

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BERKLEY)
)
 George Riley Dreher, #334165,)
)
 Applicant,)
)
 vs.)
)
 State of South Carolina,)
)
 Defendant.)

IN THE COURT OF GENERAL SESSIONS
 NINTH JUDICIAL CIRCUIT

CASE NO(S): 2022-CP-08-02034

ORDER DENYING PCR

2025 MAR 12 AM 10:07
 LEAH GUFFERY DUPREE
 CLERK OF COURT
 BERKELEY COUNTY, SC

[Handwritten Signature]
 FILED

This matter came before the Court by way of an application for post-conviction relief (PCR) filed by George Riley Dreher (Applicant) on August 24, 2022. On March 11, 2024, an evidentiary hearing was held on this matter before Judge Walton J. McLeod, IV. Applicant was present and represented by J. Taylor Bell, Esq. Respondent was represented by Assistant Attorney General Danielle Dixon. At the hearing, Applicant testified and also called plea counsel Melissa W. Gay as a witness. Following the hearing, this Court requested Memorandum from each party. Based upon the witness testimony, arguments of counsel, memorandums submitted to this Court, and relevant case law, this Court DENIES Applicant’s Petition.

PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections serving a twelve-year sentence. In November 2020, Applicant was indicted by the Berkeley County Grand Jury for Attempted Murder (2020-GS-08-02022). In December 2020, Applicant was indicted by the Berkley County Grand Jury for Failure to Stop for a Blue Light, Resulting in Great Bodily Injury (-02020). The charges arise from a high-speed chase that occurred on April 10, 2020. On that day, Applicant struck a police officer with his vehicle, crashed, and was ultimately arrested at the scene.

On February 18, 2021, Applicant appeared before Judge R. Markley Dennis, Jr., to enter a plea. At that hearing, Applicant failed to admit guilt, and a guilty plea was not entered. On April 12, 2021, Applicant again appeared before Judge Dennis, and entered a guilty plea for Failure to Stop for a Blue Light. As to the Attempted Murder charge, Applicant pled down to the lesser-included offense of Assault and Battery of a High and Aggravated Nature (ABHAN). Applicant was represented by Melisa W. Gay, Esq. Assistant Solicitor Wilton H. McNeely appeared on behalf of the State. Applicant was sentenced concurrently to twelve years for ABHAN and ten years, suspended upon five years' probation for failure to stop for a blue light.

On April 20, 2021, Applicant filed a motion to withdraw his guilty plea based on after-discovered evidence. On April 21, 2021, Applicant filed another motion to withdraw his guilty plea. On June 22, 2021, Judge Dennis issued an order denying both motions.

Applicant timely filed a Notice of Appeal. Appellate Defender Taylor D. Gilliam perfected the appeal by filing an Anders¹ brief. The South Carolina Court of Appeals dismissed the appeal pursuant to Anders. The remittitur was sent on June 9, 2022.

CURRENT PCR APPLICATION

On August 24, 2022, Applicant filed this PCR application alleging plea counsel was ineffective on the following grounds:

1. Failure to investigate and interview witnesses, specifically Brandon Swain, and only after Applicant pled guilty did counsel file a motion to withdraw his guilty plea and submit Swain's affidavit to the Court; and

¹ 386 U.S. 738 (1967)

2. Failure to inform Applicant of all available defenses and legal rights, specifically Applicant's right to compel witnesses to court.

At the evidentiary hearing, Applicant proceeded on the foregoing allegations.

INEFFECTIVE ASSISTANCE OF COUNSEL / INVOLUNTARY PLEA

To establish ineffective assistance of counsel, Applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) Applicant sustained prejudice from counsel's deficient performance. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "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). To establish prejudice, Applicant must prove "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. When reviewing a guilty plea, the Strickland deficiency prong remains unchanged—Applicant must show that counsel's representation fell below an objective standard of reasonableness. Hill, 474 U.S. at 58–59. To show prejudice, Applicant must show a reasonable probability exists "that, but for counsel's [alleged] errors, he would not have pled guilty and would have insisted on going to trial." Id. at 59.

To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. Brady v. United States, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant's choice. Id. at 755. Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he is waiving, including the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. Boykin,

395 U.S. at 243. In determining whether a plea was voluntary, the reviewing court must consider the entire record, including the transcript of the guilty plea. Harres v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

Failure to investigate Brandon Swain

Applicant first asks this Court to find counsel ineffective for not investigating Brandon Swain, the passenger in Applicant's vehicle. However, I find counsel's investigation of Swain was reasonable under prevailing professional norms and not deficient. Further—and critically—Swain did not testify at the PCR hearing, leaving this Court to speculate about what Swain may have even testified to at a trial and how much, if at all, the testimony may have impacted Applicant's decision to plead guilty. Based on the evidence presented, counsel was not deficient for not interviewing a witness that Applicant failed to produce at the PCR hearing.

“Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” Strickland, 466 U.S. at 691. Defense counsel will not be deficient if they conduct “a reasonable investigation, including interviewing potential witnesses *when it is reasonable to do so.*” Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011), emphasis added. Additionally, “[f]ailure 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, 334, 496 S.E.2d 415, 417 (1998).

At the PCR hearing, plea counsel, Ms. Gay, was questioned extensively about her attempts to locate and interview Swain. She testified she utilized an investigator, but he was unable to locate Swain. She further explained Swain provided a statement to police where he (1) denied putting a gun to Applicant's head during the car chase, (2) claimed he blacked out before the wreck and did not recall what happened, (3) claimed he jerked the wheel *earlier* in the chase to prevent Applicant

from hitting a family, and (4) denied saying he snatched the wheel at the time of the collision. Applicant testified Swain was “staying in a tent in the wood” and trial counsel should have gone into the woods looking for Swain.

Based on counsel’s foregoing credible² testimony, this Court should find her actions were reasonable under prevailing professional norms and not deficient. Critically, prevailing professional norms do not require an attorney to go hiking through the woods to search for a potential witness—as Applicant suggests counsel should have done. Likewise, prevailing professional norms do not require counsel to subpoena a witness to attend a *plea hearing* that counsel (1) cannot find and (2) never spoke to, and (3) who gave a damaging statement to police about Applicant. This Court finds Counsel did what was required under prevailing professional norms. She reviewed Swain’s statement, attempted to locate him through an investigator, and advised Applicant about the statement, and her attempts to locate Swain. This Court finds that Applicant not calling Swain is significant and further supports a finding that counsel’s performance did not fall below prevailing professional norms. Even though there is an affidavit from Swain presented by PCR counsel, this testimony is insufficient as the Court is unable to observe the witness and properly weigh his credibility. Without Swain’s testimony, the Court would have to speculate about his testimony and whether it may have impacted Applicant’s decision to plead guilty. See Moorehead, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (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.”). In sum, even if assuming *arguendo*

² Counsel’s testimony that she was unable to locate and speak to Swain is further corroborated by Applicant’s apparent inability to procure Swain’s testimony for the PCR hearing.

counsel was deficient, Applicant cannot show adequate prejudice to support his petition. Therefore, I find Applicant did not prove deficiency or prejudice.

Failure to advise

Applicant next contends counsel was ineffective for failing to advise him of all defenses—specifically that she could subpoena witnesses to Court. I find Applicant has not met his burden.

Applicant alleges that counsel should have advised him of her subpoena power to subpoena Swain to Court. While Applicant has asserted his counsel was deficient for failing to produce Swain, he himself did not produce Swain at the PCR hearing. Further, I find credible plea counsel's testimony that she met with Applicant multiple times and discussed his constitutional rights. A review of the plea transcript itself shows Applicant entered this plea freely, voluntarily, and knowingly, and that he specifically understood he was waiving his constitutional right to a jury trial. (Apr. Plea 8-9). Applicant did not produce Swain at the PCR hearing and thus failed to meet his burden of proving counsel was ineffective for not subpoenaing Swain to the plea hearing or advising him that she had the power to do so.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice; and
2. The Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 5 day of MARCH, 2023.


WALTON J. MCLEOD, IV
Presiding Judge
Ninth Judicial Circuit

Lexington, South Carolina