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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Case No. 2025-CP-10-1203

Jay L. Cook,

Appellant,

v.

State of South Carolina,

Respondent.

NOTICE OF APPEAL

Jay L. Cook hereby appeals the denial and dismissal of his application for post conviction relief in this case. An evidentiary hearing in the matter was convened before the Honorable Jocelyn Newman. Following the hearing, Judge Newman issued a written order denying and dismissing the application with prejudice filed February 11, 2026. Undersigned counsel was emailed a written filed copy of said order on February 11, 2026.

March 11, 2026

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Jay L. Cook,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT

) CASE NO. 2025-CP-10-01203

**ORDER OF DISMISSAL
FILED**

FEB 11 2026

**JULIE J. ARMSTRONG
CLERK, C.P. & G.S.**

This matter comes before the Court by way of Jay Cook’s (Applicant’s) application for post-conviction relief (PCR) filed on March 4, 2025. On January 22, 2026, an evidentiary hearing was held at the Charleston County Courthouse before the Honorable Jocelyn Newman. Applicant was present and represented by Denise G. Swope, Esquire. Assistant Attorney General Kylee Kanealey represented Respondent. Applicant proceeded forward on the allegations in his application. Applicant testified on his own behalf. Respondent presented the testimony of Benjamin Mack, Esquire.

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 currently not incarcerated. On March 11, 2024, Applicant appeared before the Honorable Deadra L. Jefferson, waived indictment to the grand jury, and pled guilty to one

count of sexual exploitation of a minor, third degree (2024-GS-10-1536).¹ Public Defender Benjamin A. Mack represented Applicant. Assistant Attorney General Stephen J. Ryan represented the State. Judge Jefferson sentenced Applicant to a sentence of 5 years. Applicant did not appeal.

CURRENT APPLICATION

On March 4, 2025, Applicant timely filed this PCR action alleging he is being held in custody unlawfully based on the following allegations of ineffective assistance of counsel:

- 1) Failing to challenge inadmissible evidence;
- 2) Failing to present a viable defense strategy;
- 3) Did not communicate properly;
- 4) Did not properly advise of rights.

As relief, Applicant requests the court "overturn the verdict completely."

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 also had the opportunity to observe the witnesses presented at the hearing, to closely pass upon their credibility, and to 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,

¹ In exchange for the plea, the State dismissed seven counts of sexual exploitation of a minor in the third degree and two counts of sexual exploitation of a minor in the second degree.

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 receive 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.

Failing to Challenge Inadmissible Evidence

Applicant alleged Counsel's representation was constitutionally ineffective for failing to challenge inadmissible evidence. This Court finds this allegation is without merit.

As an initial matter, Applicant pled guilty and therefore there was no evidence admitted that would warrant a challenge. Nevertheless, at the hearing Applicant alleged there was issues with the search warrant. Counsel *credibly* testified he did not see any issues with the search

warrant. Further, Applicant did not present the alleged defective search warrant at the evidentiary hearing. Applicant has failed to prove deficiency and prejudice and therefore this claim is denied.

Failing to Present a Viable Defense Strategy

Applicant alleged Counsel's representation was constitutionally ineffective for failing to present a viable defense strategy. This Court finds this allegation is without merit.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Applicant did not present what defense strategy counsel should have allegedly pursued had he gone to trial. Applicant failed to prove Counsel was deficient. Further, at the plea hearing, Applicant told the Judge he understood that he was giving up the right to present any defense by pleading guilty. (Plea Tr. p. 10). Applicant has failed to prove deficiency and prejudice, and therefore, this claim is denied.

Failing to Properly Communicate

Applicant alleged Counsel's representation was constitutionally ineffective for failing to

properly communicate. This Court finds this allegation is without merit.

Federal case law holds that there is no constitutional minimum number of meetings between attorneys and their clients to satisfy competency. Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006). “Brevity of time spent in consultation, without more, does not establish that counsel was ineffective,” Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980) (holding that it is not enough to merely show that counsel only met with his client twice before trial as long as counsel devoted sufficient time to ensure an adequate defense and to become thoroughly familiar with the facts of the case and the law applicable to the case, and holding the record revealed that counsel was so prepared.).

South Carolina case law has established that even if Trial Counsel only met with his client very briefly, that alone does not establish that he was unprepared or ineffective at trial. See Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) (citing Easter) (“First, there is no question that counsel met with [Applicant] on several occasions prior to the first trial. Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation.”). An applicant must present evidence to show how additional time spent in consultation would have resulted in a different outcome; mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Smith v. State, 404 S.C. 493, 500-01, 745 S.E.2d 378, 382 (Ct. App. 2012) (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)).

Counsel *credibly* testified that he discussed the discovery, the charges he faced, violent offenses, sentencing ranges, the facts, Applicant’s statement and the search warrant with Applicant. Counsel *credibly* testified he made himself adequately available to meet with Applicant. This Court

finds Applicant has failed to prove Counsel was deficient. Further, Applicant failed to prove how additional meetings with Applicant would have resulted in a different outcome and thus, failed to prove prejudice. Applicant has failed to prove deficiency and prejudice and therefore this claim is denied.

Failing to Properly Advise of Rights

Applicant alleged Counsel's representation was constitutionally ineffective for failing to properly advise Applicant of his rights. This Court finds this allegation is without merit. Trial Counsel *credibly* testified he discussed the rights Applicant was giving up by pleading guilty with Applicant. Further, Applicant told the plea court he understood his rights and that he understood he was giving up those rights. (Plea Tr. p. 10). Applicant has failed to prove deficiency and prejudice and therefore this claim is denied.

Grand Jury Indictment

At the evidentiary hearing Applicant additionally alleged his indictment was invalid because it was not presented to the grand jury. This Court finds this allegation is without merit. Applicant told the plea court he wished to waive presentment of the indictment. (Plea Tr. p. 7). Therefore, this Court finds Applicant waived presentment of the indictment and this claim is denied.

CONCLUSION

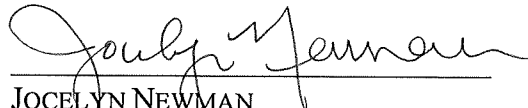
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief is **DENIED and DISMISSED WITH PREJUDICE.**

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), SCRCR, 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 6th day of February, 2026.



JOCELYN NEWMAN
Presiding Judge
Ninth Judicial Circuit

Columbia, South Carolina