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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

2020-CP-23-0225

Ricorius Shundre Lee, ... Appellant,
v.
The State, ... Respondent.

NOTICE OF APPEAL

Ricorius Shundre Lee appeals the Honorable Daniel D. Hall's Order of Dismissal filed March 20, 2025.

This 25th day of March, 2025

s/ Susannah Ross
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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS FOR THE THIRTEENTH JUDICIAL CIRCUIT
Ricorius Shundre Lee, #326428 Applicant, v. State of South Carolina, Respondent.	)	Case No. 2020-CP-23-0225 **ORDER OF DISMISSAL** *(with prejudice)*

This matter comes before the Court by way of an application for post-conviction relief filed January 14, 2020, by Applicant Ricorius Shundre Lee. Respondent made its return, moved for partial dismissal and for a more definite statement on April 13, 2020.[1]. Applicant filed an amended application on May 5, 2022.

An evidentiary hearing was held on March 10, 2023, at the Greenville County Courthouse with the Honorable Daniel D. Hall presiding. Applicant and his appointed counsel, Susannah C. Ross, Esq., were present. Assistant Attorney General Taylor Z. Smith of the South Carolina Attorney General's Office represented the State.

Ms. Ross informed the Court that Applicant's allegations of ineffective assistance of counsel before the Court are as follows: failure to investigate; misadvising that the charges carried 65% rather than 85%; failing to provide discovery prior to the guilty plea; allowing the plea to proceed when the statement of facts recited by the Solicitor was incorrect; and failure to argue lack of probable cause to search the car. (PCR Tr. at 3-4). This Court received testimony from Applicant, Jessica Davies, plea counsel Matthew M. Kennedy, and former Deputy Solicitor – now

[1] The Return and motions were again filed with the Greenville County Clerk of Court on March 3, 2021, after the Attorney General's Office did not receive confirmation of the April 13, 2020, filing. However, both are reflected on the Public Index.

the Honorable William C. McMaster, III. At the conclusion of the hearing, this Court took the matter under advisement.

After consideration of the issues raised in Applicant's application and the arguments of counsel, this Court advised the parties by email on March 21, 2023, that Applicant's application for post-conviciton relief is denied and instructed that the State prepare a proposed order.[2] This Court now **DENIES** relief for the specific reasons set out in this order.

PROCEDURAL HISTORY

Applicant is currently confined in the Allendale Correctional Institution of the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. During its August of 2018 term, the Greenville County Grand Jury indicted Applicant for trafficking in methamphetamine, 100 to 200 grams (2018-GS-23-2036). Applicant was represented by Matthew M. Canaday, Esq., and Deputy Solicitor William C. McMaster, III of the 13th Circuit Solicitor's Office prosecuted the case.

On April 11, 2019, Applicant appeared before the Honorable Letitia H. Verdin and pleaded guilty to the lesser-included offense of trafficking in methamphetamine, 28 to 100 grams. In accordance with the negotiated sentence, Judge Verdin sentenced Applicant to imprisonment for ten (10) years, with credit for time served.

Applicant did not appeal his conviction or sentence.

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[2] The proposed order was provided to counsel for Applicant prior to this Court's acceptance. Applicant's counsel was also allowed sufficient time to review the proposed order while this Court made its own detailed review. *See Fishburne v. State*, 427 S.C. 505, 516, 832 S.E.2d 584, 589 (2019) (providing a "proposed order should be transmitted to opposing counsel" for review and that counsel "should ... alert preparing counsel and the PCR court as to any deficiencies in the proposed order.'").

CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is entitled to post-conviction relief based on the following grounds:

(1) Applicant received the ineffective assistance of counsel:
   a. "I've been asking my attorney for my Rule 5, so I can see the evidence against me, and to make an independent choice whether I want to plea or go to trial depending on what evidence the State has against me, In violating South Carolina Criminal Rules and Procedures Rul #(5)(a)(1),(c),(d). I've never seen my Rule 5, as I consistently requested, therefore I was forced to plea."

(2) The solicitor committed perjury during Applicant's plea hearing by "testif[ying] that they pulled [Applicant] over in a lawful traffic stop which led to discover of the drugs and arrest. Those statement forementioned is complete 'perjury'"; and

(3) The police lacked probable cause to search Applicant's car for drugs.

On May 5, 2022, Applicant, through counsel, amended his allegations to include that counsel was ineffective for telling him he would only have to serve sixty-five percent (65%) of his negotiated ten year (10) sentence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In addition to carefully considering the record and the arguments presented by counsel, this Court has also had the opportunity to consider Applicant's testimony presented at the PCR hearing and has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

INEFFECTIVE ASSISTANCE AND INVOLUNTARY PLEA CLAIMS

For claims that trial counsel provided ineffective assistance, this Court is guided by the familiar test: To show a violation of the Sixth Amendment, an applicant must show that counsel's representation fell below an objective standard of reasonableness, and but for counsel's error, there is a reasonable probability that the outcome of the trial would have been different. *Strickland v.*

Washington, 466 U.S. 668,694 (1984); *Simpson v. Moore*, 367 S.C. 587, 595-96, 627 S.E.2d 701, 706 (2006). "A reasonable probability is a probability sufficient to undermine confidence in the outcome" of the trial. *Strickland*, at 694. It is presumed that counsel made all decisions in exercise of reasonable judgment. *Strickland*, at 689. It is an applicant's burden to prove, by a preponderance of the evidence, an entitlement to relief. Rule 71.1 (e), SCRCP. *See also Speaks v. State*, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008) ("the burden of proof is on the applicant to prove the allegations in his application"). For a guilty plea, the analysis varies slightly as the issue is, at bottom, the voluntariness of the plea.

"Where, as here, a defendant is represented by counsel during the plea process and enters [the] plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel's advice 'was within the range of competence demanded of attorneys in criminal cases.'" *Hill v. Lockhart*, 474 U.S. 52, 56 (1985) (quoting *McMann v. Richardson*, 397 U.S. 759, 771 (1970)). Indeed, "[a] defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial." *Kolle v. State*, 386 S.C. 578,588,690 S.E.2d 73, 78 (2010) (quoting *Rolen v. State*, 384 S.C. 409,413, 683 S.E.2d 471,474 (2009)); *Burket v. Angelone*, 208 F.3d 172, 189 (4th Cir. 2000) (same). This is the *Strickland* test as applied in the guilty plea context. *See also Taylor v. State*, 404 S.C. 350, 360, 745 S.E.2d 97, 102 (2013) ("In the context of a guilty plea, the deficiency prong inquiry turns on whether the plea was voluntarily, knowingly, and intelligently entered.").

Notably, the "prejudice prong ordinarily requires more than simply a defendant's assertion that but for counsel's deficient performance he would not have pled but would have gone to trial."

Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009). The Supreme Court has instructed: "Courts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies. Judges should instead look to contemporaneous evidence to substantiate a defendant's expressed preferences." *Lee v. United States*, 582 U.S. 357, 369 (2017). *See also Stalk*, at 563, 681 S.E.2d at 595; *Taylor v. State*, 404 S.C. 350,362, 745 S.E.2d 97, 103 (2013) ("Despite Petitioner's assertions to the contrary, there is probative evidence in the Record before us that he would not have chosen to proceed to trial"); *Goins v. State*, 397 S.C. 568, 575, 726 S.E.2d 1, 4 (2012) ("Although Goins testified at the PCR hearing that he accepted the plea because of the erroneous advice on the suppression of the evidence, his testimony specifically was found not to be credible. We therefore find evidence to support the PCR court's finding that Goins failed to prove he was prejudiced by counsel's ineffective assistance because he has not demonstrated he would have gone to trial absent the erroneous advice.").

"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). "A defendant's knowing and voluntary waiver of the constitutional rights which accompany a guilty plea may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel, or both." *Id.*, (quoting *Pittman v. State*, 337 S.C. 597, 600, 524 S.E.2d 623, 625 (1999)). "In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing." *Suber v. State*, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007).

Further, statements made during a guilty plea should be considered true: "... accuracy and truth of an accused's statements at ... his guilty plea . . . are 'conclusively' established by that proceeding unless and until he makes some reasonable allegation why this should not be so." *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975), *overruled on other grounds by United States v. Whitley*, 759 F.2d 327 (4th Cir. 1985); *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (same).

APPLICANT'S ALLEGATIONS LACK MERIT

Considering the record of the plea proceeding in conjunction with the testimony received at the PCR hearing, this Court finds that Applicant's PCR testimony that counsel gave him incorrect advice as to his parole eligibility is not credible. Further, this Court finds that Applicant was well aware of the evidence against him, and made a knowing, voluntary, and intelligent choice to plead guilty after consulting with plea counsel.

This Court credits plea counsel's testimony which is consistent with the settled plea record and record of charges. This Court finds that plea counsel was an experienced attorney at the time of the plea and well equipped to handle and advise Applicant on his charge.[3] Applicant has raised an allegation that counsel was ineffective for not investigating and reviewing the discovery materials, however, the record is void of any indication that Applicant was not fully aware of the evidence against him prior to entering his plea. Plea counsel testified that he filed the discovery motion on April 5, 2019, and met with Applicant regarding the discovery more than once but specifically recalls extensive discussion on the morning of the plea. (PCR Tr., at 14-15). Plea counsel testified that even if he could not remember specifics, he would have discussed the facts of Applicant's case with him from their first meeting to appraise himself of what Applicant

[3] Plea counsel began representation of Applicant on April 5, 2019, and replaced Scott Robinson, Esq., as counsel of record. (PCR Tr., at 14).

believed to be the pertinent issues of his case. (PCR Tr., at 16). Plea counsel testified that Applicant's case was not complex, and that Applicant's main complaint prior to the plea was that the drugs were not recovered pursuant to a traffic stop as was indicated by the State and that the police had no reason to search his car. (PCR Tr. at 8, 16-17). Plea counsel testified he explained to Applicant that it was not important whether the discovery of the drugs was pursuant to a traffic stop or an undercover operation, but "how did we get to the drugs that they're alleging you had." (PCR Tr., at 17). Former solicitor McMaster testified that a confidential source had set up a buy to purchase methamphetamine from Applicant and upon their arrival at the predetermined meet up spot, Vice Narcotics and SWAT were on scene to "takedown" and search the vehicle. (PCR Tr., at 24). He further testified that the vehicle was stopped and blocked in, and not free to leave the scene. (PCR Tr., at 25).

At the PCR hearing, Applicant merely stated he did not believe the police had a right to search his vehicle "cause it wasn't a traffic stop." (PCR Tr., at 8). Plea counsel testified that he explained to Applicant that it would be difficult to get around the validity of the traffic stop considering a tip was received as to the transaction and drug sniffing dogs identified drugs in the vehicle. Plea counsel testified that he explained that they could gamble on a suppression hearing and proceed to trial, however if the suppression motion was denied, Applicant would likely be convicted and would have to serve the mandatory minimum of twenty-five (25) years. He explained the other option was to plead guilty, waive the right to challenge the search, and receive a much lesser sentence. (Plea Tr., at 18). Plea counsel confirmed that after explaining his options, Applicant seemed to understand the information he had relayed. (PCR Tr., at 18).

Further, Applicant confirmed that he knew the drugs were in the vehicle and that the drugs belonged to him. (PCR Tr., at 9). Applicant confirmed that he knew what the evidence against him

was even without his attorney reviewing the discovery with him. (PCR Tr., at 9). This Court finds the Applicant has failed to present any credible evidence that counsel did not review and discuss the discovery materials with him before he pled guilty. Notably, Applicant also failed to articulate what materials he did not view and how not viewing those materials affected the outcome of his case. *See Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (holding that, in a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application).

As to Applicant's assertion that plea counsel misadvised him by indicating that he would only serve sixty-five percent (65%) of the ten year (10) negotiated sentence, this Court gives credence to plea counsel's testimony that he did not advise Applicant as to parole eligibility. *See Frasier v. State*, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (finding that "[a] guilty plea is not rendered involuntary if the defendant is not informed of the collateral consequences of his sentence," however, "if trial counsel actively misinforms the defendant about parole eligibility, the defendant must prove he relied on the misinformation to receive PCR."). Plea counsel testified that the underlying charge itself was severe and even after the charge was reduced it was still a serious charge requiring an automatic service of eighty-five percent (85%). (PCR Tr., at 18). Plea counsel further testified that he did not recall discussing parole eligibility with Applicant and knew that "there wasn't any chance of parole." (PCR Tr., 19). He testified that he did discuss with Applicant that he would likely have to serve probation after his sentence. (PCR Tr., at 19). This Court does not discount Applicant's *expectation* that he would be parole eligible after serving sixty-five percent (65%) of his sentence, however, Applicant has failed to show plea counsel misadvised him considering no advice concerning parole eligibility was given. Applicant fails to show that plea counsel acted deficiently. Even so, Applicant has failed to show that the alleged erroneous advice

concerning parole eligibility induced his guilty plea, and that he otherwise would have rejected the negotiated plea – which was a substantial reduction from the mandatory minimum sentence of the original charge - or proceeded to trial. *See Padilla v. Kentucky*, 559 U.S. 356, 373 (2010) (holding that in addition to a deficiency finding, the applicant must further convince the court that a decision to reject the plea bargain would have been rational under the circumstances).

This Court rejects Applicant's assertion that he was unable to make an informed decision as to whether or not to plead guilty. It is apparent that Applicant made an informed choice to plead considering he received a substantial reduction in sentencing pursuant to plea negotiations, was well aware of the evidence against him and was adequately informed of his options as presented to him by plea counsel. This Court finds that plea counsel performed within the competency required based on the circumstances and Applicant has failed to satisfy his burden of establishing deficiency of counsel.

Additionally, this Court finds that Applicant has failed to establish any resulting prejudice from plea counsel's alleged deficiency. Applicant failed to present any evidence that but for plea counsel's alleged failure to review all of the discovery materials, and plea counsel's alleged erroneous advice concerning parole eligibility, he would not have pled guilty. "It is beyond dispute that a guilty plea must be both knowing and voluntary." *Parke v. Raley*, 506 U.S. 20, 29 (1992). It is also clear the record should reflect that voluntary choice. *Raley*, 395 U.S. 238 (1969) ("a guilty plea should only be accepted where the record evidences 'an affirmative showing that it was intelligent and voluntary.'"). The record supports a voluntary plea. Applicant confirmed that he understood the charge and possible sentence; was properly advised of his trial rights; and had the assistance of counsel throughout. Applicant is not entitled to any relief.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations during his plea hearing. Therefore, this PCR application must be **DENIED** and **DISMISSED** with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. Applicant's application for post-conviction relief is denied and dismissed with prejudice; and

2. Applicant is remanded to the custody of Respondent for completion of his sentence.

AND IT IS SO ORDERED this 10th **day of** March**, 2025.**

Daniel D. Hall

DANIEL D. HALL
Presiding Judge

York, South Carolina

ALAN WILSON
ATTORNEY GENERAL

March 13, 2025

The Honorable Jay Gresham
Greenville County Clerk of Court
305 E. North Street
Greenville, South Carolina 29601

Re: Ricorius Shundre Lee, #326428 v. State of South Carolina
Case No. 2020-CP-23-0225

Dear Mr. Gresham:

Enclosed please find the original Order of Dismissal signed by the Honorable Daniel D. Hall in reference to the above-mentioned case for filing in your office.

Thank you for your assistance in this matter, and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

Kaylee C. Kemp

Kaylee C. Kemp
Assistant Attorney General

KCK/abb
Enclosure

cc: Susannah C. Ross, Esquire (with copy of enclosure)

Copy mailed to
Attorney general MB/Susannah Ross
on 3 / 19 / 2025.