 9, 2024 and filed on December 13, 2024. The Appellant received notice of the judgment on February 6, 2024.



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STATE OF SOUTH CAROLINA)
 COUNTY OF SPARTANBURG)
)
 Travis Jessup, SCDC #281842,)
)
 Applicant,)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2024-CP-42-00456

ORDER OF DISMISSAL

This matter is before the Court pursuant to an application for post-conviction relief (“PCR”) filed by Travis Jessup (“Applicant”) on February 2, 2024. November 18, 2024, an evidentiary hearing convened before the Honorable Perry H. Gravely. Applicant was present and represented by Rodney W. Richey, Esquire. Assistant Attorney General Bryan T. Hall represented Respondent. At the hearing, Applicant testified on his own behalf and called as a witness E. Joshua Schultz, Esquire. Respondent did not call any witnesses. Following a thorough review of the plea 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 ten (10) year sentence. In its April 2021 and May 2022 terms, the Spartanburg County Grand Jury indicted Applicant for two (2) counts of attempted murder (2021-GS-42-1339), possession of a weapon during the commission of a violent crime, and possession of an adulterant intended to defeat a drug test (2022-GS-42-2524). The charges arose from an incident in which Applicant shot at the victim, his ex-girlfriend, and another person. The victim identified Applicant as the shooter without hesitation.

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On July 18, 2023, Applicant pled guilty before the Honorable Grace Knie. E. Joshua Schultz, Esquire, ("Counsel") represented Applicant. Assistant Solicitor James Hunter prosecuted the case. In exchange for his plea, one (1) count of attempted murder was nolle prosequi, and Applicant pled guilty to assault and battery of a high and aggravated nature ("ABHAN"), the lesser-included offense. For ABHAN, Judge Knie sentenced Applicant to twenty (20) years suspended to ten (10) years followed by five (5) years of probation with probation to terminate upon payment ("PTUP") after 3 years of full compliance. Pursuant to a negotiated sentence, Judge Knie sentenced applicant to time served for the possession charge. Applicant did not appeal.

CURRENT APPLICATION

Applicant timely commenced this PCR action on February 2, 2024, alleging he is being held in custody unlawfully for the following reasons:

Ineffective Assistance of Counsel

Counsel informed Applicant that he would get probation or home detention.

Actual innocence

On October 3, 2024, Respondent filed a Return. Before this Court are the Spartanburg County Clerk of Court records of the subject conviction; Applicant's records from SCDC; the plea transcript; and the records of the current PCR action.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant's Testimony

At the evidentiary hearing, Applicant averred that he never reviewed discovery with Counsel but discussed the evidence with Counsel. Applicant testified that the victim recanted her statement, which was favorable to Applicant's case and the basis for Applicant wanting a trial. Applicant testified that he could not tell the plea judge that he was not happy with Counsel because Counsel told Applicant the judge would throw the plea out. Applicant testified that Counsel told

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him that pleading guilty would be his best opportunity to get home detention or probation. Applicant testified that he never intended to plead guilty but pled because of Counsel's advice that it was his best opportunity to go home. Applicant testified that he would not have pled guilty and would have gone to trial.

Counsel's Testimony

E. Joshua Schultz ("Counsel") testified that he met with Applicant at least five (5) to six (6) times during representation and felt that he met with Applicant sufficiently. Counsel testified that he reviewed discovery with Applicant, which included a statement by the victim identifying Applicant as the shooter, incident reports, Applicant's recorded statements, photos of injuries, and body cam footage. Counsel testified that there was not a lot of physical evidence in Applicant's case. Counsel testified that the victim later recanted her statement in May 2022. Counsel testified that Applicant wanted a jury trial initially and was placed on the trial docket, but Applicant later decided to plead guilty. Counsel testified that the solicitor offered Applicant a plea to ABHAN, and a negotiated sentence of time served for attempting to defeat a drug test; Applicant was originally indicted for two (2) counts of attempted murder. Counsel testified that trial would have been difficult [to win] but his defense strategy was to discredit the victims' credibility. Counsel testified that Applicant decided to plead guilty, and Counsel advised him that probation and house arrest were possible but did not promise that. Counsel testified that it is possible that Applicant rejected going to trial because he believed he could receive a probationary sentence. Counsel testified that he advised Applicant of his constitutional rights including his right to a jury trial, right to confront witnesses, and right to remain silent.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the plea transcript in its entirety and has heard

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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.

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“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).

This Court finds Applicant failed to prove Counsel was ineffective in advising him prior to his guilty plea. This Court finds *credible* Counsel advised him that probation and house arrest were possible, but Counsel did not promise that. Counsel’s testimony is corroborated by Applicant’s testimony that Counsel told him that pleading guilty was his “best opportunity” to get a house arrest sentence as opposed to trial. This Court finds Applicant failed to overcome the presumption that Counsel rendered adequate advice at the time he decided to plead guilty. *Padilla v. Kentucky*, 559 U.S. 356, 372 (2010) (counsel is presumed to have rendered competent advice at the time their clients considered pleading guilty). This Court finds *credible* Counsel’s testimony that it was Applicant’s decision to plead guilty. This Court finds Counsel’s performance and advice were reasonable under prevailing professional norms and thus, were not deficient.

Further, this Court finds that Applicant failed to prove that but for Counsel’s advice, he would not have pled guilty and would have insisted on going to trial because this Court finds that the determinative factor in Applicant’s decision to plead guilty was the possibility of home detention or a probationary or sentence. This Court finds *credible* Counsel’s testimony that it is possible that Applicant rejected going to trial because he believed he could receive a probationary sentence. Thus, Applicant failed to meet his burden.

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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 be knowing and voluntary, a plea must be entered with an awareness of its consequences.” *Holland v. State*, 322 S.C. 111, 113, 470 S.E.2d 378, 379 (1996). “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).

This Court finds Applicant failed to prove his guilty plea was made involuntarily. This Court finds that the record reflects Applicant pled guilty with a full understanding of the charges against him, the possible sentences for each charge, and his constitutional rights. This Court finds credible Counsel’s testimony that he reviewed discovery with Applicant and advised Applicant of his constitutional rights. This Court finds the record from the plea colloquy establishes that Applicant pled guilty freely and voluntarily. Thus, Applicant failed to meet his burden.

Actual Innocence

Applicant alleged “actual innocence” in his PCR Application. This Court finds Applicant failed to meet his burden by failing to present evidence to support his claim. Accordingly, this Court denies relief.

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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.

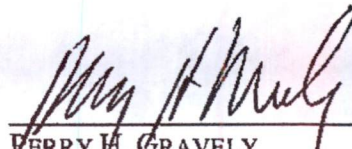
Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty (30) days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. *Austin 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), SCRPC. 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 9 day of Dec, 2024.

Spaulding, South Carolina


PERRY H. GRAVELY
Presiding Judge
Seventh Judicial Circuit

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