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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

The Honorable Edward W. Miller, Circuit Court Judge

Case No. 2022-CP-14-00289

Michael Daugherty, ...Petitioner,

v.

State of South Carolina, ...Respondent.

NOTICE OF APPEAL

Petitioner, Michael Daugherty, appeals the order of the Honorable Edward R. Miller, dated November 14, 2025, and filed November 25, 2025. Petitioner received written notice of entry of this order on December 4, 2025.

12/9, 2025

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STATE OF SOUTH CAROLINA COUNTY OF CLARENDON	)	IN THE COURT OF COMMON PLEAS FOR THE THIRD JUDICIAL CIRCUIT
Michael Daugherty, #386928, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2022-CP-14-00289 **ORDER GRANTING IN PART AND DENYING IN PART APPLICATION FOR POST-CONVICTION RELIEF**

This matter comes before the Court by way of an application for post-conviction relief ("PCR") filed by Michael Daugherty ("Applicant") on June 27, 2022, and amended on October 20, 2022. The Court convened an evidentiary hearing into the matter on November 3, 2022, at the Sumter County Courthouse. Applicant was present at the hearing and represented by Michael H. Lifsey, Esquire. Zachary W. Jones, of the South Carolina Attorney General's Office, represented Respondent.

After reviewing all records and evidence before the Court, this Court finds Applicant has established that he is entitled to limited relief in the form of resentencing on the charge of possession of a weapon during the commission of a violent crime. On all other issues, the Court finds this application must be denied and dismissed with prejudice, as Applicant has not met his requisite burden of proof of establishing he is entitled to post-conviction relief. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is currently confined in the South Carolina Department of Corrections. On April 5, 2020, Applicant and two co-defendants shot and killed the victim, Dashell Powell, during a gun

sale transaction that resulted in the defendants firing multiple shots at the victim. Law enforcement sought and obtained an arrest warrant for Applicant, who was taken into custody. Thereafter, during its October 2020 term, the Clarendon County Grand Jury indicted Applicant for murder and possession of a weapon during a crime of violence (2018-GS-14-00352). Applicant was represented by Timothy L. Griffith, Esquire ("Counsel"). The case was prosecuted by Assistant Solicitor Darla F. Pierce of the Third Circuit Solicitor's Office.

On January 10, 2022, Applicant appeared alongside counsel before the Honorable D. Craig Brown, circuit court judge, for a plea proceeding. Pursuant to a plea agreement with the State to allow Applicant to plead guilty to the lesser-included offense of voluntary manslaughter rather than murder as indicted, Applicant pled guilty to voluntary manslaughter and the weapons charge as indicted. Following a thorough plea colloquy, Judge Brown accepted Applicant's guilty pleas and sentenced Applicant to twenty-five years of imprisonment for voluntary manslaughter and a consecutive five years of imprisonment for the weapons offense. Applicant did not appeal his plea or sentence.

Present Application

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

10 (a) "Ineffective Counseling"

11(a): "My lawyer told me before I went in court the judge was gone give me 10-12 years but the judge gave me 25. My lawyer only came to see me when it was time to take a plea."

As requested relief, Applicant states he is seeking "time recon[sideration]."

On October 17, 2022, Applicant amended his application to include the following allegations of ineffective assistance of counsel:

a. "Applicant's plea counsel did not meet with Applicant a sufficient number of times prior to his plea, did not fully explain the strengths and weaknesses of the State's case, and did not explain the elements of the crimes of which he was charged. Had plea counsel given effective representation in this regard, Applicant would not have entered a guilty plea and would have insisted on a jury trial."

b. "Applicant's plea counsel informed Applicant that he would receive a sentence of between 10 and 12 years and not the 25 year sentence for Voluntary Manslaughter and the 5 year consecutive sentence for Possession of a Weapon During the Commission of a Violent Crime that Applicant actually received. Had plea counsel given effective representation in this regard, Applicant would not have entered a guilty plea and would have insisted on a jury trial."

c. "Based on plea counsel's ineffective advice as described in (a) and (b) above, Applicant believed that he had no choice but to answer the Judge's questions during the plea colloquy in such a manner as would result in the Judge accepting the plea. Had plea counsel given effective representation in this regard, Applicant would not have entered a guilty plea and would have insisted on a jury trial."

d. "Plea counsel presented a story to the trial judge in mitigation that was inaccurate and not the account of the incident that Applicant wished trial counsel to present. Had Applicant known plea counsel was going to present this inaccurate account of the incident to the trial judge, he would not have entered a guilty plea and would have insisted on a jury trial."

e. "Plea counsel was ineffective for telling the trial judge that any sentence on the charge of Possession of a Weapon During the Commission of a Violent Crime must be served consecutively despite the fact that S.C. Code Section 16-23-490(B) specifically states that '[t]he court may impose this mandatory five-year sentence to run consecutively or concurrently.'"

At the evidentiary hearing, Applicant proceeded on the allegations raised in his amended application.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, and weighed the testimony accordingly. Before the Court are Applicant's records from the South Carolina Department of Corrections, the transcript of

Applicant's plea proceeding, the records of the Clarendon County Clerk of Court regarding the subject convictions, and the original and amended applications for post-conviction relief. This Court has reviewed the records submitted to it by the parties, the legal arguments made by the attorneys, and the pleadings. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented:

Ineffective Assistance of Counsel

In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "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.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of

others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable.").

Second, counsel's deficient performance must have prejudiced Applicant such 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, 386 S.E.2d at 625. "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" *Harrington*, 562 U.S. at 111–12 (quoting *Strickland*, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." *United States v. Basham*, 789 F.3d 358, 371–72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. *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."). Statements made during a guilty plea should be considered conclusive, unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements. *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)).

Allegation a: Failure to adequately meet and discuss case

Applicant argues Counsel only met with him twice prior to the entry of Applicant's guilty plea. Applicant further claims Counsel failed to adequately consult with him about the facts and law involved in his case. But for these failures, Applicant claims, he would not have pled guilty but would have insisted on a jury trial. The Court finds this allegation to be without merit.

At the evidentiary hearing, Applicant testified that Counsel only held two in-person meetings with him and totally failed to discuss the details of his case, the elements of the charges he was facing, the difference between murder and voluntary manslaughter, or any potential defenses.

Counsel testified that he had at least two in-person meetings with Applicant: one at the Sheriff's Office, which lasted for three and a half hours, during which they went over the entire case together; and then one or two meetings at the courthouse when Applicant was present for a bond hearing. Counsel explained that his ability to schedule in-person meetings with his clients was restricted by the jail's visitation policy during the COVID pandemic. However, Counsel testified that he also met with Applicant virtually over Zoom, corresponded with Applicant through letters, and spoke with Applicant over the phone on seven or eight occasions. Counsel testified

that he fully discussed the charges Applicant was facing, their elements, the difference between murder and manslaughter, the sentencing range he faced, the possibility of requesting voluntary or involuntary manslaughter as lesser-included offenses at trial, and the elements of self-defense. Counsel further testified that he discussed Applicant's version of events and evaluated whether it could establish a defense of self-defense. Counsel supplied specific dates and referenced his contemporaneous notes throughout his testimony.

The transcript of Applicant's guilty plea proceeding reflects that Applicant, under oath, told the plea court that he was satisfied with Counsel's representation, that he had talked to Counsel enough, and that he understood his talks with Counsel. (Tr. p.8, lines 6–15). Applicant then requested more time to talk with Counsel, and the proceeding was paused while Applicant and Counsel talked to each other. (Tr. p.8, lines 16–25). Afterward, Applicant again told the plea court that he had enough time to speak to Counsel, that he did not need any more time to talk with him, and that he had no complaints about Counsel. (Tr. p.9, lines 1–13).

The Court finds Counsel's testimony credible, and Applicant's contrary testimony not credible, on this point. Applicant's self-serving testimony at the evidentiary hearing is inconsistent with his sworn testimony at the guilty plea proceeding. Counsel's testimony, on the other hand, was detailed and consistent with Applicant's sworn statements to the plea court.

Our appellate courts have repeatedly held that "the brevity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation." *Collins v. State*, 422 S.C. 250, 258, 810 S.E.2d 871, 875 (2018) (holding counsel's performance was not deficient, even though he represented his client for only six weeks and met with him only twice prior to trial); *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012) (holding counsel was not deficient, despite only meeting with applicant twice prior to his trial); *see also Harris v. State*, 377

S.C. 66, 74–75, 659 S.E.2d 140, 144–45 (2008) (holding PCR court's finding that counsel's meetings with applicant were "limited in number and duration" did not justify grant of post-conviction relief), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018).

The Court finds Applicant has failed to prove Counsel was deficient for failing to adequately consult with him prior to the plea. Both the plea transcript and Counsel's credible testimony at the evidentiary hearing establish that Counsel was able to discuss the case thoroughly with Applicant, through a combination of in-person meetings, virtual conferences, letters and phone calls. Counsel testified that he went over the entire case with Applicant, including the facts and all relevant law. The Court finds Applicant has failed to rebut the strong presumption that Counsel rendered constitutionally adequate assistance. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In addition, to prove prejudice from counsel's allegedly insufficient consultation, the applicant must show a reasonable probability that additional time spent in preparation would have changed the outcome of his case. *Collins v. State*, 422 S.C. at 259–60, 810 S.E.2d at 876 (citing *Jackson v. State*, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998); *Skeen v. State*, 325 S.C. 210, 214–15, 481 S.E.2d 129, 132 (1997)). The Court finds Applicant has not made such a showing. Therefore, Applicant has not met his burden of proving either deficiency or prejudice as to this allegation. Accordingly, the Court finds this allegation must be denied and dismissed with prejudice.

Allegation b: Improper promise of 10–12 year sentence

Applicant argues Counsel was ineffective for telling him he would receive a 10–12 year sentence, instead of up to thirty years on voluntary manslaughter and five years on the possession of a weapon charge. The Court finds this allegation to be without merit.

During the guilty plea colloquy, the plea court clearly informed Applicant that he was entering a plea to voluntary manslaughter and possession of a weapon during the commission of a violent crime, with no negotiations or recommendations as to sentencing; the plea court told Applicant that he was facing up to thirty years for voluntary manslaughter and five years, consecutive, for the weapon charge. (Tr. p.4, line 15–p.5, line 1; p.6, line 14–p.7, line 3). Applicant consistently, and under oath, responded that he understood the plea court's statements. In addition, at the evidentiary hearing, Counsel denied ever telling Applicant that he would receive only 10–12 years. Counsel testified he informed Applicant that the sentence would be up to the judge, that Applicant was facing up to thirty years on manslaughter and five years on the weapon charge, and that he could not predict what the judge would do and there were no guarantees. Counsel explained he simply mentioned 10–12 years as an example of lower sentences that he had seen judges impose for voluntary manslaughter in the past, as part of his explanation that the judge could choose to sentence Applicant to less than the maximum.

The Court finds Counsel's testimony credible, and Applicant's contrary testimony not credible, as to this issue. Applicant's statements at the guilty plea colloquy refute his current claim that he believed he was only facing 10–12 years for pleading guilty. The Court finds Applicant has failed to meet his burden of proving Counsel improperly promised him a 10–12 year sentence. Accordingly, this allegation is denied and dismissed with prejudice.

Allegation c: Applicant falsely answered plea court's questions

Applicant claims that, due to Counsel's allegedly ineffective assistance as to Allegations (a) and (b), he felt he had no choice but to answer the plea court's questions in a way that would result in the judge accepting his plea. At the evidentiary hearing, Applicant testified that he "really wasn't paying attention" during the judge's plea colloquy and was not answering the judge's

questions honestly. The Court finds this allegation meritless. As already explained, the Court finds Applicant has failed to prove that Counsel was ineffective as to Allegations (a) and (b); therefore, the premise of this allegation has already been rejected. Furthermore, even if Counsel had misadvised Applicant about the charges he was facing and the sentence he could receive, that alone would not justify Applicant in giving dishonest answers—under oath—in his response to the plea court's questions. *See Wolfe v. State*, 326 S.C. 158, 165, 485 S.E.2d 367, 370–71 (1997) (holding counsel's alleged misadvice concerning sentencing did not invite applicant to answer the plea judge's questions untruthfully or to believe they meant nothing). The Court finds Applicant has failed to show "valid reasons why he should be allowed to depart from the truth of his statements" during the plea proceeding. *Dalton*, 376 S.C. at 138, 654 S.E.2d at 874. Accordingly, this allegation is denied and dismissed with prejudice.

Allegation d: Failure to present accurate mitigation account

Applicant alleges Counsel did not accurately express Applicant's version of the facts during his mitigation presentation. The Court finds this allegation meritless.

At the evidentiary hearing, Applicant did not deny the State's accusation that he went to the victim's residence to trade a gun for marijuana and that he shot the victim when the deal fell through. The only additional detail Applicant provided at the evidentiary hearing was that he tried to "flip the gun" as a "warning," but the victim interpreted the act as a "threat" and responded by reaching for his own weapon, whereupon Applicant shot him. Applicant argues this sequence of events demonstrates that he was forced to fire in self-defense.

The Court finds, on the contrary, that Applicant's version of events would only serve to *undermine* Applicant's already flimsy case for self-defense. To establish self-defense, "the defendant must be without fault in bringing on the difficulty." *State v. Davis*, 282 S.C. 45, 46, 317

S.E.2d 452, 453 (1984). Applicant's willing participation in a black-market exchange of a firearm for marijuana and cash is already enough to defeat this element of self-defense. *See State v. Williams*, 427 S.C. 246, 830 S.E.2d 904 (2019) (holding that a person who brings an illegal weapon to a drug transaction is not without fault in bringing on the difficulty). Applicant's testimony, admitting that he began brandishing the gun as a "warning" to the victim, further tends to prove that his own conduct precipitated the ensuing violence. Applicant's impression that these additional details were in any way "mitigating" reflects only his own warped understanding of self-defense, not any deficiency in Counsel's mitigation presentation.

The guilty plea transcript reflects that Counsel presented a version of Applicant's story that, wisely, omitted any mention of Applicant's brandishing the firearm. Instead, Counsel discussed Applicant's youth, the lack of any evidence that Applicant had a preexisting intent to harm the victim, and Applicant's belief that "it was going to be him or the victim." (Tr. p.22, line 24–p.23, line 21). The Court finds Applicant has failed to prove either deficiency or prejudice as to this allegation. Therefore, this allegation is denied and dismissed with prejudice.

Allegation e: Improper concession of consecutive sentence

Finally, Applicant argues Counsel was ineffective for improperly advising the plea court that Applicant's five-year sentence for the firearm charge must be served consecutively to his sentence for the manslaughter charge.

The guilty plea transcript supports Applicant's ineffective assistance claim on this issue. During the plea colloquy, the plea court appeared to believe Applicant's sentence for the firearm charge was required by law to be run consecutive to his sentence for the manslaughter charge. (Tr. p.6, lines 22–24). Far from correcting this error, Counsel affirmed the plea court's mistaken

belief, telling the plea court that the five-year firearm sentence "is a set amount that must be served consecutive to any sentence for the manslaughter." (Tr. p.23, line 24–p.24, line 1).

This was an error of law. Applicant correctly points out that the relevant statute, S.C. Code Ann. § 16-23-490(B), expressly provides that the five-year sentence for possession of a firearm during the commission of a violent crime may be served "consecutively *or* concurrently" to the sentence for the principal crime. At the evidentiary hearing, the State conceded that Counsel rendered ineffective assistance on this point. Accordingly, the Court finds Applicant has met his burden of proof on this claim.

However, the parties disagree as to the proper scope of the remedy this Court should impose. Applicant argues Counsel's error rendered his entire guilty plea involuntary and unintelligent, such that the only appropriate remedy would be to vacate both of Applicant's convictions and sentences and remand for a new trial. The State, on the other hand, argued the error affected only the plea court's calculation of Applicant's sentence on the firearm charge; it would not have affected the plea court's sentence on the manslaughter charge, nor could it have affected the voluntary and intelligent nature of Applicant's plea. Therefore, the State argues the proper remedy should be limited to a remand for resentencing on the firearm charge alone.

The Court agrees with the State's position. There is a "reasonable probability" Counsel's erroneous concession that the five-year sentence for the firearm charge had to be served consecutively resulted in the plea court sentencing Applicant to consecutive, rather than concurrent, prison terms. *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. Applicant is entitled to have that portion of his sentence reconsidered, this time by a court properly exercising the statutory discretion to elect between concurrent and consecutive sentences.

However, the Court finds Applicant has failed to show a "reasonable probability" that, but for Counsel's error, Applicant "would not have pleaded guilty and would have insisted on going to trial." *Hill*, 474 U.S. at 59. Applicant presented no evidence tending to show that his decision to enter the guilty plea, rather than proceed to trial, was in any way induced by Counsel's mistake on this point. It strains credulity to suggest that Applicant would have *rejected* the plea, had Counsel correctly explained that his resulting sentences *could* run concurrently, but chose to *accept* the plea where Counsel erroneously stated that his sentences *must* run consecutively. Accordingly, while the Court finds Counsel's error likely contributed to Applicant's sentence on the firearm charge, it is unlikely to have affected the validity of the plea itself. Therefore, this Court agrees with the State that the proper remedy is merely to remand Applicant's sentence on the firearm charge for reconsideration pursuant to a correct understanding of the statute.

III. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant is entitled to a remand for resentencing on the charge of possession of a weapon during the commission of a violent crime. As to all other claims raised or relief sought, the Court finds Applicant has not met his burden of proving he is entitled to post-conviction relief. Therefore, the Court finds all other allegations presented in this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate

review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant's attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That Applicant's five-year consecutive sentence for possession of a weapon during the commission of a violent crime be vacated, and that charge remanded for resentencing, in accordance with S.C. Code Ann. section 16-23-490(B);

2. That all other allegations raised in the initial or amended Applications for Post-Conviction Relief be denied and dismissed with prejudice; and

3. That Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 14 **day of** November **, 2025.**

EDWARD W. MILLER
Presiding Judge
Third Judicial Circuit

Greenville, South Carolina