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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA COUNTY OF BERKLEY	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
George Riley Dreher, #334165, Applicant, v. State of South Carolina, Respondent.	Case No.: 2022-CP-08-02034 **Memo in Opposition to Post-Conviction Relief**

This matter is 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 convened before the Honorable Walton McLeod. Applicant was present and represented by J. Taylor Bell, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. At the hearing, Applicant testified on his behalf and called as a witness plea counsel Melissa W. Gay. Following the hearing, the Court requested Memorandum from each party. Respondent submits Applicant—who pled guilty—failed to meet his burden of proving counsel's actions fell below prevailing professional norms, or that his plea was involuntary. This Court should thus deny relief.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving an active twelve-year sentence. In November 2020, the Berkley County Grand Jury indicted Applicant for attempted murder (2020-GS-08-02022). In December 2020, the Berkeley County Grand Jury indicated Applicant for failure to stop for blue lights, resulting in great bodily injury (-02020). The charges arose from a high-speed chase on April 10, 2020, where Applicant struck a police officer with his vehicle. After crashing his vehicle, Applicant was arrested on scene.

On February 18, 2021, Applicant appeared before the Honorable R. Markley Dennis, Jr. to

enter a plea. However, Applicant failed to admit guilt, which concluded the hearing. On April 12, 2021, Applicant again appeared before Judge Dennis and pled guilty to failure to stop for a blue light and, on the attempted murder charge, the lesser-included offense of assault and battery of a high and aggravated nature (ABHAN). Melisa W. Gay, Esquire, represented Applicant, and Senior Assistant Solicitor Wilton H. McNeely represented the State. Judge Dennis sentenced Applicant consecutively 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 filed a timely notice of appeal. Appellate Defender Taylor D. Gilliam perfected the appeal by filing an Anders[1] brief. The South Carolina Court of Appeals dismissed the appeal pursuant to Anders. The remittitur was sent June 9, 2022.

CURRENT PCR APPLICATION

On August 24, 2022, Applicant filed this PCR application alleging plea counsel was ineffective for:

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

b. Failing 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.

[1] 386 U.S. 738 (1967).

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, 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 been able to testify to at a trial and how such testimony may have impacted Applicant's decision to plead guilty. It is incredulous to suggest counsel was deficient for not interviewing a witness that Applicant did not even produce at the PCR hearing. Thus, this Court should deny this ground.

"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. "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, 334, 496 S.E.2d 415, 417 (1998).

At the PCR hearing, counsel 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 averred counsel should have gone into the woods looking for Swain.

Based on counsel's foregoing credible[2] 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. Counsel did what is 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. The fact Applicant did not even call Swain at the PCR hearing further illustrates his inability to prove counsel's performance fell below prevailing professional norms. In other words, he is asserting counsel was deficient for not doing something he himself did not do. It is incredulous to suggest Applicant's plea should be vacated so he can proceed to trial and have Swain testify when ***he did not even produce Swain at the PCR hearing***. Likewise, because Swain did not testify, it is speculative what he would have even said at trial and what impact such testimony may have had on 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."). Applicant thus did not prove deficiency or prejudice.

Failed to advise

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

Applicant focuses this allegation on his claim that counsel should have advised him of her

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

subpoena power and used it to subpoena Swain to Court. Again, it is incredulous to suggest counsel was deficient in this regard when Applicant himself did not produce Swain at the PCR hearing. Further, plea counsel credibly testified 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 failed to 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. Thus, this claim should be denied.

CONCLUSION

Based on the foregoing, Respondent requests this Court deny and dismiss this application with prejudice.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

D. RUSSELL BARLOW, II
Senior Assistant Deputy Attorney General

DANIELLE DIXON, 73999
Assistant Attorney General

By: _____
Danielle Dixon, 73999
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

February 10, 2025