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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT
APPEAL FROM YORK COUNTY
Court of Common Pleas
The Honorable Marvin Dukes, PCR Action Judge
2022-CP-46-03214

JOHNATHAN BARNES, #340273,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

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**NOTICE OF APPEAL**

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Johnathan Barnes appeals the denial of his post-conviction relief application. The post-conviction relief action was heard and denied by the Honorable Marvin Dukes, circuit court judge, on February 13, 2025, and was denied by written order issued filed on September 12, 2025. Applicant received notice of the judgement on September 12, 2025.

/s Chelsey F. Marto
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| STATE OF SOUTH CAROLINA<br>COUNTY OF YORK | IN THE COURT OF COMMON PLEAS<br>FOR THE SIXTEENTH JUDICIAL CIRCUIT |
| Johnathan Barnes, #340273,<br>Applicant, | Case No.: 2022-CP-46-03214<br>2023-CP-46-03529 |
| v. | |
| State of South Carolina,<br>Respondent. | **ORDER OF DISMISSAL;<br>CONSENT ORDER GRANTING MOTION TO MERGE** |

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ANGIE M. BRYANT
C.C.C.P. & G.S.
YORK COUNTY, SC

This matter comes before this Court by way of Applicant's post-conviction relief applications filed October 25, 2022, and November 7, 2023. Respondent made its return and motion to merge on June 11, 2024, requesting an evidentiary hearing be convened. An evidentiary hearing was held On February 13, 2025, at the York County Courthouse. Chelsey Marto, Esquire, represented Applicant. Assistant Attorney General Zachary Jones represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Counsel David Bratton also testified. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

## Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. In November 2021, the York County Grand Jury indicted Applicant for trafficking methamphetamine, twenty-eight to one hundred grams (2021-GS-46-02928), PWID marijuana (2021-GS-46-02933), and possession of cocaine (2020-GS-46-01159). David Bratton, Esquire represented Applicant. Austin Smith

prosecuted the case. On March 10, 2022, Applicant pled guilty before the Honorable William A. McKinnon, circuit court judge. In exchange for Applicant's guilty plea, the State agreed to a negotiated fifteen-year sentence, time served on the two non-trafficking charges, and the dismissal of several additional indictments. The Court sentenced Applicant in accordance with the negotiations. Applicant did not appeal his conviction or sentence.

**Summary of Relevant Facts**

On January 29, 2020, officers responded to a disorderly conduct complaint involving Applicant. (Plea Tr. 10). Applicant's information was entered into NCIC and officers discovered he had active arrest warrants pending. (Plea Tr. 10). During a search incident to arrest, .03 grams of cocaine were discovered. (Plea Tr. 10).

On May 4, 2021, Applicant was involved in a vehicle collision. (Plea Tr. 10). Applicant was arrested for driving too closely and under suspension. (Plea Tr. 10). The vehicle was searched due to an odor of marijuana, in which the officer found a stolen handgun, multiple bundles of money, a clear bag of THC edibles weighing 12.7 grams, and 6.2 grams of marijuana. (Plea Tr. 10-11). When Applicant was searched prior to entering a holding cell, officers found 47.7 grams of methamphetamine, 10 grams of cocaine, 10.5 grams of fentanyl and .4 grams of heroin in his anal cavity. (Plea Tr. 11). Applicant had $1,998 on his person and messages on his cell phone dealing with drug activity. (Plea Tr. 11).

**Current Action Before this Court**

In his current PCR application, Applicant alleges he is being held in custody unlawfully because of ineffective assistance of counsel in that:

1. Attorney allowed me to plead from 3rd offense to 2nd offense from simple possession of marijuana and simple possession of cocaine. Under the file of the Clerk of Court records - this was my first offense trafficking, that was prior to a simple possession of cocaine 1st, 12 years in the past before my plea.

2. Applicant was ill-advised into accepting a guilty plea and wrong sentenced as a second offender.
3. Applicant claims he lacked the predicate offenses to qualify him for a second offense trafficking.
4. Applicant also argues that Counsel failed to fully investigate his defense by not obtaining the police bodycam evidence, which Applicant claims would have weakened the State's case against him.

At the PCR hearing, Applicant proceeded forward on the following allegations:

1. Ineffective assistance of counsel:
    a. Counsel erroneously advised Applicant he would be pleading to a first offense count, not a second offense count.
    b. Counsel failed to inform Applicant that he was pleading to a negotiated fifteen years' imprisonment.
    c. Counsel failed to communicate with Applicant enough.
    d. Counsel did not review the discovery with Applicant.
    e. Counsel failed to develop a trial defense.
    f. Counsel failed to discuss Applicant's parole eligibility or lack thereof with him.
    g. Counsel failed to investigate the fact that the vehicle involved in the incident was not registered to him and that he was not driving the car.
    h. Counsel failed to refile the bond motion.
    i. Counsel failed to review Applicant's rights with him.
    j. Failure to attempt to get Applicant into drug court.
2. Invalid plea:
    a. Applicant was coerced into pleading by Counsel stating that if he did not plead, he would lose at trial and get twenty-five to forty years' imprisonment.
    b. Applicant was coerced into pleading by Counsel's decision to repetitively call Applicant's mother, telling her that he needed to plead if she ever wanted to see him again.

All other allegations raised in his initial application and amendments are deemed waived and abandoned and, accordingly, will not be addressed in this order.

**Order Granting Motion to Merge**

Applicant filed two post-conviction relief applications (2022-CP-46-03214, 2023-CP-46-03529). Respondent moved to merge the applications and for the 2022 post-conviction relief application to be the surviving case, with the 2023 application being construed as an amendment. Applicant consented to the motion. This Court grants Respondent's motion accordingly.

## **Findings of Fact and Conclusions of Law**

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. Before this Court are the York County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the plea transcript, and this PCR action's records. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated Section 17-27-80 (2003).

### ***Ineffective Assistance of Counsel***

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "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. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington.*

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland,* 466 U.S. at 688. S*ee also* Rule 71.1(e), SCRCP ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.").

Reasonableness is determined by the "variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant," and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel's performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually "countless" ways. *Strickland,* 466 U.S. at 688-89.

Second, counsel's deficient performance must have prejudiced the applicant so 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters "'only in the rarest case'" because "[t]he likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

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, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Applicant's right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent solemnity and truthfulness included in the guilty plea process. *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."). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. *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)).

For a plea to be valid, the applicant must have been aware of the nature and crucial elements of the offense the maximum and minimum penalties, and the rights he is waiving by accepting the plea. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Roddy v. State*, 339 S.C. 29 (2000). A plea is not knowing or voluntary if a defendant "lacks knowledge of material evidence in the prosecution's possession." *Gibson v. State*, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (1999).

A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." *Roddy v. State*, 339 S.C. at 34, 528 S.E.2d at 421 (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "'[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the

entry of the guilty plea and the record of the post-conviction hearing.'" *Dalton*, 376 S.C. at 138, 654 S.E.2d at 874 (quoting *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)). Further, "guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including claims of a violation of a constitutional right prior to the plea." *Whetsell v. State*, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981).

***First Offense Charge***

Applicant claims he was erroneously advised by Counsel that he was pleading guilty to a first offense charge. Counsel credibly testified that he correctly advised Applicant that he was pleading to a second offense count. Still, Applicant's outcome at the plea was not affected regardless of what he was told because Applicant was clearly entering a plea to a negotiated fifteen-year sentence. Accordingly, relief is denied on this ground.

***Negotiated Sentence***

Applicant claims Counsel was ineffective and his plea was unknowingly entered because he did not know he was pleading to a negotiated fifteen-year sentence. Counsel credibly testified that he notified Applicant of the negotiation. Additionally, the plea transcript makes clear that Applicant was notified of the negotiation and Applicant professed to the court that he understood the negotiation. (Plea Tr. 2, 4-5, 9). Accordingly, relief is denied on this ground.

***Failure to Communicate Enough***

Applicant alleges that Counsel was ineffective for failure to communicate and meet with Applicant enough. "[B]revity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation." *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Applicant must show evidence indicating "how additional preparation or communication would have resulted in a different outcome." *Id. See Jackson v. State*, 329 S.C.

345, 353-54, 495 S.E.2d 768, 772 (1998) (where application failed to show ineffective assistance of counsel based on lack of preparation by neglecting to show evidence of what counsel failed to discover or what defenses counsel could have pursued had he more fully prepared for the case); *Skeen v. State*, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (where applicant failed to show ineffective assistance of counsel when he did not present evidence showing how additional preparation would have impacted the trial).

Applicant testified that Counsel only spoke with him a couple of times prior to the plea, and they only had one substantive conversation about his case. Counsel credibly testified that they discussed the discovery, charges, his rights, and his options between plea and trial multiple times. This Court finds Counsel credible on this ground. Applicant has failed to meet his burden of proof in establishing that Counsel was deficient or that he was prejudiced by the alleged deficiency. Accordingly, relief is denied on this ground.

***Discovery***

Applicant claims Counsel was constitutionally ineffective for failure to review the discovery with Applicant. However, Counsel credibly testified that he provided Applicant with a copy of the paper discovery. Based on Applicant's testimony, he was seemingly aware of the important facts substantiating the charges he pled to. Thus, relief is denied on this ground.

***Trial Defense***

Applicant claims Counsel was constitutionally ineffective for failure to prepare a trial defense. Counsel credibly testified that the only defense available was to move to suppress the drugs, which he thought would not be successful. However, one was not needed with Applicant entering a freely, voluntarily, knowingly, and intelligently plea. Relief is denied on this ground.

### *Parole Eligibility*

Applicant claims Counsel was ineffective for failure to communicate Applicant's parole eligibility or lack thereof with him. "It is well settled that parole eligibility is a collateral consequence of sentencing, and that trial counsel need not advise a client of his parole eligibility or ineligibility in order to render effective assistance." *Jackson v. State*, 349 S.C. 62, 64, 562 S.E.2d 475, 476-77 (2002) (citation omitted). "When considering any allegations on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether information conveyed by the plea judge cured any possible error made by counsel." *Burnett v. State*, 352 S.C. 589, 592, 576 S.E.2d 144, 145 (2003) (citing *Moorehead v. State*, 329 S.C. 329, 496 S.E.2d 415 (1998)).

There has been no credible testimony presented that Counsel erroneously advised Applicant concerning parole eligibility. Thus, Counsel was not ineffective on this ground and relief is denied accordingly.

### *Failure to Investigate*

Applicant claims Counsel was constitutionally ineffective for failing to investigate the fact that the vehicle involved in the incident was not registered to Applicant and that he was not driving the car. *Strickland* makes clear that defense counsel "has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." 466 U.S. at 691. When highlighting failure to investigate as a ground for a larger ineffective assistance of counsel claim, judicial determination of this claim's validity is evaluated for "reasonableness [under] all the circumstances" with "a heavy measure of deference to counsel's judgments" applied. *Id.* At the PCR hearing, Applicant is required to present evidence or witnesses he alleges Counsel did not properly investigate. *Glover v. State*, 318 S.C. 496, 498-

99, 458 S.E.2d 538, 540 (1995). Additionally, whether Applicant was prejudiced by Counsel's failure to investigate is contingent on whether the evidence presented would have led Counsel to change his recommendation regarding the plea. *Stalk v. State*, 383 S.C. 559, 562, 681 S.E.2d 592, 594 (2009).

Applicant was arrested after a vehicle collision that occurred while he was in the car. Multiple types of drugs in various amounts were found on his person during the search of the car and individuals in the car after the officer smelled marijuana. Whether he was driving, or the proper owner of the car has no bearing on these facts. Counsel credibly testified in accordance with this conclusion. Thus, relief is denied on this ground.

***Bond Motion***

Applicant claims Counsel was ineffective for failure to refile his bond motion. Allegations concerning bond motions are not valid grounds for post-conviction relief and it does not in any way attack the validity of the plea. Accordingly, relief is denied on this ground.

***Failure to Review Rights***

Applicant claims Counsel was constitutionally ineffective for failure to review his rights that he was waiving by pleading with him prior to the plea. Counsel credibly testified that Applicant was aware of the rights he was waiving prior to the plea. Additionally, the plea transcript clearly establishes that Applicant was informed that he was waiving his rights to a jury trial, to remain silent, to assert a defense, and the call and confront witnesses. (Plea Tr. 6). After being informed of this, Applicant indicated his intent to waive these rights by pleading. (Plea Tr. 7). Accordingly, relief is denied on this ground.

***Drug Court***

Applicant claims Counsel was constitutionally ineffective for failure to secure

Applicant's participation in drug court. Counsel credibly testified that drug dealers are not admitted into drug court in York County. He also credibly testified that he requested the prosecutor consider Applicant's participation in drug court, but this was rejected. After the rejection, Counsel could do no more to secure Applicant's participation in drug court. Thus, he was not deficient, and Applicant was not prejudiced as a result. Accordingly, relief is denied.

***Coercion – More Time***

Applicant claims he was coerced into pleading guilty, rendering his plea involuntary because Counsel told him that if he did not plead, he would receive a twenty-five to forty-year sentence by pleading. Counsel credibly testified that this was conveyed to Applicant, so he knew realistically what he was facing and what his options were. Threat of a higher sentence at trial is a reality; not a coercive tactic utilized to force a defendant to plead. Applicant's decision to plead guilty instead of going to trial was made considering these options but the plea transcript nor the testimony from either witness at the PCR hearing indicates that the decision to plead was forced upon Applicant, especially not for the reason provided. Accordingly, this Court denies Applicant relief on the above reason because he was not coerced into pleading guilty.

***Calls with Applicant's Mom***

Applicant claims he was coerced into pleading because of Counsel's repeated phone conversations with Applicant's mother in which he informed her that if she wanted to see her son again, he needed to plead. Counsel credibly testified that he stressed the gravity of Applicant's case and the decisions available to him during his conversations with Applicant and his mother. This does not, however, amount to coercion. Applicant's claim that he was coerced into pleading because of Counsel's decision to stress the fact that he was facing much more time at trial does not render the plea involuntary. Thus, Applicant's request for relief is denied on this ground.

## Conclusion

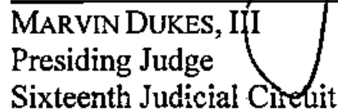
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

**IT IS THEREFORE ORDERED:**

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

**AND IT IS SO ORDERED** this 5th day of Sept, 2025.



MARVIN DUKES, III
Presiding Judge
Sixteenth Judicial Circuit

9/5, South Carolina.