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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

The Honorable George M. McFaddin, Jr., Circuit Court Judge

Case No. 2022-CP-40-02187

Kenya R. Jenkins, .....Petitioner,

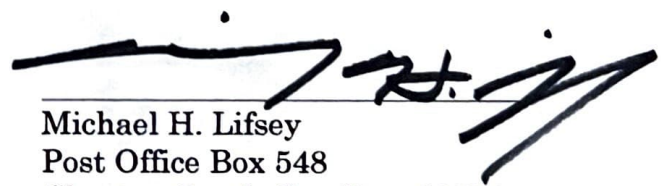
v.

State of South Carolina, .....Respondent.

**NOTICE OF APPEAL**

Petitioner, Kenya R. Jenkins, appeals the order of the Honorable George M. McFaddin, Jr., dated August 15, 2025, and filed August 20, 2025. Petitioner received written notice of entry of this order on August 28, 2025.

9/1, 2025



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STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Kenya R. Jenkins, #316379,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS  
) FIFTH JUDICIAL CIRCUIT  
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Case No.: 2022-CP-40-02187

ORDER OF DISMISSAL

FILED  
MAY 25 PM 2:21  
RICHLAND COUNTY

This matter is before the Court by way of an application for post-conviction relief filed by Kenya R. Jenkins (Applicant) on April 27, 2022. Respondent made its return, moved to dismiss an allegation related to Applicant allegedly being held without an indictment, and moved for a more definite statement. Thereafter, Applicant—through counsel—served an amended application. On January 12, 2023, a hearing convened before the Honorable George E. McFaddin, Jr. Applicant was present and represented by Michael Lifsey, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. At the hearing, Applicant testified on his behalf. Respondent called as a witness plea counsel Richard Marsh, Esquire. Following a thorough review of the records before this Court and the testimony and evidence presented at the hearing, this Court finds Applicant did not meet his burden. Thus, this Court denies relief and dismisses this application with prejudice.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections serving an aggregate ten-year sentence. In June 2021, the Richland County Grand Jury indicted Applicant for Armed Robbery (2021-GS-40-02477) and Possession of a Weapon During the Commission of a Violent Crime (2021-GS-40-02479). These charges arose from an armed robbery outside a

Regency Inn Hotel; the victim later picked Applicant from a lineup, and police obtained surveillance footage showing Applicant and a co-defendant committing the robbery. Additionally, Applicant provided a statement to police confessing to robbing the victim with a prop gun.

On November 9, 2021, Applicant appeared before the Honorable Robert E. Hood and pled guilty as indicted. Public Defender Richard Marsh represented Applicant, and Assistant Solicitor Bret West represented the State. Judge Hood sentenced Applicant to concurrent terms of ten years for armed robbery and five years for the weapon charge. Applicant did not appeal.

#### CURRENT APPLICATION

On April 27, 2022, Applicant timely filed this application alleging:

1. Ineffective Assistance of Counsel
  - a. "Failure to prepare proper defense, failure to investigate, failure to advise."
2. "Being held without presentment of indictment"
  - a. "Violation of amendment V"

Applicant requests relief in the form of "vacate, set aside or correct sentence." Thereafter, Applicant—through counsel—amended his application to allege:

Ineffective assistance of counsel / Involuntary Guilty Plea:

a. Counsel did not meet with Applicant a sufficient number of times, fully explain the strengths and weaknesses of the State's case, fully investigate, or explain the elements of the offenses;

b. Counsel did not inform Applicant that the weapon charge carried a maximum of five years. Due to the wording on the indictment, Applicant believed it carried a potential life sentence or the death penalty.

c. Counsel instructed Applicant to answer the Judge's questions during the plea colloquy in such a manner as would result in the Judge accepting the plea or that Applicant would receive the maximum sentence, which he believed to be either a life sentence or the death penalty.

d. Counsel did not file an appeal despite Applicant's request he do so.

Applicant alleges he would have proceeded to trial but for the foregoing alleged deficiencies, which rendered his plea involuntary. At the hearing, Applicant proceeded on the allegations of his amended application.

#### MOTION TO DISMISS

Respondent moved for summary dismissal of allegation two of Applicant's initial application, wherein Applicant alleged he is being held unlawfully because he was not presented with his indictments, in violation of his Fifth Amendment rights. Specifically, Respondent asserted the record of Applicant's plea hearing reflects that Applicant knew the nature of the charges against him. This Court agrees and finds Applicant was in fact indicted for this offense on June 16, 2021. He is thus not being held unlawfully. This Court further finds Applicant waived any challenge to the indictment by pleading guilty. This claim is thus dismissed.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Richland County Clerk of Court records of the underlying convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the records from this PCR action. This Court also had the opportunity to observe witnesses at the hearing, pass upon their credibility, and weigh their testimony accordingly. After a careful review based upon the Strickland standard, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of fact and conclusions of law as required by section 17 27-80 of the South Carolina Code (2017).

#### *Ineffective Assistance of Counsel / Involuntary Plea*

A PCR applicant bears the burden of proving the allegations. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). To establish ineffective assistance of counsel, Applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) Applicant was

prejudiced by 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). Under the first prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. at 117, 386 S.E.2d at 625. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment," and the applicant must overcome this presumption to receive relief. Id. at 117-18, 386 S.E.2d at 625. Second, Applicant must show prejudice by demonstrating "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id.

When reviewing a guilty plea, the Strickland deficiency prong remains unchanged—Applicant must show 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 "that, but for counsel's [alleged] errors, he would not have pled guilty and would have insisted on going to trial." Id. at 59. Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. Boykin v. Alabama, 395 U.S. 238, 243 (1969). Additionally, to knowingly and voluntarily plead guilty, the defendant must have a full understanding of the consequences of the plea, including the nature and crucial elements of the offense(s); the maximum and any mandatory minimum penalty; and the nature of the constitutional rights being waived. Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). A guilty plea generally acts as a waiver of all non-jurisdictional defects and defenses. State v. Munsch, 287 S.C. 313, 338 S.E.2d 329 (1985).

*Failure to adequately meet / explain State's case / fully investigate*

Applicant asserts counsel was ineffective for failing to meet with Applicant a sufficient

number of times, fully explain the strengths and weaknesses of the State's case, fully investigate, or explain the elements of the offenses. Applicant did not prove this ground.

At the PCR hearing, Applicant testified he had another attorney before Marsh, and he received a letter in November from Marsh indicating Marsh would be his attorney. After that, Marsh met with him at the detention center in March; at that time Applicant told Marsh he wanted an investigator because "I feel like it's a hearsay because the alleged victim was saying that somebody told him my name, gave him my picture on Facebook and he said this was me." He explained he was initially arrested on an unrelated incident from the Waffle House, and the officer in that case and this case was fired for conduct unbecoming of an officer. Applicant explained he wanted an investigator to locate "two people that told this victim my name."

Applicant recalled meeting with counsel once on a screen, again a couple months later, once more at jail after that, and at the preliminary hearing and bond hearing. He testified thereafter, Marsh "came for like a week straight" and they were supposed to discuss trial, but Marsh was only concerned with Applicant accepting the plea. Applicant maintained he would have proceeded to trial if Marsh met with him more. Applicant testified he pled guilty because Marsh was certain Applicant would be convicted if he proceeded to trial, and Marsh believed the judges in the Fifth Circuit would impose the maximum sentence. Applicant claimed that based on the indictment for the weapon charge, he believed he was facing either life in prison or the death penalty for the weapon charge.

Marsh testified he was appointed in November 2020, after another attorney left the Public Defender's Office. He stated he first met with Applicant at jail on December 15, 2020. Marsh testified he reviewed the discovery with Applicant, which included a surveillance video of the armed robbery as well as a video of Applicant confessing to Investigator Larita. Marsh testified

his notes indicated he met with Applicant about ten times, and two of those visits occurred on the same day. He stated he explained the elements of the charges, what the State needed to prove, and the strengths and weaknesses of the State's case. Marsh testified he explored a number of defenses at Applicant's request, but Applicant did not have any credible defenses. Specifically, Applicant asked counsel to move to suppress his statement based on intoxication, but Marsh averred the video and jail records showing Applicant's medication did not support suppression based on intoxication. Ultimately, Marsh believed the confession would have been admitted at trial. Marsh testified he did not see any reason to hire an investigator.

This Court finds counsel's foregoing testimony credible. Based on this credible testimony, counsel met with Applicant a sufficient number of times, and his investigation and communication with Applicant was reasonable under prevailing professional norms and not deficient. Likewise, this Court finds Applicant's testimony that he pled guilty because he feared a life sentence to be not credible—especially here where the plea court advised him the weapon charge carried five years. (Tr. 5). This Court further finds Applicant did not present any credible evidence of what counsel would have uncovered upon further investigation. Ultimately, counsel's advice was reasonable under prevailing professional norms, and Applicant pled guilty knowingly and voluntarily. Applicant did not prove deficiency or prejudice, and this claim is denied.

*Sentence for weapon charge*

Applicant next contends counsel was ineffective for not informing Applicant the weapon charge carried a maximum of five years. He asserts that due to the wording on the indictment, he believed it carried a potential life sentence or the death penalty Applicant did not prove this ground.

At the PCR hearing, Applicant claimed that based on the indictment for the weapon charged, he believed he was facing either life in prison or the death penalty for the weapon charge.



He stated he would have proceeded to trial on that charge if he knew it only carried five years. Applicant stated counsel told him that if he pled guilty to the gun charge, he would get five years on that sentence. However, he testified counsel never told him "that if he went to trial and lost trial then they won't—they wasn't going to kill me." Marsh testified Applicant never expressed to him that he believed the weapon charge carried the death penalty. Marsh explained, "I wouldn't have explicitly stated that it does not carry death because that's not something I would have assumed that anyone would believe, but that is—I did not tell him it did not carry death, or that it one way or the other." This Court finds Applicant's foregoing testimony that he thought the weapon charge carried either a life sentence or the death penalty NOT credible, especially here where the plea court advised Applicant the weapon charge carried five years, and Applicant relayed that he understood. (Tr. 5). This Court further finds Marsh's foregoing testimony credible. Based on the foregoing, counsel's advice regarding the sentence was reasonable under prevailing professional norms. Applicant thus did not prove deficiency or prejudice, and this claim is denied.

*Instructing Applicant how to answer plea court*

Applicant asserts counsel told him to answer the plea court's questions in such a manner as would result in the court accepting the plea or that Applicant would receive the maximum sentence. Applicant did not prove this ground. At the PCR hearing, Applicant stated Marsh told him that if he said anything other than he was guilty at the plea hearing, he'd receive the maximum sentence, whereas if he pled guilty, he would only receive five years. He likewise testified he was told to lie to the plea court. In contrast, Marsh testified he told Applicant to answer the court's questions honestly. He explained that he informed Applicant the Court may not accept the plea if Applicant did not express he was guilty, but he reiterated that he told Applicant to answer honestly. This Court finds Applicant's testimony that he was told to lie NOT credible, whereas this Court



finds counsel's foregoing testimony credible. Based on the foregoing, counsel's advice was reasonable under prevailing professional norms. Applicant did not prove deficiency or prejudice, and this claim is denied.

#### *Late appeal*

Applicant testified that after his plea, he wrote Marsh and requested an appeal, but Marsh never filed an appeal. Marsh testified he did not recall Applicant requesting an appeal in-person or by mail, although he left the Public Defender's Office shortly after the representation. However, he clarified he left at the end of 2021—more than ten days after this plea. He further averred he was not aware of any meritorious issues from this guilty plea. However, Marsh stated he would have filed an appeal if Applicant had requested one. This Court finds credible Marsh's foregoing testimony that Applicant did not ask him to appeal and he did not receive a letter requesting an appeal prior to leaving the Public Defender's Office. Thus, Marsh was not deficient for not filing an appeal. See Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008) (“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, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.”). This Court further finds Applicant did not demonstrate extraordinary circumstances for an appeal from a guilty plea. Thus, this claim is denied.

#### CONCLUSION

Based on the foregoing, Applicant has not established any constitutional violations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice. Should Applicant wish to appeal, he must file and serve a notice of appeal within thirty

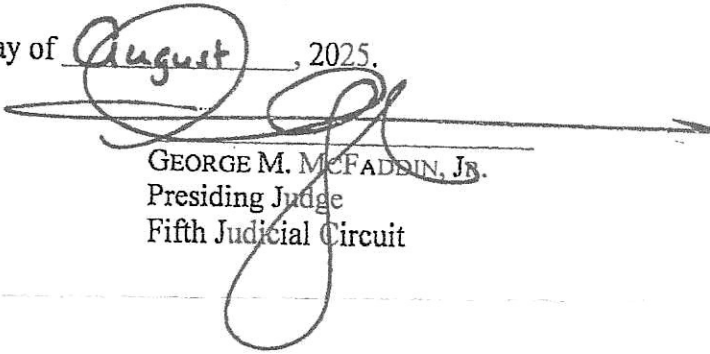


days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to seek appellate review, PCR counsel 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 appellate procedures.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant shall be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 15<sup>th</sup> day of August, 2025.

  
GEORGE M. MCFADDIN, JR.  
Presiding Judge  
Fifth Judicial Circuit

Sumter, South Carolina