STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Kristi F. Curtis, Circuit Court Judge

Case No. 2021-CP-32-00267

Lamont M. McClain, II, #358351, ... Petitioner,

v.

State of South Carolina, ... Respondent.

NOTICE OF APPEAL

Applicant, Lamont M. McClain, II, appeals the order of the Honorable Kristi F. Curtis, filed on or about March 13, 2025.

March 20, 2025

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FILED

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LISA M. COMER
CLERK OF COURT
LEXINGTON

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)	IN THE COURT OF COMMON PLEAS FOR THE ELEVENTH JUDICIAL CIRCUIT
Lamont McClain, II, SCDC #358351, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2021-CP-32-0267 **ORDER OF DISMISSAL**

INTRODUCTION

The matter before this Court is an action for post-conviction relief (PCR) commenced by Lamont McClain, II, ("Applicant") on January 28, 2021. On April 7, 2023, a hearing into the matter was convened before the Honorable Kristi F. Curtis at the Lexington County Courthouse. Former Assistant Attorney General Taylor Z. Smith represented the State. Applicant was present and represented by Ashley A. McMahan, Esquire. During the hearing, testimony was taken from Applicant and Johnta Gantt. Following the testimony, the record in this matter was held open to receive the testimony of Deputy Solicitor Angela Garrick Martin. On November 2, 2023, this matter was reconvened by way of a virtual hearing. Applicant was present and represented by Ashely A. McMahan, Esquire. Assistant Attorney General T. Cruise Mitchell represented the State. Testimony was taken from Deputy Solicitor Angela Garrick Martin.

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 and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections. During its November 2015 term, the Lexington County Grand Jury indicted Applicant for attempted murder (2015-GS-32-2359), assault and battery of a high and aggravated nature (ABHAN) (2015-GS-32-2360), two counts of kidnapping (2015-GS-32-2361, -2362), possession of a weapon during the commission of a violent crime (2015-GS-32-2363A), and armed robbery (2015-GS-32-2363). Applicant was represented by Wayne Floyd, Esquire. Deputy Solicitor Angela Garrick Martin prosecuted the case.

On February 13, 2020, Applicant appeared before the Honorable William P. Keesley and pleaded guilty to ABHAN and attempted murder. The remaining indictments and an unrelated set of charges from 2019 were dismissed in exchange for Applicant's plea. Pursuant to negotiations entered into between the State and Applicant, Judge Keesley sentenced Applicant to concurrent terms of twelve years' imprisonment for each charge. Applicant did not appeal his pleas or sentences.

FACTUAL SUMMARY

In the early evening hours of July 18, 2015, Christopher Tillman was working on car repairs in the parking lot of the Raintree Apartment Complex on Fernandina Road. (Plea Tr. 8). Applicant approached Mr. Tillman and presented a firearm. (Plea Tr. 8). A bystander, Benjamin Cupido, approached the two men after noticing something strange was happening. (Plea Tr. 8). Applicant ordered both men to get down on the ground. (Plea Tr. 8). Mr. Cupido had a concealed weapons permit. (Plea Tr. 8). As he lowered himself to the ground, Mr. Cupido pulled his firearm. (Plea Tr. 8). He and Applicant exchanged gunfire. (Plea Tr. 8). By that point, Applicant had already

collected Mr. Tillman's driver's license and other miscellaneous items that had been in his pocket or in his car. (Plea Tr. 8–9).

After exchanging gunfire with Mr. Cupido, Applicant fled on foot. (Plea Tr. 9). He left a blood trail through the woods and left a white shirt covered in blood in the woods. (Plea Tr. 9). Law enforcement set up a perimeter and K-9 units began tracking Applicant's scent through the woods. (Plea Tr. 9). Applicant was ultimately able to leave the area without being apprehended. (Plea Tr. 9).

Law enforcement put out a BOLO at local hospitals for individuals matching the description given by Mr. Tillman and Mr. Cupido. (Plea Tr. 9). A Columbia hospital notified law enforcement of an individual matching the description with gunshot wounds to the lower back and buttocks area. (Plea Tr. 9).

Video surveillance footage from the hospital shows Applicant pulling up in a stolen vehicle and yelling that he had been robbed. (Plea Tr. 9). During the course of the investigation, law enforcement found Mr. Tillman's ID on Applicant and blood in the car. (Plea Tr. 9). The blood samples recovered from the woods matched the sample given by Applicant. (Plea Tr. 9–10).

CURRENT APPLICATION

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective assistance of counsel
    a. "Attorney was ill and unable to prepare the case for trial. Defendant felt he had no choice but to plea[*sic*] as he had no financial means to hire another lawyer, didn't have an appointed one, and his attorney was medically unable to physically prepare or conduct a trial if he did not plea[*sic*]."
    b. "Defendant did not want to plea[*sic*] but felt he had no choice because there was no Counsel physically able to carry out duties for this case and he was told he must the day in question."
    c. "Defendant was unable to properly prepare the case with his lawyer and review the evidence. Discovery now shows elements of armed robbery no[sic] present.

Defendant did not believe lawyer could physically conduct a trial and was therefore deprived of effective assistance of Counsel. The evidence in question did not meet the elements of the offenses during the plea in question and defenses existed that could not be explored due to counsel."

2. Involuntary Guilty Plea

On October 4, 2022, Applicant filed an amended PCR application adding the following allegations:

1. Ineffective Assistance of Counsel – Wayne Floyd
    a. Had Applicant known the dismissed charge could not have been prosecuted to begin with, Applicant would not have accepted the plea offer. Tytron Derrick told the Sherriff that the Applicant did not shoot him.

At the evidentiary hearing, Applicant only went forward on the allegations in his amended application.

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), SCRCP. 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 finds Applicant's allegations of ineffective assistance of counsel are 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's Illness Affected His Ability to Effectively Represent Applicant[1]

Applicant contends Counsel's illness affected his ability to prepare the case for trial. Applicant further contends he felt he had no choice but to plead guilty because Counsel could not physically carry out his duties. This Court disagrees and finds that the record from Applicant's guilty plea and the credible testimony of Solicitor Angela Garrick Martin ("Solicitor") refute this allegation.

1. PCR Testimony

Johnta Gantt testified she retained the services of Counsel on Applicant's behalf. (PCR Tr., dated April 7, 2023, p. 9). Gantt testified Counsel would communicate with her regularly regarding Applicant's case. (PCR Tr., dated April 7, 2023, p. 9).Gantt further testified she never went with Counsel to meet Applicant at the jail. (PCR Tr., dated April 7, 2023, p. 10).

Applicant testified he probably met with Counsel three to four times while incarcerated, two to three times when he was out on bond, and three or five times over the phone. (PCR Tr., dated April 7, 2023, p. 16). Applicant testified Counsel appeared sick during his representation of him. (PCR Tr., dated April 7, 2023, p. 19). Applicant believed he was diagnosed with cancer. (PCR Tr., dated April 7, 2023, p. 20). Applicant explained that he felt Counsel could not properly defend him due to his illness; however, Applicant was not able to say whether Counsel was physically able to defend him at trial. (PCR Tr., dated April 7, 2023, pp. 20 – 21). Applicant testified his main concern with Counsel was that he would go along with whatever Solicitor Martin said and would not defend him. (PCR Tr., dated April 7, 2023, pp. 22 – 23, p. 33). Applicant testified he wanted a guilty plea deal because he was not comfortable going to trial on the charges for which he pleaded guilty. (PCR Tr., dated April 7, 2023, p. 27, p. 30). Applicant then explained he would have risked

[1] All the allegations raised in Applicant's original PCR application will be addressed in this section.

going to trial if Counsel had been healthier. (PCR Tr., dated April 7, 2023, p. 31). Applicant testified he never received discovery for the second set of charges, but he did receive discovery on the charges for which he pleaded guilty. (PCR. Tr., dated April 7, 2023, p. 22).

Solicitor Martin testified Counsel did not appear too sick to effectively handle this case. (PCR Tr., dated November 2, 2023, p. 8). Solicitor explained that at the time of Applicant's trial, Counsel had recently tried a murder, and Martin further testified that Counsel continued working until his death (PCR Tr., dated November 2, 2023, p. 8). Solicitor testified she had many conversations with Counsel and she began the plea negotiations with an offer for a substantially greater sentence then what Applicant ultimately received. (PCR Tr., dated November 2, 2023, p. 10). Solicitor noted she had no concerns regarding Counsel's ability to represent Applicant. (PCR Tr., dated November 2, 2023, p. 10). Solicitor testified they were able to negotiate a very generous plea offer of 12 years for ABHAN and armed robbery, along with the dismissal of the 2019 charges. (PCR Tr., dated November 2, 2023, p. 10). Solicitor testified Counsel was very active during plea negotiations and attempted to get an offer for the minimum sentence; however, the State's case was strong and Solicitor was not going to offer the minimum. (PCR Tr., dated November 2, 2023, p. 12). Solicitor reiterated Counsel was not too ill to effectively represent Applicant. (PCR Tr., dated November 2, 2023, p. 12).

2. Discussion

This Court finds Applicant has failed to meet his burden of proving Counsel's illness affected his ability to effectively represent Applicant. At the time of his plea, Applicant asserted that he was fully satisfied with the services of Counsel, that there was nothing else Applicant wanted Counsel to do for him, that he had enough time to meet with Counsel, and that he had no complaint of any kind against Counsel. (Plea Tr. p. 11).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual . . . "a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977); see also *Jamison v. State*, 410 S.C. 456, 469–71, 765 S.E.2d 123, 129–30 (2014)). Admissions made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements. *Id.* at 137–38, 654 S.E.2d at 874; see also *Blackledge*, 431 U.S. at 73–74 (pointing out that representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a "formidable barrier in any subsequent collateral proceedings"). Applicant's own admissions at his guilty plea hearing refute this allegation.

Furthermore, this Court finds the credible testimony of Solicitor demonstrates that Counsel was able to effectively represent Applicant. This Court finds Counsel actively participated in the plea negotiations with Solicitor and was able to negotiate a very favorable plea deal wherein Applicant pleaded guilty to ABHAN and armed robbery for a negotiated sentence of 12 years' imprisonment in exchange for all other charges, including the unrelated 2019 charges, being dismissed. This Court finds the nature of this plea agreement is evidence of Counsel's highly competent representation of Applicant. Due to the admissions made by Applicant at his guilty plea hearing, the credible testimony of Solicitor at the evidentiary hearing, and the nature of the plea agreement itself, this Court finds Counsel was not deficient in his representation of Applicant.

Applicant further alleges Counsel did not adequately review discovery with him. This Court finds this allegation is without merit. Applicant acknowledged at the evidentiary hearing that he received discovery for the charges he pleaded guilty to; however, he testified he did not

review the discovery for the charges that were dismissed. 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). Applicant has presented no evidence of how further review of the discovery for his *dismissed* charges would have resulted in a different outcome on the charges of ABHAN and armed robbery.

Applicant's own testimony at the evidentiary hearing demonstrates he was not comfortable going to trial on the charges he pleaded guilty to, and he only wanted a better plea offer. Therefore, Applicant has failed to prove he would have proceeded to a jury trial if not for Counsel's alleged deficiency.

Accordingly, these allegations are denied.

Failure to Inform Applicant that the Dismissed Charge Could Not Have Been Prosecuted

Applicant next contends Counsel was ineffective for failing to inform him that the dismissed charges could not have been prosecuted. Had Applicant known the dismissed charges could not have been prosecuted, he would not have pleaded guilty. Applicant contends Tytron Derrick told law enforcement Applicant did not shoot him. This Court disagrees and finds the record and Counsel's credible testimony refutes this allegation.

1. PCR Testimony

Applicant explained that, while being represented by Counsel on the underlying charges in this case, he was charged with several additional crimes, including attempted murder, stemming

from an incident involving an individual named Tytron Derrick. (PCR Tr., dated April 7, 2023, p. 18). Regarding the unrelated charge, Applicant averred he could not have been prosecuted for attempted murder because he did not intend to harm anybody. (PCR Tr., dated April 7, 2023, p. 23). Applicant further explained that there existed social media photographs that would have exonerated him. (PCR Tr., dated April 7, 2023, p. 24). Applicant acknowledged that Tytron Derrick made a statement to law enforcement implicating him in the crime. (PCR Tr., dated April 7, 2023, pp. 24–25). Applicant testified that the Solicitor was willing to drop the charges pertaining to Tytron Derrick if he pleaded guilty to the underlying charge. even though the Solicitor said she was going to drop the charges anyway. (PCR. Tr., dated April 7, 2023, p. 27). Applicant testified he ultimately accepted the twelve year plea offer because Counsel was not properly defending him. (PCR Tr., dated April 7, 2023, p. 27). Applicant testified that Solicitor Martin informed him she would proceed to trial on both cases if he did not accept the plea deal. (PCR Tr., dated April 7, 2023, p. 30). Applicant testified Solicitor Martin dropped all charges involving Tytron Derrick in exchange for his guilty plea. (PCR Tr, dated April 7, 2023, p. 35).

Solicitor Martin testified that had Applicant proceeded to trial on the first set of charges then he could have potentially served life without parole notice on the second set of charges. (PCR Tr., dated November 2, 2023, p. 11). However, with Counsel's representation, they were able to negotiate a twelve year sentence while also dropping all the charges involving Tytron Derrick. (PCR Tr., dated November 2, 2023, p. 11). Solicitor Martin noted the State's evidence regarding the underlying charges was very strong and they certainly would have proceeded to trial had Applicant not accepted the plea offer. (PCR Tr., dated November 2, 2023, pp. 11–12).

2. Discussion

This Court finds Counsel was not ineffective in failing to inform Applicant that his charge involving Tyrton Derrick could not have been prosecuted. Applicant has failed to present sufficient evidence demonstrating why he could not have been prosecuted for the charges. Although Applicant testified there allegedly exists inculpatory social media photographs, he did not present them at the evidentiary hearing. Solicitor Martin testified she certainly would have considered proceeding to trial on the charges involving Tyrton Derrick had Applicant not pleaded guilty. This Court finds Applicant has failed to present sufficient evidence supporting the allegation these charges could not have been prosecuted. Furthermore, Counsel was able to negotiate a plea agreement wherein all the charges involving Tytron Derrick were dismissed. Therefore, this Court finds Counsel was clearly not deficient in his representation regarding those charges. As explained in the previous section, this Court finds Applicant, by his own admission, was not comfortable proceeding to trial on the charges he pleaded guilty to; therefore, he has failed to prove prejudice as to this allegation. Accordingly, this allegation is denied.

CONCLUSION

Based on the foregoing, this Court finds 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. Therefore, the allegations of ineffective assistance of counsel are denied and dismissed 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. This application with respect to all other allegations for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant remain in the custody of the State.

AND IT IS SO ORDERED this 21st day of Feb., 2025.

Kristi Curtis

THE HONORABLE KRISTI F. CURTIS
Presiding Judge
Eleventh Judicial Circuit

Sumter, South Carolina