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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

R. Lawton McIntosh, Circuit Court Judge

2024-CP-42-00043

Troy Braxton..... Appellant,
v.
The State, ... Respondent.

NOTICE OF APPEAL

Troy Braxton appeals the Honorable R. Lawton McIntosh's Order of Dismissal filed December 19, 2024. The Order was found on the public index during file inventory. Written notice has not yet been received.

This twenty-eight day of February, 2025.

s/Susannah Ross
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STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
Troy Braxton, SCDC #372305, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2024-CP-42-00043 **ORDER OF DISMISSAL**

This matter is before the Court pursuant to an application for post-conviction relief ("PCR") filed by Troy Braxton ("Applicant") on January 29, 2024. On September 5, 2024, an evidentiary hearing convened before the Honorable R. Lawton McIntosh. Applicant was present and represented by Susannah C. Ross, Esquire. Assistant Attorney General Bryan T. Hall represented Respondent. At the hearing, Applicant testified on his own behalf. Respondent called as a witness E. Joshua Schultz, Esquire. 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 forty-three (43) year sentence. In June 2020, the Spartanburg County Grand Jury indicted Applicant for murder (202-GS-42-03479), four (4) counts of armed robbery (2020-GS-42-03475; -03476; 03477; -03478); possession of a weapon during the commission of a violent crime (2020-GS-42-03474); possession with intent to distribute ("PWID") marijuana (2020-GS-42-03473); and failure to stop for blue lights (2020-GS-42-03472). In May 2022, the Spartanburg County Grand

Jury indicted Applicant for assault and battery of a high and aggravated nature ("ABHAN") (2022-GS-42-02555).

On March 13, 2023, Applicant pled guilty before the Honorable J. Derham Cole. Michael Morin, Esquire, represented Applicant on the ABHAN charge; E. Joshua Schultz, Esquire, ("Counsel") represented Applicant on all other charges. Solicitor Barry Barnette prosecuted the case. Applicant pled to voluntary manslaughter, the lesser-included offense of murder, and Judge Cole sentenced Applicant to a concurrent sentence of twenty-five (25) years for voluntary manslaughter; fifteen (15) years for three (3) counts of armed robbery; ten (10) years for ABHAN; five (5) years for PWID marijuana; five (5) years for the weapon charge. Judge Cole sentenced Applicant to a consecutive sentence of fifteen (15) years for one (1) count of armed robbery and three (3) years for FTS for blue light.

Applicant filed a timely notice of appeal. The Court of Appeals dismissed the Applicant's appeal for failure to provide a sufficient explanation as to why an appeal from his guilty plea should proceed, pursuant to Rule 203(d)(1)(B)(iv), SCACR. *State v. Braxton*, S.C. Ct. App. Order filed May 24, 2023.

FACTUAL HISTORY

These charges arose from a December 31, 2019, incident in which Applicant went to a restaurant, pulled out a gun, stole cell phones from the victims, and fled. (Plea Tr. 42-43). On January 10, 2020, law enforcement responded to a location, whereat a victim had been shot in the groin. (Plea Tr. 44). On January 21, 2020, law enforcement observed Applicant with a wrong tag and committing other traffic offenses, Applicant fled when law enforcement initiated blue lights. Applicant jumped out of the vehicle and was captured; drugs were found in Applicant's vehicle. Law enforcement officers noticed the vehicle driven by Applicant, a white Honda, matched a

vehicle in videos related to the murder in which the victim was shot in the groin. Law enforcement searched Applicant's phone records, which revealed messages referencing the victim and a robbery between Applicant and Corey Lyles, who was present at the armed robbery that led to Victim's death. Applicant admitted to being present but denied being the shooter. (Plea Tr. 45-55).

Regarding ABHAN, Applicant got into an altercation with another inmate at the Spartanburg County Detention Center. The ABHAN victim suffered substantial injuries including a skull fracture. (Plea Tr. 65-66).

CURRENT APPLICATION

Applicant timely commenced this PCR action on January 29, 2024, alleging he is being held in custody unlawfully for the following reasons:

Ineffective Assistance of Counsel
a. Failure to investigate

Involuntary Guilty Plea

Unconstitutional Sentence

On July 8, 2024, Respondent filed its Return. In August 2024, Applicant amended his application to add the following allegations:

Ineffective Assistance of Counsel
b. Failure to review discovery with Applicant.
c. Advising Applicant that a reduction of his murder charge to voluntary manslaughter would limit his potential sentence to two (2) to thirty (30) years.
d. Failure to file an appeal.

Before this Court are the Spartanburg County Clerk of Court records of the subject conviction; Applicant's records from SCDC; the appellate records; 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 testified that Counsel advised him of a two (2) to thirty (30) year plea offer but Applicant received more time. Applicant testified that he considered trial but decided to plea. Applicant testified that he spoke to his mother, which made him reconsider going to trial. Applicant averred that he would have gone to trial if he knew he would receive more time. Applicant testified that he did not believe he would get a consecutive sentence. Applicant averred that Counsel met with him four (4) to five (5) times and did not spend more than ten (10) hours on his case. Applicant testified that he did not feel Counsel was acting in his best interest, and Applicant wanted to relieve Counsel but the motion to relieve was denied after a hearing. Applicant averred Counsel did not go over the whole discovery, which affected the outcome of the plea. Applicant averred his sentence was unlawful because the crimes were closing related, citing Section 17-25-50 and *Bryant v. State*. Applicant testified that he would have wanted his mother to be present at the evidentiary hearing and she would have said that she spoke to him during the recess.

On cross-examination, Applicant testified that he informed the plea judge that he had plenty of opportunity to speak to Counsel about his cases. Applicant testified that he told the court that Counsel shared all the evidence the State had and would present if he proceeded to trial, and Applicant and Counsel looked over the State's evidence. Applicant testified that he explained to the plea judge that Counsel explained to him the possible sentences for each count of armed robbery was ten (10) to thirty (30) years. Applicant testified that the plea judge explained him that possession of a weapon charge carried up to five (5) years, PWID marijuana carried up to five (5) years, and failure to stop for blue lights carried three (3) years.

Counsel's Testimony

E. Joshua Schultz ("Counsel") testified that he met with Applicant a "fair amount" of times and believed he met sufficiently with Applicant. Counsel testified that he requested and received discovery and reviewed the discovery with Applicant. Counsel testified that the State's evidence included 911 calls, video surveillance, and statements from witnesses. Counsel testified that there was a question of [the robber's] identity in the surveillance videos, which was a defense that could be used if the case went to trial. Counsel testified that the State was going to try the armed robbery charges first, which the State believed to be their best case. Counsel testified that he explained to Applicant the charges in his case, the elements of the offenses, and the potential sentences for each charge. Counsel testified that he explained to Applicant that voluntary manslaughter carried a sentence of two (2) to thirty (30) years instead of murder, which carried thirty (30) years to life.

Counsel testified that Applicant did not ask him to investigate anything specifically, but Counsel reviewed discovery and assessed the evidence the State had. Counsel testified that he engaged in plea negotiations with the State. Counsel testified that he believed if the State moved from murder to voluntary manslaughter, Applicant could possibly get less time and would only serve eighty-five percent (85%). Counsel testified that Applicant was pleading straight up without any recommendation or negotiations, which meant the sentence would be left to the judge's discretion. Counsel testified that he explained the plea offers to Applicant. Counsel testified that he filed a notice of appeal, and Applicant's appeal was dismissed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the plea 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€, SCRCP; *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.

"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). Counsel is presumed to have rendered competent advice at the time their clients considered pleading guilty. *Padilla v. Kentucky*, 559 U.S. 356, 372 (2010). Additionally, the burden is on the applicant to convince the court that rejecting a plea or plea bargain would have been rational under the circumstances. *Id.*

Failure to Investigate

This Court finds Applicant failed to prove Counsel was ineffective for failing to conduct an independent investigation. "A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). "The scope of a reasonable investigation depends on a number of issues, but at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." *Ard v. Catoe*, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007). Counsel's duty to investigate is limited to reasonable investigations or a reasonable decision that makes particular investigations unnecessary. *Id.* at 331, 642 S.E.2d at 597; *Strickland*, 466 U.S. at 691. In applying the *Strickland* standard to a claim of failure to investigate, counsel's decision not to undertake a particular investigation should be evaluated for reasonableness under all the circumstances, with heavy deference to counsel's judgment. *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 633 (Ct. App. 2014).

To prevail upon a claim that counsel did not adequately prepare or investigate 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 v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result. *Moorehead v. State*, 329 S.C. 329, 496 S.E.2d 415 (1998). The applicant must further 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 investigation of the case was reasonable under prevailing professional norms, and thus was not deficient. This Court finds ***credible*** Counsel's testimony that he reviewed and assessed the discovery and evidence in Applicant's case. This Court finds ***credible*** Counsel's testimony that Applicant did not ask Counsel to investigate anything specifically. Further, Applicant failed to prove prejudice by failing to show discoverable matters or defenses that Counsel could have discovered or developed that would have resulted in a different outcome. Thus, Applicant failed to meet his burden.

Failure to Prepare and Review Discovery with Applicant

This Court finds Applicant failed to prove Counsel was ineffective for failing to prepare and failing to review discovery with Applicant. To prevail on a claim that counsel did not adequately prepare, Applicant must present evidence of what counsel could have discovered or

what defenses could have been developed with additional preparation, and Applicant must demonstrate how the discoverable matters or defenses would have resulted in a different outcome. *Jackson*, 329 S.C. at 353-54; 495 S.E.2d at 772; *Harris*, 377 S.C. at 75-76, 659 S.E.2d at 145-46, *abrogated on other grounds by Smalls*, 422 S.C. 174, 810 S.E.2d 836.

This Court finds Counsel's preparation and review of the discovery with Applicant was reasonable under prevailing professional norms, and thus was not deficient. This Court finds ***credible*** Counsel's testimony that he requested and received discovery from the State. This Court finds ***credible*** Counsel's testimony that he reviewed the discovery with Applicant, including reviewing video surveillance. This Court finds ***credible*** Counsel's testimony that upon review of the video surveillance, identity would be an issue if Applicant were to proceed to trial. This Court finds ***credible*** Counsel's testimony that identity would have been Applicant's defense if he chose to proceed to trial. Further, this Court finds Applicant failed to prove prejudice by failing to present evidence of discoverable matters or defenses that Counsel could have developed that would have resulted in a different outcome. Thus, Applicant failed to meet his burden.

Failed to Spend Adequate Time

This Court finds Applicant failed to prove Counsel was ineffective for failing to meet with him sufficiently or spend adequate time. "[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*, 329 S.C. at 353-54, 495 S.E.2d at 772.

This Court finds ***credible*** Counsel's testimony that he met with Applicant a "fair amount" of times and believed the time spent was sufficient. This Court has had the opportunity to review

the jail visitation logs submitted by Applicant, and finds the logs reflect Counsel met with Applicant several times. This Court finds Applicant failed to prove prejudice by failing to present evidence of how additional time would have resulted in a different outcome. Thus, Applicant failed to meet his burden.

Misadvising Applicant that Voluntary Manslaughter Would Limit his Exposure to Two to Ten Years

This Court finds Applicant failed to prove Counsel was ineffective in misadvising him that voluntary manslaughter would limit his exposure to two (2) to thirty (30) years. To collaterally attack a guilty plea, an applicant must prove (1) counsel was ineffective [in advising] and (2) but for counsel's deficient performance, the applicant would not have pled guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. at 59 (1985); *Dalton*, 376 S.C. at 136, 654 S.E.2d at 873.

This Court finds Counsel was not deficient in advising Applicant. This Court finds ***credible*** Counsel's testimony that he believed and advised Applicant that by pleading to voluntary manslaughter, Applicant *could* serve less time than the murder charge, which carries thirty (30) years to life. This Court finds ***credible*** Counsel's testimony that he advised Applicant that voluntary manslaughter carries two (2) to thirty (30) years and is an eighty-five percent (85%) offense. This Court finds ***credible*** Counsel's testimony that he informed Applicant that he would be pleading without negotiation or recommendation from the State, which meant the sentence would be in the judge's discretion. This Court finds Counsel's advice was reasonable under prevailing professional norms, and thus was not deficient. Further, this Court finds Applicant failed to prove prejudice by failing to show a reasonable probability that but for Counsel's advice, he would have rejected the plea offer and proceeded to trial. The fact that Applicant hoped for a concurrent sentence is insufficient to collaterally attack his guilty plea. *Wolfe v. State*, 326 S.C.

158, 485 S.E.2d 367 (1997) (stating the fact that defendant "hoped" and "expected" to get a reduced sentence does not render a plea invalid). Thus, Applicant failed to meet his burden.

Failure to File an Appeal

This Court finds Applicant failed to prove Counsel was ineffective for failing to file an appeal from Applicant's guilty plea. There is no constitutional requirement that a defendant be informed of the right to direct appeal from a guilty plea. *Turner v. State*, 380 S.C. 223, 670 S.E.2d 373 (2008). Counsel does not have a duty to initiate an appeal after a guilty plea "absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing." *Id.* at 224, 670 S.E.2d at 374.

Upon review of Applicant's appellate records, this Court finds Counsel filed a notice of appeal on March 24, 2023. The Court of Appeals dismissed Applicant's appeal for failure to provide a sufficient explanation showing that there is an issue that can be reviewed on appeal, pursuant to Rule 203(d)(1)(B)(iv).[1] To the extent that Applicant alleges Counsel was ineffective for failing to provide an explanation of an appealable issue, this Court finds Applicant failed to prove prejudice by failing to present evidence of an issue from his guilty plea that could be reviewed on appeal. Thus, Applicant failed to meet his burden.

Unlawful Sentence

Applicant alleges his sentence was unlawful under section 17-25-50 and *Bryant v. State*, 384 S.C. 525, 683 S.E.2d 280 (2009). This Court finds Applicant failed to prove his sentence was unlawful. Under 17-25-50, for purposes of imposing a sentence, the court shall treat as one offense any number of offenses which have been committed at times so closely connected in time that they

[1] *State v. Braxton*, S.C. Ct. App. Order filed May 24, 2023.

may be considered as one offense, notwithstanding under the law they constitute separate and distinct offenses. S.C. Code Ann. § 17-25-50. In *Bryant*, the Supreme Court held that section 17-25-50 is a legislatively sanctioned safeguard to ensure that a life without parole sentence is not imposed in cases where multiple section 17-25-45 offenses are "so closely connected in point of time that they may be considered as one offense[.]" *Bryant v. State*, 384 S.C. at 534-35, 683 S.E.2d at 285. In interpreting section 17-25-50, the Court stated the following:

> In essence, what may be charged as two, three or more strikes under section 17–25–45 must be deemed 'one-strike' for sentencing purposes under section 17–25–50 and, as a result, preclude a life without parole sentence. We believe this approach most closely hews to legislative intent based on what is admittedly imprecise statutory language.

Id. In its reasoning, the Court cited *State v. Woody*, 359 S.C. 1, 596 S.E.2d 907 (2004) (holding that a defendant's two convictions of armed robbery constituted one offense under section 17-25-50 for purposes of the three-strikes law since the offenses were committed at the same time). *Id.* at 532, 683 S.E.2d at 284.

In accordance with the holdings from *Bryant* and *Woody*, this Court finds the statutory designation of offenses under section 17-45-50 as "one offense" for purposes of sentencing was legislatively intended to prevent subjecting a defendant to life without parole under the three-strikes law for multiple offenses that occurred so closely in time. This Court finds the statute does not prohibit the sentencing judge from ordering consecutive sentences for offenses that occurred so closely in time.

This Court finds Applicant failed to prove his sentences were unlawful because the sentences were imposed within the statutory limits for the offenses, subject to the discretion of the sentencing judge, and Applicant failed to present evidence of prejudice by the sentencing judge. *State v. Sidell*, 262 S.C. 397, 205 S.E.2d 2 (1974) (a judge has discretion in sentencing within

statutory limits); *Cummings v. State*, 274 S.C. 26, 260 S.E.2d 187 (1979) (a sentence is not excessive if it is imposed within the statutory limitations and there is no evidence of prejudice against a defendant). Thus, Applicant failed to meet his burden.

Involuntary Plea

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(e), SCRCP; *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 show his plea was involuntary. Applicant indicated to the plea judge that Counsel shared all of the evidence the State had against Applicant. (Plea Tr. 10). This Court finds ***credible*** Counsel's testimony that he reviewed discovery with Applicant and explained to Applicant the charges against him, the elements of the offenses, and the possible sentences for each offense. The record reflects the plea judge also explained to Applicant the charges against him and the possible sentences for each offense. (Plea Tr. 11-13). This Court finds the record establishes Counsel explained to Applicant his constitutional rights, including the right to remain silent, right to confront witnesses, and right to a jury trial. (Plea. Tr. 33-35) Applicant indicated to the plea judge that no one promised him anything, and he was not pressured to plead guilty. (Plea Tr. 37-38). Applicant indicated to the plea judge that he was pleading guilty freely and voluntarily. (Plea Tr. 38). Thus, this Court finds the record establishes Applicant pled guilty knowingly, intelligently, freely and voluntarily with an understanding of the consequences of pleading. Thus, Applicant failed to meet his burden.

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), SCRCP. 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 20 **day of** November **, 2024.**

Anderson, South Carolina

R. LAWTON MCINTOSH
Presiding Judge
Seventh Judicial Circuit

FILED
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CLERK OF COURT
SPARTANBURG COUNTY