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March 28, 2018

Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

Re: Malcolm Cromedy v State, 2017-CP-22-00781

Dear Clerk Shearouse:

Please find the enclosed Notice of Appeal, Proof of Service, and Order of Dismissal in the above Georgetown County PCR action. Please return a clocked copy of the Notice of Appeal and Proof of Service in the enclosed SASE.

Should you have any additional questions please do not hesitate to contact my office.

With best regards, I am,

James K Falk

Thank you for your assistance.

Cc: Johnny James Esq Malcolm Cromedy 294206.

Mailing Address: PO Box 1058, Charleston, S.C. 29402
Location: 38 Broad Street, Suite 350, Charleston, S.C. 29401

THE STATE OF SOUTH CAROLINA

In The Supreme Court

RECEIVED

MAR 30 2018

S.C. SUPREME COURT

APPEAL FROM GEORGETOWN COUNTY

Court of Common Pleas

Honorable William H Seals, Circuit Judge

Case No.: 2017-CP-22-00781

Malcolm Cromedy 294206.....PETITIONER

V.

State of South Carolina.....RESPONDENT

NOTICE OF APPEAL

The Petitioner Malcolm Cromedy appeals the Honorable Steven H John's March 21, 2018 Order of Dismissal. Undersigned counsel received notice of entry of the order on March 28, 2018. A copy of the order on appeal is attached hereto.

James K Falk
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PO Box 1058
Charleston, SC 29402

March 28, 2018

Johnny James Jr., Esq.
Office of S.C. Attorney General
PO Box 11549
Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA

In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM GEORGETOWN COUNTY

Court of Common Pleas

Honorable Steven H. John., Circuit Judge

Case No.: 2017-CP-22-0781

Malcolm Cromedy 294206.....PETITIONER

V.

State of South Carolina.....RESPONDENT

CERTIFICATE OF SERVICE

I, James Falk, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the U.S. Mail, postage prepaid, addressed to its attorney of record, Johnny James, Jr. Esq. Office of the S.C. Attorney General, PO Box 11549, Columbia, SC 29211-1549. I further certify that all parties required by Rule to be served have been served this March 28, 2018.

James K Falk
Falk Law Firm
PO Box 1058
Charleston, SC 29402

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	
Malcolm Cromedy, S.C.D.C. No. 294206,	)	Case No.: 2017-CP-22-00781
Applicant,	)	
v.	)	**ORDER OF DISMISSAL**
State of South Carolina,	)	
Respondent.	)	

This matter comes before the Court by way of an application for post-conviction relief filed by Malcolm Cromedy ("Applicant") on September 14, 2017. Respondent made its return on or about December 13, 2017. The Court convened an evidentiary hearing into the matter on Friday, February 23, 2018, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by James K. Falk, Esq. Johnny Ellis James Jr., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Ronald W. Hazzard, Esq. ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the Georgetown County Clerk of Court regarding the subject convictions, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. Applicant was indicted at the August 2016 term of the Georgetown County Grand Jury for two counts of trafficking in heroin, between

4 and 14 grams, second offense (2016-GS-22-00747, -00750).[1] Ronald Hazzard, Esq. represented Applicant, and Alicia Richardson, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On November 28, 2016, Applicant pled guilty to the lesser-included of trafficking in heroin, between 4 and 14 grams *first* offense. Upon a sentencing recommendation by the State of 10 years' incarceration, The Honorable William H. Seals, Jr. sentenced Applicant to imprisonment for concurrent terms of 10 years. Applicant did not appeal his plea or sentence.

Present Application

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

1. "My lawyer inform me that I wasn't getting charge with the CI Buy. He told me that I was getting charge for what I had on me at the time of my arrest."
    a. "What I have to support this is my warrant and the investigation report."

Applicant requests relief as follows:

- "I'm trying to be given the charge my lawyer said I was Pleading for"

II. 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 records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel & Involuntary Guilty Plea

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813

[1] Applicant was additionally indicted for distribution of heroin, second offense (2016-GS-22-00746); driving under suspension, 3rd or subsequent offense (2016-GS-22-00748); a habitual traffic offender violation (2016-GS-22-00749); and possession of marijuana, less than one ounce, 2nd or subsequent offense (2016-GS-22-00751).

(1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "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." Butler at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry at 117, 386 S.E.2d at 625 (citing Strickland at 688). 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." Cherry at 117-18, 386 S.E.2d at 625 (citing Strickland at 694). With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 696-97.

Applicant claims his plea was not entered knowingly or voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243 (1969); Dover v . State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v.

U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985)).

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. See Roscoe v. State, 345 S.C.16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

1. Misadvice as to Basis of Plea

Applicant alleges his plea was not knowingly, intelligently, and voluntarily entered because Counsel affirmatively misadvised him as to which crime served as the basis of his guilty plea. At the plea proceeding, Judge Seals asked Applicant if he was pleading guilty to two counts of trafficking heroin, 4 to 14 grams, first offense; Applicant affirmed that he was. (Tr. 4-5). Judge Seals informed Applicant of the minimum and maximum sentence for that charge and Applicant again affirmed he was pleading guilty. (Tr. 5, ll. 4-7). Applicant expressed no confusion in the plea proceeding, but to the contrary expressed that he understood all of the court's questions. (Tr. 6, ll. 9-10). The State's recitation of the factual basis was brief and clear:

> [O]n October 29, 2015, this Defendant sold 6.88 grams of heroin to a confidential informant working with the Drug Enforcement Unit. This was captures on audio and video and occurred in Georgetown County. As for the second offense, that occurred on March 3rd of this year in Georgetown County, actually in the city, in the Maryville Section of Georgetown. Officers observed the Defendant driving a vehicle and knew his license was suspended. They also observed what appeared to be a hand-to-hand transaction with another car. That vehicle, the second

> vehicle was stopped. There was a female occupant. She was found to be in possession of heroin, which she indicated she had just bought from the Defendant. The Defendant was stopped. A search of the vehicle found just over four grams of heroin packaged to be sold.

(Tr. 6-7). Applicant signed both sentencing sheets.

At the evidentiary hearing, Applicant testified he met with Counsel only once. Applicant recalled he discussed with Counsel whether or not to go to trial, and that he informed Counsel that he wanted a good plea deal. Applicant recalled Counsel noting the confidential informant providing the basis for some of his charges was not credible, and that he would look into potential dismissal of the charges. Applicant denied ever seeing his discovery, and complained he never saw the video of the CI buy. Applicant testified he believed he would receive a non-violent sentence of eight years, but that Counsel came back with an offer for a violent sentence of ten years. Applicant conceded that he was not innocent, but professed that he was "lost" at the time of his plea, and that he was simply "going with the flow." Applicant expressed his willingness to risk a substantial sentence by going to trial, but also expressed that his greater desire was to secure a non-violent sentence in order to more quickly return to his family. Applicant testified he believed he was on the eve of going to trial on all of the charges against him.

Counsel testified he met with Applicant six to eight times and recalled his various conversations with Applicant. Counsel indicated he was without a doubt ready for trial, and recalled the two sets of facts underpinning Applicant's charges, which he identified as the "car stop" case and the "CI" case. Counsel reviewed Facebook pictures provided by Applicant regarding an individual he suspected was the confidential informant, but noted the impeaching photographs predated the CI's cooperation with law enforcement. Counsel expressed his belief that both cases against Applicant were "triable" and that he had subpoenaed witnesses in the "car

stop" case. Counsel recalled his belief that the State would not initially go forward on the CI case, but rather would save the charges in case the "car stop" case failed to result in Applicant's conviction. Counsel testified he clearly explained to Applicant that the impending trial would be on the "car stop" case. Counsel testified he clearly explained to Applicant that he was pleading to both charges. Counsel testified he reviewed the video recording from the CI buy, and explained the State does not give a copy of the video unless doing so is an absolute necessity. Rather, Counsel explained, the State provided still frames from the video to share with Applicant. Counsel recalled Applicant's concern was not precisely which facts he was pleading to but the sentence he would receive. Counsel noted the State reduced its offer from a 12 year sentence to a 10 year sentence, and that Applicant chose to plead guilty.

The Court finds no deficiency on the part of counsel. The Court finds Counsel's performance was more than adequate—Counsel was prepared for trial, subpoenaed witnesses, explained everything to Applicant, and demonstrated a supreme command of the facts of Applicant's wrongdoings. The potential sentence Applicant faced had he been convicted at trial far exceeded what he received in exchange for his plea. Applicant knew what he was pleading to, what sentence he was receiving, and expressed as much at the plea proceeding. The Court finds no error on the part of Counsel and, accordingly, Applicant's request for relief is **DENIED**.

III. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the 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 (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. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

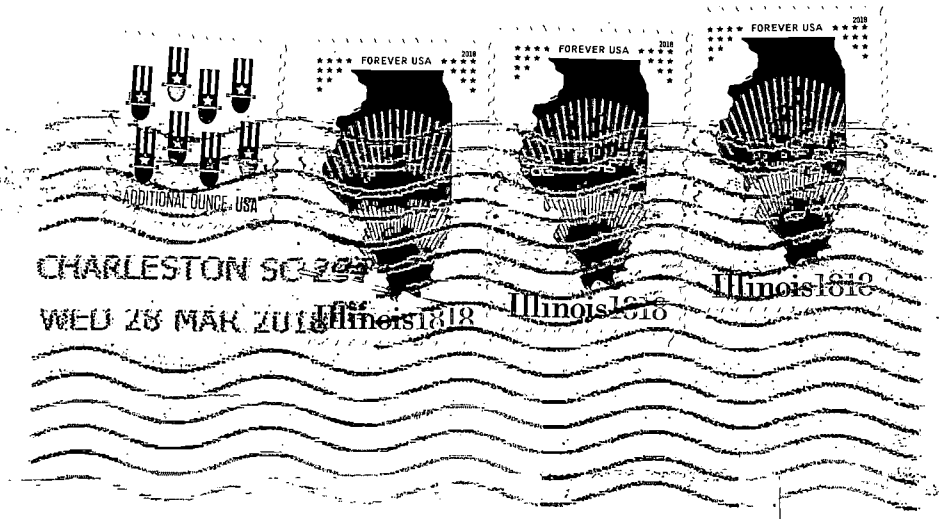
1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 21st **day of** March **, 2018.**

STEVEN H. JOHN
Presiding Judge
Fifteenth Judicial Circuit

Georgetown, South Carolina



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