Law Office of Leah B. Moody, LLC

235 East Main Street
Post Office Box 1015
Rock Hill, South Carolina 29731
lbmatty@comporium.net

Phone: (803) 327-4192

Fax: (803) 329-1344

April 15, 2015

The Honorable Daniel E. Shearouse
The Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29221

RE: Charles Woodruff v. State of South Carolina
Case No.: 2013-CP-42-1659

Dear Mr. Shearouse:

The Spartanburg County Court of Common Pleas appointed my office to represent Charles Woodruff in his Post-Conviction Relief action. Please find enclosed for filing the original and two (2) copies of the Notice of Appeal, Proof of Service, and one (1) copy of the Order of Dismissal in the above-referenced case. Please return the clocked copies to me in the enclosed self-addressed, stamped envelope.

Thank you for your assistance with this matter.

Sincerely,

Leah B. Moody

LBM/scm
Enclosure

cc Charles Woodruff
Suzanne White, Esquire
Sharon Graham, SCCID
Hope Blackley, Clerk of Court, Spartanburg County

RECEIVED
APR 21 2015
S.C. Supreme Court

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Deadre L. Jefferson, Presiding in Spartanburg County

Case No. 2013-CP-42-1659

Charles Woodruff, ... Appellant,

v.

State of South Carolina, ... Respondent.

NOTICE OF APPEAL

Charles Woodruff appeals the order of the Honorable Deadra L. Jefferson, dated April 6, 2015. Appellant received written notice of entry of the final order on April 10, 2015.

Leah B. Moody, Esquire
Law Office of Leah B. Moody, LLC
235 E. Main Street, Suite 115
Post Office Box 1015
Rock Hill, South Carolina 29731

Other Counsel of record:
Suzanne White, SC Attorney General's Office
Rembert C. Dennis Building
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-3970

RECEIVED
APR 21 2015
S.C. Supreme Court

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Deadra L. Jefferson, Presiding in Spartanburg County

Case No. 2013-CP-42-1659

Charles Woodruff, ... Appellant,

v.

State of South Carolina, ... Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Suzanne White by depositing a copy of it in the United States Mail, postage prepaid, on 4/17, 2015 addressed to its attorney of record, Suzanne White, Post Office Box 11549, Columbia, South Carolina, 29211-1549.

Leah B. Moody, Esquire
Law Office of Leah B. Moody, LLC
235 E. Main Street, Suite 115
Post Office Box 1015
Rock Hill, South Carolina 29731

April 15, 2015
cc Charles Woodruff
Suzanne White, Esquire
Hope Blackley, Clerk of Court, Spartanburg County
Sharon A. Graham, SCCID

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Fax: (803) 329-1344

April 15, 2015

The Honorable Hope Blackley
Spartanburg County Clerk of Court
Post Office 3483
Spartanburg, South Carolina 29304

RE: Charles Woodruff v. State of South Carolina
Case No.: 2013-CP-42-1659

Dear Ms. Blackley:

Please find enclosed the Notice of Appeal and the Proof of Service in the above-referenced matter.

Sincerely,

Leah B. Moody

LBM/scm

Enclosures

cc Charles Woodruff
Suzanne White, Assistant Attorney General
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
Sharon Graham, SCCID

Law Office of Leah B. Moody, LLC

235 East Main Street
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Rock Hill, South Carolina 29731
lbmatty@comporium.net

Phone: (803) 327-4192

Fax: (803) 329-1344

April 15, 2015

Suzanne White, Esquire
South Carolina Attorney General's Office
Post Office Box 11549
Columbia, South Carolina 29211

RE: Charles Woodruff v. State of South Carolina
C.A. No.: 2013-CP-42-1659

Dear Ms. White:

The Spartanburg County Court of Common Pleas appointed my office to represent Charles Woodruff in his Post-Conviction Relief action. Please find enclosed a copy of the Notice of Appeal and Proof of Service in this matter.

If you have any questions or concerns, please feel free to contact my office. Thank you.

Sincerely,

Leah B. Moody

LBM/scm

Enclosures

Cc Charles Woodruff
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
Hope Blackley, Clerk of Court, Spartanburg County
Sharon Graham, SCCID

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235 East Main Street
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April 15, 2015

Ms. Sharon A. Graham
SC Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11433
Columbia, South Carolina 29211-1433

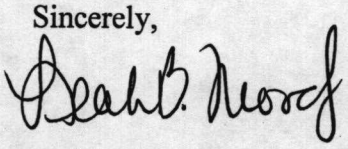
RE: Charles Woodruff v. State of South Carolina
Case No.: 2013-CP-42-1659

Dear Ms. Graham:

The Spartanburg County Court of Common Pleas appointed my office to represent Charles Woodruff in his Post-Conviction Relief action. Please find enclosed the Notice of Appeal and Proof of Service in the above-referenced matter.

Thank you for your attention in this matter.

Sincerely,



Leah B. Moody

LBM/scm
Enclosures

cc Charles Woodruff
Suzanne White, Esquire
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
Hope Blackley, Clerk of Court, Spartanburg County

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Charles J. Woodruff, #296287,	)	2013–CP–42–1659
	)	
Applicant,	)	
	)	
v.	)	**ORDER OF DISMISSAL**
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Presiding Judge:	Hon. Deadra L. Jefferson
Applicant's Attorney:	Leah B. Moody, Esquire
Respondent's Attorney:	Suzanne H. White, Esquire
Plea Counsel:	James A. Cheek, Esquire
Date of Hearing:	January 14, 2015
Court Reporter:	Pamela E. Green

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed April 8, 2013. The Respondent made its Return on or about March 14, 2014. An evidentiary hearing into the matter was convened on January 14, 2015, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Leah B. Moody, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. James A. Cheek, Esquire, (Counsel) and Beverly Jones, Esquire, also testified. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the Return, and the plea transcript.

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PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was true bill indicted at the December 2012 term of the Spartanburg County Grand Jury for Distribution of Crack Cocaine–Third Offense[1] (2012–GS–42–5566). James Cheek, Esquire, represented the Applicant. On February 12, 2013, the Applicant pled guilty without negotiations or recommendations to the lesser-included charge of Distribution of Crack Cocaine–Second Offense.[2] The Honorable Benjamin H Culbertson sentenced the Applicant to fifteen (15) years' imprisonment or a fine of fifty thousand dollars ($50,000.00).[3] The Applicant did not appeal his sentence or conviction.

Although the Applicant challenges only his conviction on Indictment Number 2012–GS–42–5566 for Distribution of Crack Cocaine–Second Offense, he pled guilty on the same day to eight (8) other charges, each sentence was to run concurrent with the fifteen (15) year sentence

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[1] Distribution of Crack Cocaine–Third Offense is a serious felony and "for a third or subsequent offense or if the offender has been convicted two or more times in the aggregate of any violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, the offender must be imprisoned for not less than ten [(10)] years nor more than thirty [(30)] years, or fined not more than fifty thousand dollars [($50,000.00)], or both." S.C. CODE ANN. § 44–53–375(B)(3) (2012); S.C. CODE ANN. § 17–25–45 (C)(2)(a) (2012). "Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsection (A), may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted." S.C. CODE ANN. § 44–53–375 (2012).

[2] Distribution of Crack Cocaine–Second Offense is a serious felony and "for a second offense or if, in the case of a first conviction of a violation of this section, the offender has been convicted of any of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, the offender must be imprisoned for not less than five [(5)] years nor more than thirty [(30)] years, or fined not more than fifty thousand dollars [($50,000.00)], or both." S.C. CODE ANN. § 44–53–375(B)(2) (2012); S.C. CODE ANN. § 17–25–45 (C)(2)(a) (2012). "Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a first offense or second offense may have the sentence suspended and probation granted, and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits." S.C. CODE ANN. § 44–53–375 (2012).

[3] The sentence sheet should read "and" instead of "or" and appears to be the result of a scriveners error as the fine is mandatory and was imposed by the plea court at the time of sentencing as reflected on the sentencing sheet.

on Distribution of Crack Cocaine–Second Offense. The plea court also revoked the Applicant's probation and imposed the remainder of his seven (7) year active sentence and terminated probation (Tr. 38:11–13). The Applicant pled guilty to: 2012–GS–42–0684, Distribution of Crack Cocaine–Second Offense, which was originally indicted as Distribution of Crack Cocaine–Third Offense;[4] 2012–GS–42–0689, Possession with Intent to Distribute Crack Cocaine–Second Offense, which was originally indicted as Possession with Intent to Distribute Crack Cocaine–Third Offense;[5] 2012–GS–42–5530, Distribution of Crack Cocaine–Second Offense, which was originally indicted as Distribution of Crack Cocaine–Third Offense;[6] 2012–GS–42–5567, Distribution of Crack Cocaine Within Half Mile of a School;[7] 2012–GS–42–5532, (Alford plea) Trafficking in Crack Cocaine–10-28 Grams, Second Offense, which was originally indicted as Trafficking in Crack Cocaine–10-28 Grams, Third Offense;[8] 2012–GS–42–5532A,

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[4] See notes 1 & 2, *supra*.

[5] Possession with Intent to Distribute Crack Cocaine–Second Offense is a serious felony and "for a second offense or if, in the case of a first conviction of a violation of this section, the offender has been convicted of any of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, the offender must be imprisoned for not less than five [(5)] years nor more than thirty [(30)] years, or fined not more than fifty thousand dollars [($50,000.00)], or both." S.C. CODE ANN. § 44–53–375(B)(2) (2012); S.C. CODE ANN. § 17–25–45 (C)(2)(a) (2012). "Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a first offense or second offense may have the sentence suspended and probation granted, and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits." S.C. CODE ANN. § 44–53–375 (2012). Possession with Intent to Distribute Crack Cocaine–Third Offense is a serious felony and "for a third or subsequent offense or if the offender has been convicted two or more times in the aggregate of any violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, the offender must be imprisoned for not less than ten [(10)] years nor more than thirty [(30)] years, or fined not more than fifty thousand dollars [($50,000.00)], or both." S.C. CODE ANN. § 44–53–375(B)(3) (2012); S.C. CODE ANN. § 17–25–45 (C)(2)(a) (2012). "Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsection (A), may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted." S.C. CODE ANN. § 44–53–375 (2012).

[6] See notes 1 & 2, *supra*.

[7] Distribution of Crack Cocaine–Proximity is a serious felony punishable by imprisonment not more than ten (10) years or a fine of not more than ten thousand dollars ($10,000.00), or both. S.C. CODE ANN. § 44–53–445 (2012). S.C. CODE ANN. § 17–25–45 (C)(2)(b) (2012).

[8] Trafficking in Crack Cocaine–10-28 Grams, Third Offense is a violent, serious felony punishable by "a mandatory minimum term of imprisonment of not less than twenty-five [(25)] years nor more than thirty [(30)] years, no part of

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Possession of a Weapon During the Commission of a Violent Crime;[9] 2012–GS–42–5564, Possession with Intent to Distribute Crack Cocaine Within Half Mile of a School;[10] and 2012–GS–42–5533, Possession of Marijuana, which was originally indicted as Possession of Marijuana–First Offense.[11] Additionally, the State dismissed two (2) Distribution of Crack Cocaine–Third Offense charges and Possession with Intent to Distribute Marijuana Within Half Mile of a School as a condition of the plea.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

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which may be suspended nor probation granted, and a fine of fifty thousand dollars [($50,000.00)]." S.C. CODE ANN. § 44–53–370(e)(2)(a)(3) (2012); S.C. CODE ANN. § 17–25–45 (C)(2)(b) (2012); S.C. CODE ANN. § 16–1–60 (2012). Trafficking in Crack Cocaine–10-28 Grams, Second Offense is a violent, serious felony punishable by "a term of imprisonment of not less than five [(5)] years nor more than thirty [(30)] years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars [($50,000.00)]."

[9] The offense of Possession of a Firearm During the Commission of a Violent Crime provides:

> (A) If a person is in possession of a firearm or visibly displays what appears to be a firearm or visibly displays a knife during the commission of a violent crime and is convicted of committing or attempting to commit a violent crime as defined in Section 16-1-60, he must be imprisoned five [(5)] years, in addition to the punishment provided for the principal crime. This five-year [(5)] sentence does not apply in cases where the death penalty or a life sentence without parole is imposed for the violent crime.
> (B) Service of the five-year [(5)] sentence is mandatory unless a longer mandatory minimum term of imprisonment is provided by law for the violent crime. The court may impose this mandatory five-year [(5)] sentence to run consecutively or concurrently.
> (C) Except as provided in this subsection, the person sentenced under this section is not eligible during this five-year [(5)] period for parole, work release, or extended work release. The five [(5)] years may not be suspended and the person may not complete his term of imprisonment in less than five years pursuant to good-time credits or work credits, but may earn credits during this period. The person is eligible for work release, if the person is sentenced for voluntary manslaughter (Section 16-3-50), kidnapping (Section 16-3-910), carjacking (Section 16-3-1075), burglary in the second degree (Section 16-11-312(B)), armed robbery (Section 16-11-330(A)), or attempted armed robbery (Section 16-11-330(B)), the crime did not involve any criminal sexual conduct or an additional violent crime as defined in Section 16-1-60, and the person is within three [(3)] years of release from imprisonment.

S.C. CODE ANN. § 16–23–490 (2011).

[10] Possession with Intent to Distribute Crack Cocaine–Proximity is a serious felony punishable by imprisonment not more than ten (10) years or a fine of not more than ten thousand dollars ($10,000.00), or both. S.C. CODE ANN. § 44–53–445 (2012). S.C. CODE ANN. § 17–25–45 (C)(2)(b) (2012).

[11] Possession of Marijuana–First Offense is a misdemeanor punishable by six (6) months' imprisonment or a one thousand dollar ($1,000.00) fine, or both. S.C. CODE ANN. § 44–53–370(d)(2) (2012). Simple Possession of

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1. Ineffective Assistance of Counsel:
   a. "Counsel rendered erroneous advice."
   b. "Counsel failed to file a motion for reconsideration."
2. Involuntary guilty plea:
   a. "Counsel said I would get over 100 years if I did not plead."

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. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. CODE ANN. § 17–27–80 (2003).

Summary of the Testimony

The Applicant testified that he had previously met with Beverly Jones, Esquire and Counsel, James Cheek, Esquire, but only Counsel represented him at his plea. The Applicant testified that he spoke with Counsel about the charges and exposure he faced if he did not accept the plea offer. The Applicant testified that he discussed the possibility of proceeding to trial on the trafficking charge, but decided against that because of the possibility that based on the "three strikes" law, he could face life in prison without possibility of parole. The Applicant alleged the State would dismiss the charges because he was not the assailant captured on the video.

The Applicant testified that Beverly Jones conveyed and he understood that he would receive a negotiated sentence of twelve (12) years on all cases if he accepted the plea. He likewise testified that was his understanding of the offer during Counsel's representation. The

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Marijuana is a misdemeanor punishable by thirty (30) days' imprisonment or a minimum one hundred dollar ($100.00) or maximum two hundred dollar ($200.00) fine. S.C. CODE ANN. § 44–53–370(d)(4) (2012).

Applicant also testified that he was expecting the sentencing court to suspend his active sentence, but that his sentence on Possession of a Firearm During the Commission of a Violent Crime could be run consecutively or concurrently. The Applicant testified that based on his understanding that the Assistant Solicitor would recommend twelve (12) years; he would have taken the twelve (12) year offer. He further testified that if he took an "open plea," the judge would determine his sentence within the penalty range of five (5) to fifteen (15) years. The Applicant then clarified that his understanding was without the drug charges that he alleged would be dismissed based on the State's lack of video evidence, his exposure would have been ten (10) years and he would have received a suspended sentence.

However, the Applicant admitted that he pled straight up on all charges with a penalty range of five (5) to thirty (30) years and with no recommendation. The Applicant asserted that the State instead recommended a fifteen (15) to twenty (20) year sentence. The Applicant testified that he was aware that the narcotics officers intended to ask for fifteen (15) to twenty (20) years at the plea based upon what Counsel had shared with him, but he believed the Assistant Solicitor would not make a recommendation. The Applicant alleged he was unaware of the sentencing procedure. The Applicant testified that he felt the State reneged on its promise of a straight up plea without a sentencing recommendation and thus he was prejudiced. However, on cross examination, the Applicant admitted he understood the colloquy, the penalty ranges, and the Solicitor's argument on sentencing.

The Applicant testified that he never said anything to Counsel after hearing the recommendation, but he wanted Counsel to file a motion for reconsideration. The Applicant prayed for the following relief: either his initial twelve (12) year plea deal, reopen the time to file motion for reconsideration or vacate sentences and convictions and remand for a new trial.

Beverly Jones, Esquire testified that she recalled representing the Applicant on cases assigned between October 2012 and November 2012. Jones testified that the Applicant was formerly represented by Max Singleton, private counsel, on six (6) old charges from 2011. She further testified that Counsel was handling the Applicant's instant case. Jones testified that when she first spoke with the Applicant, the Applicant had already met with Counsel and discussed all of the charges. Jones testified that she understood that the plea offer was all-inclusive and for all outstanding charges, including several in which the Applicant was represented originally by a private attorney. At that time, the offer would be for second offense charges and a penalty range of five (5) to twenty (20) years. She testified that Applicant's bond was revoked at that time, so he was in the jail. She further testified that the Applicant rejected that initial offer and then his private counsel was relieved because of problems with his practice and problems communicating with Counsel. At that point, Jones testified, the Applicant's case was transferred to the Office of the Public Defender. Jones testified that a twelve (12) year offer was never extended during her representation and her notes did not reflect a twelve (12) year offer. She further testified the only offer she was aware of was a reduction of the third offenses to second offenses thus reducing the applicable penalty range. She opined that the offer must have been extended to Counsel.

Jones testified that she met with the Applicant twice the week before his plea to summarize the charges against the Applicant and his probationary case as well as discuss the possibility of entering a no contest plea. Jones opined that part of the Applicant's problem was that he could not "stick" with a lawyer and could have lost potential offers among attorneys. Jones testified that she had no further conversations with the Applicant, but that Counsel and the Applicant met thereafter. Finally, she testified that she deferred to Counsel regarding the facts of

the Applicant's plea because he had the most current conversations with the Applicant and handled the Applicant's plea while she was out of the office for a death in the family.

Counsel testified that he interviewed the Applicant at the jail and spoke with the Assistant Solicitor on Applicant's behalf regarding his pending cases. Counsel testified that he also reviewed the discovery materials for all pending cases and had reviewed the problems with the Applicant's case with another attorney—Singleton—who was out of communication with the Solicitor's office. Counsel clarified that the parties executed a consent order relieving private counsel. Counsel testified that based on the discovery, he performed research and his strategy was to use the Applicant's physical appearance to distinguish his identity from the perpetrator captured in the videos. He further testified that the strategy to prove that the Applicant was not the person on the video was the catalyst to negotiation on all of his new charges and the ability to deal with them all at one time. Then, Counsel testified, he would deduce which charges could not be "paired down" and attempt negotiations with the Solicitor.

The Solicitor's office ultimately agreed to reduce the charges to second offenses so that the penalty range would be between five (5) and thirty (30) years, but their hands were tied somewhat because the narcotics officers planned to be present at the plea and request a sentence of fifteen (15) to twenty (20) years. Counsel further testified that the officers were "steadfast" in their request. Counsel explained to the Applicant that the Solicitor would remain silent during the sentencing proceeding because the State had already agreed to a reduction in the charges and a straight up plea to a five (5) to fifteen (15) year range. He testified that based on his experience, the State would not normally ask for a specific sentence and that the Defense could then argue for the mandatory minimum sentence. Counsel testified that the narcotics officers would then ask for a specific sentencing range. Counsel elaborated that if the narcotics officers were not present

at the hearing, as an officer of the court, the Solicitor was obligated to divulge the narcotics officers' wishes.

Counsel testified that the Solicitor's office extend a twelve (12) year negotiated plea offer to Counsel twice, which the Applicant clearly and adamantly rejected. Counsel testified that the Applicant rejected the twelve (12) year offer twice. Counsel testified that the day before the Applicant's plea on February 11, 2013 and the final time the Assistant Solicitor extended the twelve (12) year offer, Counsel invited the Solicitor to discuss the offer with the Applicant and the Applicant still declined the State's offer. The Solicitor was clear that once the Applicant rejected the twelve (12) year offer the day before the plea, the State would be extending no further offers. Counsel testified that ultimately the Applicant knew that if the straight up plea arrangement to second offenses was revoked, the Applicant would be facing all third offenses with a minimum sentence of twenty-five (25) to thirty (30) years and the potential of life imprisonment without possibility of parole. The day before the Applicant's plea, the Solicitor again made clear to Counsel that the State would seek life imprisonment without possibility of parole. The night before the plea, Counsel testified, when he visited the Applicant at the jail, the Applicant asked for the twelve (12) year offer back. Counsel informed the Applicant that the twelve (12) year offer was "off the table," to which the Applicant responded that he wanted to get his plea "over with." Counsel was unable to convince the Solicitor to re-extend the offer a third time the morning of the Applicant's plea. Counsel then arranged for the Applicant's transport the next morning so that the Applicant could plead to the second offenses straight up. Counsel opined that the Applicant made the wise decision to plead to the second offenses straight up with the penalty range of five (5) to thirty (30) years in order to avoid life imprisonment without possibility of parole and that the arrangement inured to his benefit.

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Counsel elaborated that the State allowed the reduction in charges from third offenses to second offenses but that the Assistant Solicitor did not want to negotiate and wanted to try each charge as third offenses. The Applicant wanted a negotiated plea and would not agree to the recommendation or reduction in offense level. Counsel testified that after all of his effort and negotiations and even convincing the Solicitor speak with the Applicant personally, the Applicant still rejected the twelve (12) year negotiated plea. The Assistant Solicitor explained to the Applicant that he was taking the risk that law enforcement and his boss would be angry at him for entering into a negotiated plea of twelve (12) years on the Applicant's case. Counsel explained that the narcotics agents were present the day before the Applicant's plea and reluctantly agreed to the twelve (12) year negotiated plea. When the Applicant rejected the plea, they were "furious" and wanted the State to seek life imprisonment without possibility of parole at trial. He further testified that after all of this back and forth the Assistant Solicitor was "through" and had no further interest in negotiating and was ready to go to trial.

The Applicant ultimately proceeded with a straight up plea with the reduction in charges and although the State made no recommendation on sentencing, the State conveyed the narcotics officers' request for a fifteen (15) to twenty (20) year sentence. Counsel testified that he did not recall the Applicant request he file a motion for reconsideration. Counsel further testified that even if the Applicant would have requested a motion for reconsideration, he would not have filed one because it would not have been in the Applicant's best interest. He testified that he predicted that all the narcotics agents would most certainly attend any hearing and, considering the Applicant's behaviour the State would be "on board," with the agents requesting a more stringent sentence around twenty-five (25) to thirty (30) years. He further testified that he told the Applicant that the sentence he received would give him the chance to see his children "grow up."

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Ineffective Assistance of Counsel

In a PCR action, "the burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 622, 300 S.E.2d 482, 483 (1983)). Where the Applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 686, 104 S. Ct. at 2064).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. See Strickland at 690, 104 S. Ct. at 2066. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See id. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. See id. at 117–18, 386 S.E.2d at 625. Under this prong, attorney performance is measured by its "'reasonableness under prevailing professional norms.'" Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 668, 104 S. Ct. at 2052). Second, counsel's deficient performance must have 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 (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068). "A reasonable probability is a

probability sufficient to undermine confidence in the outcome of the trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068).

The Applicant alleges he received ineffective assistance of counsel. This Court finds the testimony of Counsel to be more credible than the testimony of Applicant as to all allegations. This Court finds Counsel is a criminal practitioner who has extensive experience in the trial of serious offenses. This Court finds Counsel provided credible testimony during the Applicant's evidentiary hearing. Counsel conferred with the Applicant and discussed the pending charges, the elements of the charges and what the State was required to prove, the Applicant's version of the facts, the penalty ranges associated with the charged offenses, and the potential time the Applicant could serve incarcerated. The record reflects that Counsel effectively explained the charges, their associated penalty ranges, and the consequences of pleading guilty. The record is completely devoid of any evidence that Counsel failed to fully explain all of the State's plea offers. The record further reflects that the Applicant's plea was entered freely, voluntarily, knowingly, and intelligently.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that the Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 5, 239 S.E.2d 750, 752 (1977); Strickland, 466 U.S. at 687–88, 104 S. Ct. 2052, 2064–65; Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 687–88, 104 S. Ct. at 2064–65, Turner v. Bass, 753 F.2d 342, 348 (4th Cir. 1985), *rev'd on other grounds*, Turner v. Murray, 106 S. Ct. 1683 (1986); Marzullo v. Maryland, 561 F.2d 540, 543

12-14-28

(4th Cir. 1977)). This Court further finds Counsel thoroughly conferred with the Applicant and provided more than competent representation. This Court finds that Counsel's representation did not fall below an objective standard of reasonableness.

Regarding Applicant's allegation that Counsel was ineffective for providing erroneous sentencing advice and failing to file a motion for reconsideration on his behalf, this Court finds that the Applicant has failed to meet his burden of proof. Counsel's testimony that not only was a motion for reconsideration never requested, but that it would not have been in the Applicant's best interest, was credible. The testimony of Counsel was credible that the Applicant on several occasions adamantly rejected a negotiated twelve (12) year plea offer. This Court finds that Counsel did all he could on Applicant's behalf, conveyed all plea offers, and zealously advocated for Applicant. As noted in the plea transcript, the Applicant faced a potential of 175 years and over $300,000 in fines if he plead to the charges as indicted. This Court can find no deficiency on Counsel's behalf and no evidence that the Applicant would have proceeded to trial, but for, any advice from Counsel. Therefore, this claim is denied and dismissed.

Failure to Advise of Penalty and Sentencing Consequences

The Applicant alleges Counsel was ineffective for providing him erroneous advice and failing to inform the Applicant of the penalty ranges associated with his charges, the potential sentences he was facing, the terms of the plea offer, and the consequences of entering his plea. Additionally, the Applicant challenges his sentence because he argues Counsel represented that his plea would be "open" and not subject to any recommendations and negotiations. This Court finds this allegation is wholly without merit. This Court finds credible Counsel's testimony that he informed the Applicant of the following: the elements of the charged offenses; the penalty ranges of the offenses; the potential sentences associated with his charges; and his LWOP

eligibility. Further, this Court finds that Counsel actively involved the Applicant during crucial plea negotiations. This Court finds credible Counsel's testimony that he explained all potential contingencies of each plea agreement scenario.

This Court finds Counsel was not deficient in this regard and his performance did not affect the outcome of the Applicant's proceeding. See Randall v. State, 356 S.C. 639, 641–42, 591 S.E.2d 608, 609–610 (2004) (citing Jackson v. State, 349 S.C. 62, 562 S.E.2d 475 (2002)) (failure to advise of collateral consequences of parole eligibility before the applicant proceeds to trial not ineffective assistance of counsel); Knox v. State, 340 S.C. 81, 530 S.E.2d 887 (2000), *overruled on other grounds*, State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005) (counsel is not ineffective for failing to advise a defendant regarding parole eligibility in connection with his guilty plea because it is a collateral consequence of sentencing); Smith v. State, 329 S.C. 280, 494 S.E.2d 626 (1997) (unless counsel gives erroneous advice, parole information is not a ground for collateral attack of a guilty plea); Brown v. State, 306 S.C. 381, 412 S.E.2d 399 (1991) (guilty plea is not rendered involuntary if the defendant is not informed of the collateral consequences of his sentence).

"A defendant must be advised of a mandatory punishment for the offense to which he is pleading." State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980). Despite counsel's alleged failure to advise his or her client regarding the mandatory minimum sentences, the trial judge cures any misconception by properly advising the defendant of the penalty ranges at the plea hearing. Knox, 340 S.C. at 86, 530 S.E.2d at 889 (citing Moorehead v. State, 329, S.C. 329, 496 S.E.2d 415 (1998)). Cf. Smith v. State, 329 S.C. 280, 284–85, 494 S.E.2d 626, 628–29 (1997) (enumerating collateral consequences of burglary conviction and holding that guilty plea not rendered invalid for counsel's failure to advise of each consequence associated with violent

14-9428

crimes). This Court finds that any alleged deficiencies in the Applicant's personal understanding of the ramifications of his plea were cured by both the Solicitor's and law enforcement's statements as well as the plea court's summary of the plea arrangement during the colloquy. Specifically, the Solicitor stated that the Applicant's plea was without recommendation, but that the Applicant was getting the benefit of a possible five (5) to thirty (30) year sentencing range, instead of the mandatory minimum twenty-five (25) years associated with Trafficking in Crack Cocaine–Third Offense (Tr. 5:9–11). Thereafter, the State argued for a fifteen (15) to twenty (20) year sentence and the Defense argued for the minimum (5) year sentence (Tr. 35:14–36:20). The transcript of the guilty plea confirms that the Applicant understood all penalty ranges, the potential consequences of his plea, and the posture of the plea arrangement.

This Court finds that the Applicant's assertion that he was unaware of sentencing procedure is without merit. The Applicant's criminal history is extensive at best—including a 1998 Manufacturing, Distribution, and Possession with Intent charge, a 2001 Possession of Crack Charge, a 2002 Criminal Domestic Violence charge, a 2003 Criminal Domestic Violence–Second Offense charge, a 2003 ABHAN charge, and a 2008 Distribution of Crack Cocaine–Second Offense, for which the Applicant was on probation during the commission of the instant offenses, while he was out on bond, and during his guilty plea (Tr. 34:13–19; 35:9–13)—and indicates that he was aware of the criminal justice system and sentencing process.

The Applicant's assertion that Counsel represented that he would be pleading straight up when in fact the Solicitor made a recommendation as to sentencing is without merit.[12] Counsel's

[12] The Applicant made similar assertions that he had the option of obtaining a potential suspended sentence and that the State would dismiss charges. Upon review of the record, the State did dismiss a number of charges as a concession to the Applicant's straight up plea. The Applicant failed to articulate any grounds supporting his assertion. Further, in his Application for PCR, the Applicant asserts that Counsel erroneously informed him that he would serve a one hundred (100) year sentence in order to induce his guilty plea. In fact, the Applicant's exposure

15 of 28

credible testimony and the contemporaneous record of the proceedings reveal that Counsel, the Solicitor, and law enforcement negotiated a straight up plea without negotiations or recommendations to lesser-included offenses and a penalty range of five (5) to thirty (30) years. According to the terms of the plea arrangement, the Solicitor would allow law enforcement to speak on behalf of the community and ask the plea court to impose a sentence in the range of fifteen (15) to twenty (20) years. Likewise, the Defense could argue for the mandatory minimum of five (5) years. The parties merely presented arguments to the sentencing court and left the final calculation of penalty entirely at the discretion of the plea court. The parties did not enter into any recommendations or negotiations. Further, Counsel and the Solicitor painstakingly explained the arrangement to the Applicant prior to and during the plea. Thus, the Applicant's assertion that he erroneously pled to a recommended sentence and not an "open plea" is without merit.

Thus, this Court finds the Applicant has failed to carry his burden of proving Counsel was ineffective in this regard.

Failure to File Motion for Reconsideration

The Applicant asserts that Counsel was ineffective for failing to file a motion to reconsider the Applicant's sentence.

"The authority to change a sentence rests exclusively with the sentencing judge and is within his or her discretion." State v. Hicks, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008) (citing State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981)). "A judge or other sentencing authority is to be accorded very wide discretion in determining an appropriate sentence, and must be permitted to consider any and all information that reasonably might bear

was LWOP, if he rejected the offers and plea arrangement and proceeded to trial and up to one hundred eighty-two

16 of 28

on the proper sentence for the particular defendant, given the crime committed." Hicks, 377 S.C. at 325, 659 S.E.2d at 500.

The Applicant offers no corroborating evidence in support of his assertion that he requested Counsel file a motion for reconsideration and appeal of his guilty plea. Additionally, this Court finds that based on Counsel's credible testimony and a review of the transcript, there is no evidence or indication that had Counsel filed a motion for reconsideration, he would have been successful.

Moreover, Counsel articulated a valid strategy supporting his contention that a motion to reconsider would actually work against the Applicant's best interest. Counsel testified that he feared that based on the history of plea negotiations, the Applicant's behavior and failure to cooperate, and the Solicitor's and law enforcement's vehement plea for a stringent sentence of incarceration, the Applicant may have received a lengthier sentence before the plea judge on rehearing. "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Strickland, 466 U.S. at 693, 104 S. Ct. at 2067. Where counsel articulates a valid strategic reason for his action or inaction, based on an objective standard of reasonableness, counsel's performance should not be found ineffective. See Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes, 308 S.C. at 548, 419 S.E.2d at 779.Accordingly, this Court finds that Counsel was not deficient in this regard.

Involuntary Guilty Plea

In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999).

(182) years' imprisonment if the plea court ran his sentences consecutively (Tr. 12:19–13:23; 21:18–22:10).

17 of 28

A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566, 566 (4th Cir. 1976).

When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill, 474 U.S. at 52, 106 S. Ct. at 366; Roscoe, 345 S.C. at 20, 546 S.E.2d at 419 (citing Hill, 474 U.S. at 52, 106 S. Ct. at 366; Jackson v. State, 342 S.C 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243–44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991) (citing State v. Hazel, 275 S.C. 392, 394, 271 S.E.2d 602, 602 (1980)). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing.

Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009) (citing Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 650 (2000)). See Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). "Specifically, the voluntariness of a guilty plea is not determined by an examination of a 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 also from the record of the PCR hearing." Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000). "In order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of the plea." Id. (citing Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991); State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980)). 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 court and defendant, between court and defendant's counsel, or both." State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993). "Under the procedure, a defendant, before his guilty plea may be accepted, is examined under oath on the voluntariness of his plea, including particularly its freedom from coercion by threat." Edmonds, 546 F.2d at 567. When a defendant pleads guilty on the advice of counsel, the plea may be attacked through only a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citing Al-Shabazz v. State, 338 S.C. 354, 363–64, 527 S.E.2d 742, 747 (1999)). Moreover,

> a signed document that informs a defendant of the charges against him, such as a sentencing sheet, gives rise to a presumed regularity in the proceedings and signifies that the defendant has been notified of the charges to which he has pled guilty. . . . In a criminal case, a defendant who chooses to plead guilty has ample opportunity to be fully notified of the charges he is pleading guilty to. . . . [A] defendant may check a box to indicate that he wishes to plead guilty. In addition, a defendant may sign the sentencing sheet, indicating the defendant is informed of the choices and has selected the box that corresponds to the course of action the defendant wants to take in the case. As a result, we believe that all of these factors

19 of 28

indicate that the Defendant had notice of the charges to which he chose to plead guilty.

State v. Smalls, 364 S.C. 343, 347, 613 S.E.2d 754, 756 (2005).

This Court finds that the Applicant failed to meet his burden of proof as to this claim. This Court finds the contemporaneous recording of the plea and testimony to be most persuasive and compelling. At the commencement of the Applicant's plea hearing, the Solicitor published the charges and indictments for the record, including the plea arrangement and reduction in charges, the Alford pleas—Trafficking in Crack Cocaine–10-28 Grams Second Offense, Distribution of Crack Cocaine–Proximity, and Possession of a Firearm During the Commission of a Violent Crime—and the dismissed charges (Tr. 3:5–4:24). The Solicitor stated that the Applicant's plea was without recommendation, but that the Applicant was getting the benefit of a possible five (5) to thirty (30) year sentencing range, instead of the mandatory minimum twenty-five (25) years associated with Trafficking in Crack Cocaine–Third Offense (Tr. 5:9–11). Thereafter, the State argued for a fifteen (15) to twenty (20) year sentence and the Defense argued for the minimum (5) year sentence (Tr. 35:14–36:20). The State published the Applicant's prior record, which consists of a 1998 Manufacturing, Distribution, and Possession with Intent charge, a 2001 Possession of Crack Charge, a 2002 Criminal Domestic Violence charge, a 2003 Criminal Domestic Violence–Second Offense charge, a 2003 ABHAN charge, and a 2008 Distribution of Crack Cocaine–Second Offense, for which the Applicant was on probation during the commission of the instant offenses, while he was out on bond, and during his guilty plea (Tr. 34:13–19; 35:9–13). The Applicant affirmed that he was pleading guilty to the charged offenses according to the Solicitor's publication of the plea arrangement and in consideration of the plea colloquy (Tr. 10:3–11:3; 17:9–19:19; 20:5–25; 22:8–10). The Applicant understood and admitted the facts of the charged offenses (29:2–7).

2008 28

The Applicant agreed that he understood the possible penalty ranges and agreed that he was pleading guilty to the offenses with the understanding that should the court run his sentences consecutively, he would be facing over one hundred seventy-five (175) years in jail and three hundred twenty one thousand dollars ($321,000.00) in fines (Tr. 12:19–13:23).[13] The Applicant affirmed that he understood the mandatory minimum sentences associated with the charged offenses; that he was not eligible for parole on the Possession of a Weapon During the Commission of a Violent Crime charge; that the Distribution of Crack Cocaine–Second Offense, Trafficking Crack Cocaine–Second Offense, Possession with Intent to Distribute Crack–Proximity, Distribution of Crack–Proximity, and Possession with Intent to Distribute Crack Cocaine–Second Offense charges were considered serious offenses and thus he was subject to the "three strikes" law and life imprisonment without possibility of parole (Tr. 13:25–15:10). The Applicant told the court that he understood he was receiving a concession on behalf of the State to enter Alford pleas and that Alford pleas are legally indistinguishable from guilty pleas and admissions of guilt (Tr. 15:11–16:12). The Applicant indicated that he understood drug enhancements and the enhanced sentences associated with multiple drug possession charges (Tr. 15:13–23). The Applicant also told the court he understood that Trafficking in Crack Cocaine is a violent crime and that multiple violent crime convictions may impact his probation and parole eligibility (Tr. 16:24–17:8).

The Applicant told the Court that he had not consumed any alcohol, drugs, medication, or other intoxicants that would affect his ability to understand why he was pleading guilty and

[13] Although the plea court accidentally misspoke when enumerating the penalty range for Distribution of Crack Cocaine–Second Offense, stating that the maximum penalty was thirty (30) days instead of thirty (30) years (Tr. 11:24–13:1), he later clarified that Distribution of Crack Cocaine–Second Offense carries a mandatory minimum sentence of five (5) years' imprisonment. S.C. CODE ANN. § 44–53–375(B)(2) (2012). Therefore, there was no reason for the Applicant to believe that a felony offense carrying a mandatory minimum five (5) year term of imprisonment carried a maximum term of imprisonment of thirty (30) days.

asserted that he had no further questions for his attorney (Tr. 11:13–24). The plea court advised the Applicant of his constitutional rights, which he thereafter waived (Tr. 11:25–12:18). The Applicant affirmed that he was pleading voluntarily, free from threats and promises (19:20–20:1). The Applicant also stated that he was satisfied with his lawyer's services (Tr. 20:2–4)

Further, the Applicant was on probation at the time of his plea for Distribution of Crack Cocaine–Second Offense and was sentenced to seven (7) years' imprisonment provided upon the service of five hundred four (504) days time served and thirty-six (36) months' probation (Tr. 21:1–17). The Applicant acknowledged that by entering his guilty plea, he was probably violating his probation and his active sentence could be imposed in full and run consecutively to his sentence on the instant offenses for a total of one hundred eighty two (182) years' imprisonment (Tr. 21:18–22:10). The Applicant accepted service of his probation warrant, indicated that he had an opportunity to review the citation and violation report with his attorney, and admitted that he willfully violated the terms of his probation (Tr. 22:14–23:7).

This Court finds that the Applicant pled freely and voluntarily. Therefore, this claim is denied and dismissed.

Remedy Provided by Davie v. State

The Applicant asserts that he is entitled to his twelve (12) year negotiated plea and a belated motion to reconsider. The Applicant requests this Court impose the remedy provided by Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) and Bell v. State, 410 S.C. 436, 765 S.E.2d 4 (Ct. App. 2014). Pursuant to the professional standards espoused by the American Bar Association and the South Carolina Rules of Professional Responsibility, "counsel is required to fully communicate [a plea offer] with the client so that the client can make an informed decision regarding any proposals by the State." Davie, 381 S.C. at 609, 675 S.E.2d at 420. Once the PCR

22-4-28

court determines that counsel was ineffective for failing to adequately communicate a plea deal to his or her client, "the question becomes whether [the applicant] was prejudiced by this deficient performance." Id. The PCR court uses a case-by-case approach in "assessing whether but for counsel's deficient performance a defendant would have accepted the State's proposed plea bargain and that he would have benefited from the offer. Id. at 613, 675 S.E.2d at 422. "The second prong of the ineffective assistance inquiry—prejudice—is shown by demonstrating through *objective* evidence . . . [the existence of] a reasonable probability that, but for counsel's advice, [the defendant] would have accepted the plea. Mere statements by the PCR petitioner that he would have accepted the plea agreement but for counsel's incompetence are insufficient to show prejudice because they are self-serving and inherently unreliable." Judge v. State, 321 S.C. 554, 562, 471 S.E.2d 146, 150 (1996). "[D]epending on the facts of the case, a defendant's self-serving statement may be sufficient to establish actual prejudice." Davie, 381 S.C. at 613, 675 S.E.2d at 422. Where the applicant does not express a desire to proceed to trial, the remedy for counsel's failure to communicate a plea offer is remand for a new sentencing hearing, not specific performance of the purported offer. See id. at 615–616, 675 S.E.2d at 423–24.[14]

This Court finds Counsel's testimony credible and the Applicant's testimony that he did not understand the terms of his plea without merit. Counsel effectively communicated the State's offers to the Applicant and therefore he was not inefficient. Moreover, not only did Counsel himself effectively communicate the terms of the twelve (12) year negotiated plea offer to the Applicant twice, but on the eve of his plea hearing, Counsel implored the Solicitor himself to

[14] The Davie court further held: "Given that we cannot compel the State to reinstate or the circuit court judge to accept the original, fifteen-year plea offer, we remand the case for a new sentencing hearing with the limitation that Petitioner's sentence should not exceed the original sentence of twenty-seven years' imprisonment." Davie, 381 S.C. at 616, 675 S.E.2d at 424.

23 of 28

explain the terms of the offer directly to the Applicant. The Applicant adamantly rejected the negotiated plea twice. Having determined Counsel adequately explained the terms of the offer to the Applicant, this Court need not reach the question of whether the Applicant suffered actual prejudice by Counsel's alleged failures.

Nevertheless, the underlying facts of the Applicant's case are distinguishable from Davie and Bell. In Davie, the court found that the applicant was prejudiced by counsel's failure to communicate the State's offer based on plea counsel's admission that he failed to communicate the offer to the applicant; the admission by both plea counsel and the applicant that had the offer been communicated to the applicant, he would have accepted the agreement; and based on the fact that had the applicant accepted the offer, he would have received a significantly lower sentence than the 27 year sentence actually imposed. See Davie, 381 S.C. at 614, 675 S.E.2d at 423. The facts of Bell are substantially similar to Davie, although, in Bell, the applicant's "trial counsel testified Bell's file contained a note indicating the solicitor made an offer of ten years imprisonment" and "Bell testified he did not know anything about a plea offer until his sentencing." Bell, 410 S.C. at 442, 765 S.E.2d at 7. However, the Solicitor and Bell's counsel disagreed as to whether the State ever tendered an offer. Id.

Here, credibly Counsel testified the Applicant was aware of the negotiated plea offer, its expiration date, and all contingencies and consequences of the Applicant's rejection of the deal. Moreover, by the Applicant's own admission at the hearing, he testified to understanding the basic terms of the twelve (12) year offer as communicated by both Jones and Counsel. Finally, on the eve of trial, the Applicant chose to take advantage of the State's concession that they would waive seeking life imprisonment without possibility of parole, seek convictions on second offenses instead of third offenses, and allow the Applicant to plead under Alford. Although the

24 of 28

Applicant could have received as little as five (5) years imprisonment based on the straight up plea arrangement with no negotiations and recommendations, the sentencing court still could have imposed the maximum penalty allowable of thirty (30). Ultimately, the fifteen (15) year sentence imposed by the plea court was substantially more generous than the Applicant's possible exposure to life imprisonment without possibility of parole if he was found guilty at trial. Moreover, the Applicant never testified that had he been presented with the initial deal, he would have accepted it; he simply asked this Court to give him his deal "back." This Court finds compelling Counsel's ability to obtain any kind of agreement whatsoever on behalf of the Applicant once he had rejected prior negotiations, jeopardized the Solicitor's relationship with his boss and law enforcement, and infuriated the narcotics agents assigned to his case. This Court further finds that hindsight is not an adequate legal basis for vacating a sentence. Accordingly, this Court finds that the Applicant failed to show actual prejudice as required pursuant to Davie and Strickland. This Court finds the Applicant has failed to meet his burden of proof and therefore declines to remand the Applicant's case for resentencing.

This Court notes that Davie and its progeny does not stand for the proposition that upon Counsel's prejudicial failure to communicate a plea offer, a PCR applicant is entitled to a belated, direct appeal. As this Court has found *supra*, the Applicant is not entitled to a belated, direct appeal, pursuant to established precedent.

All Other Allegations

As to any and all allegations that the Applicant raised in the application and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant abandoned such allegations. Therefore, they are hereby denied and dismissed.

CONCLUSION

This Court finds in regards to the allegations of ineffective assistance of counsel and involuntary guilty plea, the Applicant's testimony as a whole was not credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct did not fall below an objective standard of reasonableness. This Court finds that the Applicant failed to meet his burden of proof to support his claims. Therefore, they are denied and dismissed.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test specifically that Counsel failed to render reasonably effective assistance under prevailing professional norms. See Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant. The Applicant failed to show that Counsel's performance was deficient. Therefore, this Court need not address whether the Applicant was prejudiced by Counsel's representation. See id.

Although the Applicant testified that he was prejudiced by Counsel's erroneous advice and ineffective assistance, he merely claimed that if he would have known he was pleading to a "recommended" sentence, he would have accepted his previous negotiated plea offer. The Applicant has failed to meet his burden of proving prejudice in connection with an involuntary guilty plea. Roscoe, 345 S.C. at 21, 546 S.E.2d at 419 (citing Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (1991); Ray v. State, 303 S.C. 374, 401 S.E.2d 151 (1991); Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989) (applicant failed to show any "evidence supporting a finding that the defendant's plea was induced such that, but for the erroneous advice, the defendant

would not have pled guilty but would have insisted on going to trial"); see also Roscoe, 345 S.C. at 20 n.6, 546 S.E.2d at 419 n.6 (citing Smith v. State, 329 S.C. 280, 494 S.E.2d 626 (1997); Simpson v. State, 317 S.C. 506, 455 S.E.2d 175 (1995); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991)) ("Although we have consistently held a defendant must have a full understanding of the consequences of his plea and of the charges against him, . . . the defendant must also demonstrate prejudice to be entitled to relief on PCR.").

Accordingly, The Applicant's complaints concerning Counsel's performance are without merit and are denied and dismissed. Based on all the foregoing, this Court finds and concludes that the 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 must be denied and dismissed with prejudice.

This Court cautions 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. 453 454, 409 S.E.2d 395, 396 (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 if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. The Applicant's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post–Conviction Relief must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the Respondent.

27 of 28

AND IT IS SO ORDERED this 1st day of April, 2015.

Deadra L. Jefferson
Presiding Judge
Seventh Judicial Circuit

Charleston, South Carolina
At Chambers

28 of 28

Deadra L. Jefferson, Judge
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