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STATE OF SOUTH CAROLINA COUNTY OF UNION Jeremy Lee Moody, Plaintiff(s), FILED FOR RECORD -vs- South Carolina State of, 2015 SEP 2 AM 11 17 Defendant(s).	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT CASE NO.: 2015CP4400294 APPOINTMENT OF COUNSEL OR GAL (*Select one.*) ☒ ORDER ☐ AMENDED ORDER

WILLIAM F. GAULT
CLERK OF COURT
UNION, SC

TYPE OF CASE/PROCEEDING: (*Check one.*)

☐ Post-Conviction Relief (PCR)/habeas case	☐ Adoption	☐ Juvenile
☐ SVP case	☐ Custody and/or Visitation	☐ Abuse and Neglect
☐ Minor Name Change	☒ Other: Post Convict Rel 500	

It appears Jeremy Lee Moody, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (*Select only one.*)

☒ counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.

☐ counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on:

☐ counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.

☐ court appointed counsel has obtained , Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.

☐ Other: .

Therefore, it is ordered that N. Beth Faulker hereby is appointed as (*Select one.*)

☒ counsel ☐ lead counsel (*if capital PCR case*) ☐ guardian ad litem

for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

☐ (*If Death Penalty PCR Case*) It is further ordered that , Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED
September 2, 2015

William F. Gault/dbw
☐ Circuit Judge ☒ Clerk of Court

Plaintiff Attorney:

N. Beth Faulker
PO Drawer 300
York, South Carolina 29745

Defendant Attorney:

Justin James Hunter
PO Box 11549
Columbia, SC 29211-1549

A TRUE COPY

SEP - 2 2015

CLERK OF COURT

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

CP20 (08/08)
SCCA/267 (03/07)

STATE OF SOUTH CAROLINA COUNTY OF UNION Jeremy Lee Moody, S.C.D.C. No. 359801, Applicant, v. State of South Carolina, Respondent.	)	IN THE COURT OF COMMON PLEAS OF THE SIXTEENTH JUDICIAL CIRCUIT 2015-CP-44-294 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed July 10, 2015. An evidentiary hearing into the matter was convened on April 18 and 19, 2017, at the Moss Justice Center in York, South Carolina before the Honorable G. Thomas Cooper, Jr. Applicant was present at the hearing and represented by Beth Faulkner, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Harry Dest, Esquire, also testified. This Court also had before it a copy of the records of the Union County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Respondent's Return, and the plea transcript.

At the outset of the hearing, Applicant's counsel made a motion to have Applicant officially evaluated. Ms. Faulkner relayed to the Court that she had no issue of Applicant's competency to proceed with the PCR hearing, but stated that his grounds for relief included his plea counsel's failure to submit an official mental evaluation to the plea court. This Court continued the hearing until the next day, April 19, 2017. At the hearing, Ms. Faulkner renewed her motion for an evaluation, arguing that she wants Applicant evaluated for criminal

responsibility and competency. She submitted Applicant's medical records to the Court as Applicant's Exhibit 1. This Court denied Applicant's motion and proceeded with the evidentiary hearing.

I. PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Union County Clerk of Court's orders of commitment. The Union County Grand Jury indicted Applicant at the January 2014 term of General Sessions for two counts of murder (2014-GS-44-0060, -0061), two counts of possession of a firearm or knife during the commission of a violent crime (2014-GS-44-0063, -0064), and first-degree burglary (2014-GS-44-0066). Harry Dest, Esquire, and Erik Delaney, Esquire, and represented Applicant. On May 6, 2014 the Applicant pled guilty as indicted. The Honorable Lee S. Alford sentenced the Applicant to life imprisonment for murder, life imprisonment for the second count of murder, five years imprisonment for possession of a weapon during the commission of a violent crime, five years imprisonment on the second count of possession of a weapon during the commission of a violent crime, and life imprisonment for first-degree burglary – to be served concurrently.

Applicant timely filed a notice of appeal. The South Carolina Court of Appeals dismissed Applicant's appeal by an order filed June 30, 2014. The Remittitur was submitted on July 16, 2014.

Allegations

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

1. Ineffective Assistance of Counsel
    a. "Counsel was ineffective where he hired a forensic science expert to conduct an evaluation which was not properly conducted or evaluated."

b. "The lead attorney nor the forensic science expert Dr. Harold Morgan, who was the wrong expert, were "trying to be adversarial" or not trying to make the court aware of applicant's black out spells or the mental health treatment he was receiving before this crime, which is the Caskey test after discovery. Applicant can satisfy the Caskey test, applicant must show that the evidence upon which it is based."

2. Involuntary guilty plea
    a. "Applicant contends that his plea was not voluntary and intelligently made"
3. Denial of due process

II. SUMMARY OF EVIDENCE PRESENTED AT PCR HEARING

Applicant's Testimony

Applicant testified that he was represented by public defenders Harry Dest and Eric Delaney. He testified that he met with Mr. Dest only three to four times but met with Mr. Delaney about twice a month prior to his plea. He testified that Mr. Delaney went over the evidence and discovery, which included a video of him holding the victims at gun point.

Applicant testified that he had been going to mental health since age seventeen. He testified that prior to that age, he had mental issues including hallucinations but was not sure what it was. He testified that he would be fine if he was on medication, but would regress when he would stop taking his medication. Applicant testified that at the time of the incident, it had been over a year since he took his medication. He testified that he had been experiencing some hallucinations and should have stayed on his medication.

Applicant testified that he did not talk to Mr. Delaney about his mental health history. He testified that he discussed it with Mr. Dest. He testified that they never explored the insanity defense. Applicant testified that he wanted to go to death row but did not tell Mr. Dest. He testified that he pled guilty to avoid a death sentence. He further testified that he discussed a plea of guilty but mentally ill (GBMI) and the possibility of being in a psychiatric facility.

Applicant testified that he met with Dr. Harold Morgan two to three times. He testified that Mr. Dest was present during these meetings in jail and right before he pled. Applicant testified that Dr. Morgan did a good job but he did not think that Dr. Morgan could learn enough about him in forty-five minutes. He testified that Mr. Delaney went over the results of Dr. Morgan's findings, which provided no new information and only confirmed what he already knew from mental health.

Applicant testified that he was in his right mind at the time he committed the crime. He testified that he did nothing wrong and never killed anyone who did not deserve to be killed. He testified that Mr. Dest was ineffective because he should have gone to Columbia and met with the doctors at the Department of Mental Health. He testified that Counsel was ineffective because Applicant was not evaluated for a long period of time.

Counsel Harry Dest's Testimony

Mr. Dest testified that he met with Applicant six to seven times. He testified that Mr. Delaney met with Applicant more times but he was still kept apprised of their conversations. Mr. Dest testified that he relayed the entire discovery to Applicant during their meetings and discussed his mental health history. He testified that Applicant seemed to understand their conversations. Mr. Dest further testified that he and Dr. Morgan met with Applicant just prior to the plea hearing and he believed that Applicant understood what was occurring during the hearing.

Mr. Dest testified that he was able to obtain all of Applicant's mental health records and hired a forensic psychiatrist, Dr. Morgan. He testified that he has used Dr. Morgan many times in prior cases. Mr. Dest testified that Dr. Morgan evaluated Applicant, which included evaluations for criminal responsibility, competency, the possibility of a GBMI plea, *M'Naughten*, and other

personality tests. He testified that Dr. Morgan believed Applicant had been acting out because he stopped taking his medication. Mr. Dest also testified that Dr. Morgan did not believe that Applicant could be found not criminal responsible under a *M'Naughten* defense because of Applicant's extensive amount of planning he had undertaken prior to committing the crime. He testified that Applicant was obsessed with sex offenders because he had witnessed sex abuse in his family, and specifically sought out sex offenders to kill.

Mr. Dest testified that he and Dr. Morgan believed that a GBMI plea was probably more appropriate in Applicant's case. He testified that he discussed the possibility of a GBMI plea with Applicant and where he would be housed if he took the plea. Mr. Dest testified that Applicant refused the plea and saw it as a "cop out." He testified that Applicant had a need to act out against sex offenders and did not want to plead GBMI. Mr. Dest testified that this was a potential death penalty case and he wanted to convince the prosecutor to not seek the death penalty. He testified that when Applicant rejected the GBMI plea, their strategy was to plead guilty and have Dr. Morgan mitigate so Applicant could get less than a life sentence.

Mr. Dest testified that Dr. Morgan did not provide an official written report of his evaluation because competency was never an issue. He testified that he did not think that a written report was necessary to submit to the plea court and would have requested one from Dr. Morgan had he needed one. Mr. Dest testified that a report would have revealed other information from the evaluation that would not have been beneficial to Applicant's defense. He testified that he never believed that Applicant needed a second evaluation.

III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the

application 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, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject

convictions, the guilty plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Ineffective Assistance of Counsel

Applicant alleges Counsel was ineffective regarding his guilty plea. This Court finds that Applicant failed to meet his burden of proving that his plea counsel was ineffective. This Court finds 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, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813.

An applicant 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 applicant 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) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full

understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969).

This Court finds that Applicant has failed to meet his burden of proving that Counsel was ineffective regarding Applicant's mental health evaluation. Applicant alleged that he was not evaluated by Dr. Morgan for a lengthy period of time and should have been evaluated at the Department of Mental Health in Columbia. Mr. Dest testified that he never had a question about Applicant's competency but employed Dr. Morgan, who Mr. Dest had used many times before, to evaluate Applicant for a wide variety of tests including criminal responsibility, competency, the possibility of a GBMI plea, *M'Naughten*, and other personality tests. Applicant was also concerned that a written report from Dr. Morgan was never presented to the plea judge. Mr. Dest testified that he did not think a written report was necessary since competency was not an issue and because certain findings from Dr. Morgan would not have been beneficial to Applicant's defense. This Court finds that Applicant has failed to prove that Counsel's actions were deficient as he has failed to show what an extended evaluation would have revealed and has failed to show that there were any deficiencies in Dr. Morgan's evaluation or his testimony in the plea hearing. This Court also finds that Applicant has failed to show that entering a written report from Dr. Morgan would have changed the outcome of his plea.

Furthermore, this Court finds that Applicant has failed to show that he was prejudiced by Counsel's actions because Applicant has failed to show that he otherwise would have elected to go to trial. Similarly, Applicant has not shown any error in Counsel's assistance that led him to plead guilty instead. Applicant admitted guilt in the plea and PCR hearings and made no indication that he would have gone to trial but for Counsel's actions regarding the mental health

evaluation. Therefore he cannot prove any prejudice. Accordingly, this allegation is denied and dismissed with prejudice.

Involuntary Guilty Plea

Applicant alleges that his plea was given involuntarily. This Court finds that Applicant's allegation must be dismissed. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). 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." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

"A guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 129 (2014) (citing State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013); Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). Notably the South Carolina Supreme Court has held "[a] guilty plea represents a break in the chain of events which has preceded it in the criminal

process." Id. (citations omitted). "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." Id. (citing Rice, 401 S.C. at 332, 737 S.E.2d at 486).

This Court finds, and the record reflects, Applicant was fully advised that he was pleading guilty and therefore waiving any challenges to the evidence against him. The plea court's thorough colloquy with Applicant demonstrates that he understood the consequences of pleading guilty and the potential sentences he could receive. Applicant advised the plea court that no one had promised him anything in order to get him to plead guilty. Applicant also advised the plea court that he was pleading guilty freely and voluntarily. The record also reflects that Applicant fully admitted his guilt to the plea court and agreed with the State's version of the facts. Applicant presented no credible evidence at the PCR hearing as to why he should be able to depart from his statements at the plea hearing. This Court finds credible Counsel's testimony regarding his preparation and advice to Applicant prior to the guilty plea. After a full review of the guilty plea transcript, this Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made. This Court also finds that Applicant has presented no evidence that he did not understand the plea proceeding or that his plea was not freely, voluntarily, or intelligently made. Accordingly, this allegation must be dismissed.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds Applicant has abandoned any such allegations.

V. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsels' performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice; and

2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 5 day of June, 2017.

G. THOMAS COOPER, JR.
Presiding Judge
Sixteenth Judicial Circuit

Chester, South Carolina