STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) NINTH JUDICIAL CIRCUIT

16 MAY -3 PM 4:39

BERKELEY COUNTY, S.C.

Rodney Ladson, #262438,) 2012-CP-08-0637

Applicant,)

v.) **ORDER OF DISMISSAL**

State of South Carolina,)

Respondent.)

This matter comes before the Court by way of the Applicant's Post-Conviction Relief application filed February 29, 2012. Respondent filed its Return and Motion to Dismiss on July 10, 2013. The Honorable Roger M. Young, Sr. issued a Conditional Order of Dismissal on July 17, 2013. PCR counsel filed a Notice of Appearance on February 10, 2014. On June 2, 2014, the Honorable Stephanie P. McDonald issued a Form 4 order rescinding the Conditional Order of Dismissal and setting this case for an evidentiary hearing. On August 1, 2014, Applicant, through Counsel, filed a Motion for Discovery. On September 8, 2014, a hearing was held before the Honorable G. Thomas Cooper, Jr. on Respondent's motion to dismiss for Applicant's failure to file his application within the statute of limitations pursuant to S.C. Code Ann. § 17-27-45(a). On October 10, 2014, Judge Cooper ruled that there was not a pending motion to dismiss which needed to be resolved before Applicant's motion for discovery was heard. On December 9, 2014, a motion hearing was held before the Honorable J.C. Nicholson, Jr. On December 29, 2014, Judge Nicholson granted discovery in this case limited to a copy of the SLED file, a copy of plea counsel's file, a copy of the Berkeley County Solicitor's Office file if plea counsel did not have a file containing Rule 5

SCRCrimP materials and complete case documents, and a copy of the coroner's file. On June 16, 2015, Counsel filed a Supplementary Motion for Discovery. On July 1, 2015, Respondent filed a Motion for Summary Judgment. On July 22, 2015, a motion hearing was held before the Honorable Roger E. Henderson at the Charleston County Courthouse. On July 30, 2015, Judge Henderson issued an Order denying Respondent's Motion for Summary Judgment and granting Applicant's Motion for Supplemental Discovery. On December 2, 2015[1], Applicant, through Counsel, filed Amendment to Application for Post-Conviction Relief.

An evidentiary hearing into the matter was convened on January 21, 2016 at the Berkeley County Courthouse. Tricia A. Blanchette, Esquire, represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Robert Tressel, Ruby Mac Beaufort, Bertha Beaufort and Peter Skidmore also testified. This Court had before it a copy of the records of the Berkeley County Clerk of Court, records from the South Carolina Department of Corrections, the Application, the State's Return, Applicant's Response to Conditional Order of Dismissal, the guilty plea transcript, the Berkeley County Solicitor's file, the SLED file, plea counsel's file, the Berkeley County Coroner's file and the Berkeley County Sheriff's file.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. The Applicant was indicted at the March 1999 term of the Berkeley County Grand Jury for murder (1999-GS-08-0860).

---

1 While the document states the date as December 2, 2014, PCR Counsel orally corrected the date as December 2, 2015.

Michael Brown, Esquire, represented the Applicant. On November 15, 1999, the Applicant pled guilty to murder. The Honorable R. Markley Dennis sentenced him to confinement for thirty (30) years. The Applicant did not appeal his conviction or sentences.

ALLEGATIONS

In his application for post-conviction relief, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
   a. Failure to investigate the case
   b. Failure to challenge the indictment at trial
   c. Failure to tell the Judge he was under the influence of drugs during trial and plea
   d. Failure to explain he could appeal his sentence and conviction
   e. Failure to get mental evaluation

2. Due Process of Law

3. Involuntary Guilty Plea

In his amended Application, Applicant alleged the following:

1. "Ineffective assistance of counsel that resulted in an involuntary guilty plea due to counsel's failure to provide and review the Berkeley County agencies and SLED's file with Applicant prior to the entry of the guilty plea. Additionally, failure to inform Applicant and/or the court that testing had not been completed on evidentiary items sent to SLED."

2. "Ineffective assistance of counsel that resulted in an involuntary guilty plea for failure to conduct a reasonable investigation prior to the entry of Applicant's guilty plea."

3. "Ineffective assistance of counsel that resulted in an involuntary guilty plea for failure to address Applicant's mental health and prescription medication with Applicant and the court prior to the entry of Applicant's guilty plea."

4. "Alternatively, Applicant submits the responses to interrogatories from the Berkeley County Sheriff's Department and SLED, along with the file received from Berkeley County Solicitor's office, Berkeley County coroner's office, Berkeley County sheriff's office and SLED amount to newly discovered evidence that was not provided by his counsel prior to entry of his plea, was not provided in response to his repeated requests for his final and has been discovered within the last year (as a result of the discovery orders issued on the PCR action) that would have caused him not to proceed with a guilty plea and proceed to trial."

5. "Pursuant to United State v. Cronic, 466 U.S. 648, 104 S.Ct. 2039 (1984) and Nance v. Ozmint, 367 S.C. 547, 626 S.E.2d 878 (2006), Applicant alleges that counsel rendered ineffective assistance in violation of the Sixth Amendment's requirement that Applicant have counsel acting in the role of an advocate and in violation of the adversarial process the Sixth Amendment protects when counsel failed to subject the State's case to meaningful adversarial testing."

6. "Pursuant to Rule 15(b), SCRCP, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing."

At the hearing, the Applicant proceeded on his claims of ineffective assistance of plea counsel and newly discovered evidence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review a copy of the records of the Berkeley County Clerk of Court, records from the South Carolina Department of Corrections, the Application, the State's Return, Applicant's Response to Conditional Order of Dismissal, the guilty plea transcript, the Berkeley County Solicitor's file, the SLED file, plea counsel's file, the Berkeley County Coroner's file, and the Berkeley County Sheriff's file. This Court has also heard witness testimony at the post-conviction relief hearing and had the opportunity to observe the witnesses presented pass

PKF

upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law.

Statute of Limitations

This Court finds this PCR application should be dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). South Carolina Code Ann. § 17-27-45(a) reads as follows:

> An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

Applicant pled guilty to the offenses he challenges in this application on November 15, 1999. This application was filed on February 29, 2012, nearly twelve years after the one-year statutory filing period had expired. The statute of limitations contained in section 17-27-45(a) sets forth a bright-line test that must be followed by this Court in determining whether an application for PCR was filed in a timely manner. Applicant testified that the delay in filing his application was due to various mental and medical health issues. Specifically, Applicant testified that he was placed on psychotic medication by Berkeley County Detention after his arrest in March of 1999. Applicant introduced part of his medical and mental health records from South Carolina Department of Corrections and testified that he was on mental health medications until 2001 and was in mental health counseling for some time after that. Applicant also noted that in 2004 he had an eye infection and a corneal transplant in 2006-2007. Applicant further testified that he various other eye and medical issues that prevented him from filing his application until 2012. However, Applicant admitted on cross-examination that he had never been deemed mentally incompetent, nor had he

PAR

been hospitalized for mental health issues. Though Applicant has asserted various reasons why he was unable to file his application until 2012, this Court finds that the asserted reasons do not justify disregarding this one-year statute of limitations. As such, all issues related to Applicant's plea hearing are dismissed. Alternative findings on the issues of newly discovered evidence and ineffective assistance of counsel will be discussed below.

Newly discovered evidence

Applicant also claimed that the documents received from the Berkeley County Sheriff's office, the Berkeley County Coroner's office, the Berkeley County Solicitor's office, and SLED constitute newly discovered evidence under S.C. Code § 17-27-45(c). This Court finds Applicant has failed to meet his burden of proving there is newly-discovered evidence. See Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) ("The burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.").

S.C. Code § 17-27-45(c) states: "If the Applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the Applicant or **after the date when the facts could have been ascertained by the exercise of reasonable diligence.**" (emphasis added). Further, when an Applicant seeks relief on the basis of newly discovered evidence following a guilty plea, relief is appropriate only when the Applicant presents evidence showing (1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea and (2) the newly discovered evidence is of such weight and quality that, under the facts of circumstances of that particular case, the "interest of justice" requires the Applicant's

PHV

guilty plea be vacated. Jamison v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014).

While Applicant asserts he did not receive the above-referenced documentation until his PCR action, this Court finds Applicant has failed to meet the definition of newly discovery evidence, as these documents were available and discoverable prior to and during his guilty plea. This Court finds that these documents and information could have been ascertained by the exercise of reasonable diligence. Applicant has simply failed to exercise reasonable diligence pursuant to S.C. Code § 17-27-45(c). This Court finds the documents and information Applicant claimed to be newly discovered evidence satisfies neither prong under Jamison. Therefore, this Court denies this allegation, as this information is not newly discovered evidence.

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel leading to a breakdown in the adversarial process in violation of his Sixth Amendment rights. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). 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 v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985);

PHR

Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

Under United States v. Cronic, 466 U.S. 648 (1984) and Nance v. Ozmint, 367 S.C. 547, 626 S.E.2d 878 (2006), the defendant does not need to show specific prejudice because there is a presumption of prejudice. In Cronic, the Court identified three situations where a presumption of prejudice exist: (1) where a defendant is denied counsel at a critical stage of the trial; (2) a constructive denial of counsel when a lawyer "entirely fails to subject the prosecution's case to meaningful adversarial testing"; and (3) when even a fully competent lawyer would not be able to provide effective assistance. Cronic, 466 U.S. at 659 (finding that the appoint of a young lawyer with a real estate practice and only twenty-five days to prepare for trial did not create a presumption of prejudice). Establishing per-se prejudice under Cronic is a very high standard for a criminal defendant. Nance, 367 S.C. at 552, 626 S.E.2d at 880. In Nance, the South Carolina Supreme Court found that not only was defense counsel presently suffering from, and was on medication for, or had recently suffered from pneumonia, gout, ulcers, diabetes, alcoholism, and congestive heart failure at the time he was appointed, but that his presentation during the trial and sentencing actually bolstered the prosecution's case and counsel failed to act as an adversary to the prosecution. Nance, 367 S.C. at 553, 557–58, 626 S.E.2d at 881, 883.

Applicant argues that not only did he receive actual prejudice and ineffective assistance of counsel under Strickland, but that there should also be a presumption of prejudice under Cronic and Nance due to a violation of the adversarial process. This Court disagrees. First, it is noted that both Cronic and Nance involve trials. It is noted that this case involves a guilty plea. Applicant's testimony shows that he had always intended to plead guilty. There was no testimony that he had ever requested a trial prior to his guilty plea. Applicant stated that he had accepted the negotiated

PHV

thirty year offer instead of going to trial and facing a life sentence plus an additional twenty years on additional charges. Applicant also stated that he did not want a trial because he did not want his children to have to go through a trial. During his guilty plea, Applicant listened to the facts as recited by the State and when asked by the plea judge if Applicant "on March the 2nd did willfully, unlawfully and feloniously with malice aforethought shoot Patricia Ladson in the chest and that she died as result", Applicant responded affirmatively. (Plea Tr. 14). This Court also notes that though he testified that he wanted a new trial at the hearing, in Applicant's PCR application he states that he is seeking to have his sentence vacated so he can plead to the lesser included offense of manslaughter. (Application 5). Applicant testified that had he known of the existence of various documents including SLED reports, items in the Berkeley County Sheriff's file, items in the Coroner's file, and items in the Solicitor's file he would have wanted to discuss these items with his plea counsel, have certain test run, and would have wanted to go to trial.

To support Applicant's claims, Applicant put forth the testimony of Robert Tressel, who was qualified as an expert in crime scene analysis and reconstruction, Peter Skidmore, a licensed private investigator, Ruby May Beaufort, and Bertha Beaufort.

Both Ruby May and Bertha Beaufort testified that though they were not at the scene at the time of the Victim's murder, they had either seen or spoken to Applicant near the time of the murder and were not contacted by Applicant's plea counsel prior to Applicant pleading guilty.

Mr. Tressel's testified that he reviewed the various documents before the Court. Based on his review of the materials in this case, he stated that there were several issues that he would have raised to plea counsel had he been involved in the case. First, as to a trajectory analysis, Mr. Tressel testified he was not able to make an analysis because the case was missing important measurements.

PHR

He testified he would have raised this issue to Counsel. Next, as to a firearms analysis, Mr. Tressel testified that none was completed even though a recovered weapon was sent to SLED. In 2002, the weapon was returned to Berkeley County. He also stated there was a recovered projectile from the wall and a .357 caliber shell casing recovered. There was also a .38 caliber gun recovered in a river close to the crime scene. This gun was traced to a State Trooper. Concerning a trace analysis, Mr. Tressel testified there was gunshot residue on Victim's palm and the back of her right hand; he opined that the right-hand of Victim was closer to the gun than the left hand. There was no gunshot residue test performed on Applicant. Mr. Tressel also testified there were hair samples collected on March 22, 1999 by the medical examiner's office. Mr. Tressel stated SLED did not test the blood found under Victim's fingernails, but should have. Mr. Tressel then opined that manual strangulation was a possible cause of death and that most of the evidence had been destroyed. He further opined that there was no forensic evidence linking Applicant to the crime.

Peter Skidmore testified he had reviewed the Solicitor's file, Sheriff's Office file, SLED file, and Coroner's file. He testified his involvement in this case was to help subpoena the files, review the case, and locate witnesses. He claims he was easily able to locate Ruby May and Bertha Beaufort. He also stated that he reached the conclusion that an expert was needed in this case to review the fingernail scrapings and gunshot residue. He stated that he was surprised that Applicant, as a former law enforcement officer, would plead guilty without reviewing these items. He also stated that he believed plea counsel needed to reach out to other agencies in this case. He lastly stated that there is currently no evidence to be tested because it was destroyed at some point after the guilty plea.

While this Court finds that there was certainly more investigation that could have been done in this case, the situation at hand does not rise to the actual prejudice under Strickland or presumed

PHV

prejudice under Cronic and Nance. This case involves a guilty plea and not a trial. The level of investigation required is not the same when the defendant who never asserted he wanted a trial and admitted on the record in his guilty plea that he was in fact guilty. Applicant is not professing his innocence, in fact his original application simply asked to vacate the murder charge so he can plead to manslaughter, although, it is noted that his testimony at the hearing was that he now wanted a new trial. Though things could have been done differently, it does not rise to the level of incompetence.

CONCLUSION

Based on the records, pleadings, the arguments of counsel, and evidence presented this Court finds the Applicant failed to file his PCR application within the time mandated by the Uniform Post-Conviction Procedure Act. This Court further finds the Applicant failed to meet his burden of proving after-discovered evidence. This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure the appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED THAT:

1. The Respondent's Motion to Dismiss is hereby **GRANTED** and the post-conviction relief application is **DENIED AND DISMISSED WITH PREJUDICE.**

2. The Applicant is remanded to the custody of the Respondent for the completion of his sentence.

AND IT IS SO ORDERED this 13th day of April, 2016.

Perry H. Gravely
Presiding Judge
Ninth Judicial Circuit

Moncks Corner, South Carolina.