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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

J. Derham Cole, Jr., Circuit Court Judge

2024-CP-39-01190

Jennifer N. Burns, Appellant,
v.
The State, Respondent.

NOTICE OF APPEAL

Jennifer N. Burns appeals the Honorable J. Derham Cole, Jr.'s Order of Dismissal filed September 14, 2026.

This 18th day of September, 2026

s/ Susannah Ross
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Clerk of Court Pickens County, SC
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STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

Jennifer N. Burns, #396391,

Applicant,

v.

State of South Carolina,

Respondent.

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

) CASE NO. 2024-CP-39-01190

) **ORDER OF DISMISSAL**

This matter comes before the Court by way of Jennifer Burns' application for post-conviction relief (PCR) filed on November 19, 2024. Respondent filed its Return requesting an evidentiary hearing. On August 10, 2026, an evidentiary hearing was held at the Greenville County Courthouse before the Honorable J. Derham Cole, Jr. Applicant was present and represented by Susannah Ross, Esquire. Assistant Attorney General Kylee Kanealey represented Respondent. Applicant proceeded forward on the allegations in her amended application. Applicant testified on her own behalf and presented the testimony of Jamie Irvin and Chelsey Marto (Plea Counsel).

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 her to relief and, accordingly, denies and dismisses this action with prejudice.

PROCEDURAL HISTORY

The State Grand Jury indicted Applicant for trafficking meth 400 grams or more - conspiracy, trafficking methamphetamine 400 grams or more, possession of a weapon during the commission of a violent crime and possession with intent to distribute marijuana (2019-GS-47-23). On June 24, 2024, Applicant appeared before the R. Lawton McIntosh and pled guilty as

indicted. Chelsey Marto, Esquire, represented Applicant. Assistant Attorney General Savanna Goude represented the State. Judge McIntosh sentenced Applicant to consecutive terms of thirty years for trafficking conspiracy, 25 years for trafficking methamphetamine 400 or more grams, and five years concurrent for the weapons charge, and five years concurrent to the possession with intent to distribute marijuana. Applicant appealed and the appeal was dismissed for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules (SCACR). The remittitur was sent August 28, 2024.

CURRENT APPLICATION

On November 19, 2024, Applicant timely filed this PCR action alleging she is being held in custody unlawfully based on the following:

1. Ineffective assistance of counsel
 - a. Promises lawyer did not keep;
2. Misleading by representation;
 - a. I got 55 years verses 30 years;
3. My sentence was supposed to be run concurrent not consecutively;
 - a. Lawyer said since I have no criminal background.

As relief, Applicant requests “the sentence violates constitution and requires correction.”

On August 6, 2026, Applicant filed an amended application alleging:

1. Ineffective assistance of counsel;
 - a. Failure to advise Applicant that the thirty-year plea recommendation would expire;
 - b. Failure to explain that there was a real possibility the Applicant would be sentenced to consecutive time if she plead guilty;
 - c. Failure to present adequate mitigation to explain the level of duress when the Mexican cartels were threatening Applicant’s life;
 - d. Failure to explain that the guilty plea only covered the Prison Empire case and did not dispose of the charges from the Las Senioritas case which are still pending;
 - e. Asking for the minimum twenty-five years versus the thirty (30) years the State was originally willing to recommend with a global plea; and
 - f. Failure to move for a reconsideration of the sentence pursuant to rule 39 of the South Carolina Rules of Criminal Procedure
2. Due process violations because the plea was not knowingly and voluntarily



made and fundamental unfairness when similarly situated co-defendant Mr. Chastain who instigated her involvement in drug dealing and had similar charges received a sentence of twenty years.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act¹ (“the Act”) provides that any person who has been convicted of a crime may seek post-conviction relief based upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or other conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint;
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient

¹ S.C. Code Ann. 17-27-10 to -160 *et seq.*



to warrant granting relief. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. Strickland v. Washington, 466 U.S. 668 at 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687-88; Cherry v. State, 300 S.C. 115, 117—18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[without proof of both deficient performance and prejudice to the defense... it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea. Hill v. Lockhart, 474 U.S. 52 (1985), extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel. See Padilla v. Kentucky, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). The analysis of counsel's performance under the first prong of Strickland remains unchanged, the applicant must show that counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58-59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000).

An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the range of competence demanded of

attorneys in criminal cases.” Hill, 474 U.S. at 56. The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” Id. at 58-59. Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” Id. at 59.

This inquiry “focuses on a defendant’s decisionmaking” and does not turn on the outcome of a defendant’s actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. 357, 367 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—**not** whether counsel would have still advised him or him to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999) (emphasis added).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the State Grand Jury 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 her 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

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 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.

An applicant who enters a guilty plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty but would have insisted on going to trial instead. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001); Richardson v. State, 310 S.C. 360, 363, 362 426 S.E.2d 795, 797 (1993).

Failure to Advise Recommendation Would Expire

Applicant alleged counsel was ineffective for failing to advise Applicant that the thirty-year plea recommendation would expire. This Court finds this allegation is without merit. Counsel



credibly testified that she communicated to Applicant that this offer would expire. Furthermore, Counsel testified that Applicant rejected the thirty-year recommendation offered by the State on the record. At the guilty plea, the Assistant Attorney General states on the record that Applicant had rejected this offer. (Plea Tr. p. 3). Counsel properly conveyed this recommendation to Applicant and Applicant made the decision to reject the offer. Applicant did not provide any evidence of how Counsel's representation fell below an objective standard of reasonableness. This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [her] case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland as laid out in Hill—that but for Plea Counsel's deficient performance, Applicant would have gone to trial and not pled guilty. Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, this allegation is denied.

Failure to Explain Possibility of Consecutive Time

Applicant alleged Counsel was ineffective for failing to explain that there was a real possibility the Applicant would be sentenced to consecutive time if she plead guilty. This Court finds this allegation is without merit. Counsel *credibly* testified that she discussed with Applicant the possibility of getting consecutive time. Applicant did not provide any evidence of how



Counsel's representation fell below an objective standard of reasonableness. This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [her] case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*).

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Failure to Present Adequate Mitigation

Applicant alleged Counsel was ineffective for failing to present adequate mitigation to explain the level of duress when the Mexican cartels were threatening Applicant's life. This Court finds this allegation is without merit.

Counsel told the court the following at sentencing:

"Now, the State did say that she fled to Mexico after talking to Mr. Chastain, but what they failed to say is what that conversation consisted of. And what that conversation consisted of is Mr. Chastain telling Nicole there was a hitman seven minutes away that was going to kill her if he did not work out a deal and have her sent down to Mexico. Potentially, she could have called the cops, but we would submit that it's unlikely that the cops would have been able to respond in time. Since the hitman was five to seven minutes away. And I know the evidence always shows that she had, at least, one other person in that operation who was killed by the cartel for cooperating directly with Ms. Burns. So, there was a real risk for her."

(Plea Tr. pp. 14, 15).

The record reflects Counsel extensively detailed the level of duress Applicant was facing regarding the situation. Applicant failed to allege what more specifically counsel should have further stated regarding the situation, beyond what was already extensively conveyed. Applicant did not provide any evidence of how Counsel's representation fell below an objective standard of reasonableness. This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [her] case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*).

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Failure to Explain what the Plea Covered

Applicant alleged counsel was ineffective for failing to explain that the guilty plea only covered the Prison Empire case and did not dispose of the charges from the Las Senioritas case which are still pending. This Court finds this allegation is without merit. Counsel credibly testified that she rejected the global plea to resolve the charges on the record. At the guilty plea, the Assistant Attorney General states on the record that Applicant had rejected this offer of a global



plea in this case and in the Las Senioritas case for a recommendation of thirty years. (Plea Tr. p. 3). Counsel credibly testified they discussed the charges to which Applicant was pleading to. Further, Applicant was told on the record what charges she was pleading to the day of her plea. (Plea Tr. pp. 4,5). This Court finds based of Counsel's testimony and the record that Applicant was made fully aware by counsel and the court which charges she was pleading to the day of her plea. Applicant did not provide any evidence of how Counsel's representation fell below an objective standard of reasonableness. This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [her] case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland as laid out in Hill—that but for Plea Counsel's deficient performance, Applicant would have gone to trial and not pled guilty. Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, this allegation is denied.

Failure to Ask for More Time

Applicant alleged counsel was ineffective for asking for the minimum twenty-five years versus the thirty years the State was originally willing to recommend with a global plea. This Court finds this allegation is without merit. This Court finds Counsel was clearly not deficient for not requesting a *longer* sentence for Applicant. Applicant did not provide any evidence of how



Counsel's representation fell below an objective standard of reasonableness. This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [her] case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). Further, Applicant has failed to prove that she was prejudiced by Counsel not asking for a *longer* sentence.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland as laid out in Hill—that but for Plea Counsel's deficient performance, Applicant would have gone to trial and not pled guilty. Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, this allegation is denied.

Failure to Move to Reconsider

Applicant alleged counsel was ineffective for failing to move for a reconsideration of the sentence pursuant to Rule 39 of the South Carolina Rules of Criminal Procedure. This Court finds this allegation is without merit. Counsel testified that she did discuss with Applicant the option of a motion to reconsider and that they were not inclined to go back in front of the Judge that gave her fifty-five years. Applicant did not provide any evidence of how Counsel's representation fell below an objective standard of reasonableness. This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [her] case." Ard v. Catoe,

372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). Further, Applicant has presented no evidence to prove there is a reasonable probability that had Counsel failed to move to reconsider Applicant's sentence, that she would have received a more favorable sentence.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland as laid out in Hill—that but for Plea Counsel's deficient performance, Applicant would have gone to trial and not pled guilty. Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, this allegation is denied.

Due Process Violations

Applicant alleged due process violations because the plea was not knowingly and voluntarily made and fundamental unfairness when similarly situated co-defendant Mr. Chastain who instigated her involvement in drug dealing had similar charges received a sentence of twenty years. This Court finds this allegation is without merit.

The record reflects that Applicant's plea was made knowingly and voluntarily made. Applicant has failed to provide any credible evidence to prove otherwise. As an initial matter, Applicant's co-defendant's sentence has no impact on *Applicant's* due process rights. Additionally, Counsel credibly testified that this co-defendant cooperated with the State and was willing to testify against Applicant. Further, Counsel told the court at sentencing "She was not dealing before meeting Mr. Chastain. Who, as Your Honor knows, got a 20-year deal in this case." (Plea Tr. pp. 13,14). The record reflects that Applicant was sentenced within the correct sentencing



range. Applicant has failed to provide any evidence that her due process rights were violated.

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 her application. Therefore, this application for post-conviction relief is **DENIED and DISMISSED WITH PREJUDICE.**

Should Applicant wish to secure appellate review, she 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), SCRCP, 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 9 day of September, 2026.



THE HONORABLE J. DERHAM COLE JR.
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina