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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Common Pleas

The Honorable Marvin H. Dukes, III, Circuit Court Judge

Case No.: 2023-CP-10-04981

Cary Stephens (#00389267)..... Appellant

v.

State of South Carolina Respondent

NOTICE OF APPEAL

Cary Stephens appeals the order of the Honorable Marvin H. Dukes, III, filed November 10, 2025, and served on his counsel November 12, 2024, that dismisses the PCR action. The Defendant/Appellant requests that the order be reversed, and he be granted a new trial. Defendant/Appellant received proper notice of the entry of the written order on November 17, 2025.

November 18, 2025

/s/Christopher L. Murphy
Christopher L. Murphy
Post Office Box 80547
Charleston, SC 29416
Phone: 843-926-0146
Email: chris@chrismurphy.com

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)
)
 Cary Stephens, #389267,)
)
 Applicant,)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT

CASE NO. 2023-CP-10-04981

ORDER OF DISMISSAL

FILED
 10/10/23
 10:12 AM
 10/10/23

This matter comes before the Court by way of Cary Stephen’s (Applicant’s) application for post-conviction relief (PCR) filed on October 10, 2023. On August 6, 2025, an evidentiary hearing was held at the Charleston County Courthouse before the Honorable Marvin H. Dukes, III. Applicant was present and represented by Christopher Murphy, Esquire. Assistant Attorney General Kylee Kanealey represented Respondent. Applicant proceeded forward on the allegations in his application.

Following a thorough review of the record, along with the testimony and evidence presented at the hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a thirty-year sentence. In its September 2019 term, the Charleston County Grand Jury indicted Applicant for Murder (2019-GS-10-04645) and Possession of a Weapon during the Commission of a Violent Crime (2019-GS-10-04647). These charges arose from the fatal shooting of Deja Dantley on February 26, 2019. On October 11, 2022, Applicant entered into a negotiated guilty plea before the Honorable R. Lawton McIntosh. Applicant was represented by Peter McCoy, Jr.,

Esquire (Counsel). Solicitor Scarlett Wilson prosecuted the case. Pursuant to the negotiations, Judge McIntosh sentenced Applicant to forty (40) years for murder, with a concurrent term of five (5) years for the possession charge. Applicant, through Counsel, filed a motion to reconsider the sentence on October 19, 2022. Judge McIntosh issued an order denying the motion on October 31, 2022. Applicant did not appeal his conviction.

CURRENT APPLICATION

On October 10, 2023, Applicant timely filed this PCR application alleging he is being held in custody unlawfully on the following grounds:

- I. Ineffective assistance of counsel
 - a. Failed to adequately prepare;
 - b. Failed to discuss trial strategies, defenses, potential witnesses, and sentencing expectations;
 - c. Failed to adequately meet;
 - d. Failed to explain charges;
 - e. Failed to review warrants;
 - f. Failed to inform of right to jury trial.
- II. Involuntary Guilty Plea
 - a. Applicant was coerced;
 - b. Only had ten to fifteen minutes to make up his mind;
 - c. Applicant did not understand the terms of the plea.

Applicant requests relief from his guilty plea and sentences.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Charleston County Clerk of Court records of the underlying conviction, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the records from this PCR action. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of

proof. Below are the 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

In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). To prove ineffective assistance of counsel, the applicant must show counsel was deficient, and the deficiency prejudice applicant. Strickland v. Washington, 466 U.S. 668 (1984). When evaluating deficiency, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C at 117, 386 S.E. 2d at 635 (quoting Strickland, 366 U.S. at 690). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to received relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. To prove prejudice, an applicant must prove counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. 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 "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 knowing and voluntary, 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.

Failure to Prepare for Guilty Plea and Communicate with Client¹

Applicant alleged counsel failed to adequately prepare; failed to discuss trial strategies; defenses; potential witnesses; sentencing expectations; failed to adequately meet; failed to explain the charges; and failed to inform Applicant of the right to a jury trial. This Court finds this allegation is without merit.

Counsel testified that he met with Applicant between 5 and 9 times and further his paralegal also met with Applicant. Counsel testified that he had adequate time to meet with Applicant. Counsel testified that he reviewed all the evidence with the solicitor and her investigator. Counsel testified he went to the jail to discuss the evidence with Applicant after meeting with the solicitor. Counsel testified that he discussed the constitutional rights Applicant was waiving by pleading, the sentencing range, and the terms of the plea. Counsel testified that Applicant never provided evidence of a defense. This Court finds counsel's testimony *credible*. Based on Counsel's testimony, this Court finds Counsel's advice and preparation were reasonable within prevailing professional norms. Further, Applicant told the plea court that he was satisfied with the services of Counsel, Counsel had reasonably done what Applicant had asked him to do, he had no complaints whatsoever about any aspect of his legal representation, and he was totally and completely satisfied. (Tr. 10,11). See Hinson v. State, 297 S.C. 456, 458, 377 S.E.2d 338, 359 (1989) (finding a defendant's testimony several years after a guilty plea, that his plea was induced by erroneous advice of counsel is not persuasive). This Court finds Applicant failed to prove Counsel was deficient.

Applicant failed to present what he wished Counsel would have further prepared for. Applicant has failed to show he would not have pled guilty had he met more frequently with

¹ This section addresses allegations I(a), I(b), I(c), and I(d) and I(f).

Counsel and thus failed to prove prejudice. See Hill v. Lockhart, 474 U.S. 52, 59, 106 S. Ct. 366, 370, 88 L. Ed. 2d 203 (1985). Further, Applicant told the plea court that he understood the constitutional rights he was giving up by pleading guilty, including specifically the right to a jury trial. (Tr. 7-10). This Court finds Applicant has failed to prove deficiency and prejudice and thus, this claim is denied.

Failed to Review Warrants

Applicant failed to present any evidence, testimony, or legal authority regarding these allegations at the evidentiary hearing. "When a party provides no legal authority regarding a particular argument, the argument is abandoned, and the court will not address the merits of the issue." Palmer v. State, 427 S.C. 36, 47, 829 S.E.2d 255, 261 (Ct. App. 2019) (citing State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011)). Therefore, the Court deems this allegation abandoned.

Involuntary Guilty Plea²

Applicant alleged he was coerced into pleading guilty, only had ten to fifteen minutes to make up his mind, and did not understand the terms of the plea. This Court finds this allegation is without merit.

As discussed above, Counsel credibly testified that he discussed the terms of the plea with Applicant. Further Applicant told the plea court no one had forced, threatened, or promised him anything in order for him to plead guilty and that he was doing so of his own free will. (Tr. 7). Applicant told the plea court he understood the sentencing range of the negotiated plea. (Tr. 6,7). Finally, Applicant told the plea court he understood the constitutional rights he was waiving and the sentence he faced. (Tr. 6, 9, 10).

² This section addresses allegations II(a), II(b) and II(c).

Applicant has presented no valid reason why he should be able to depart from the statements made during his guilty plea. See Tollett v. Henderson, 411 U.S. 258, 267 (1973) (“When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.”); Garren v. State, 423 S.C. 1, 12, 813 S.E.2d 704, 710 (2018) (“A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed.”); Jamison v. State, 410 S.C. 456, 468, 765 S.E.2d 123, 129 (2014) (“[I]n South Carolina, a guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights.”). Thus, based on the evidence presented at the plea proceeding and the evidentiary hearing, this Court finds Applicant freely, knowingly, and voluntarily pled guilty. Applicant has failed to prove deficiency and prejudice and thus, this claim is denied.

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 application for post-conviction relief is **DENIED and DISMISSED WITH PREJUDICE**.

Should Applicant wish to secure appellate review, 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. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC, provides that PCR counsel must serve and file a Notice of Appeal on the Applicant's

behalf if the Applicant wishes to seek appellate review. Attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 6 day of Nov, 2025.



THE HONORABLE MARVIN H. DUKES, III
Presiding Judge
Ninth Judicial Circuit

Beaufort, South Carolina