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August 2, 2018

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

Re: Raymond Powell v State, 2016-CP-15-0199

Dear Clerk Shearouse:

Please find the enclosed Notice of Appeal, Proof of Service, and Order of Dismissal in the above Colleton 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:
Christian Saville, Esq
Raymond Powell 346648

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED
AUG 07 2018
S.C. SUPREME COURT

APPEAL FROM COLLETON COUNTY
Court of Common Pleas
Honorable Thomas A. Russo, Circuit Judge

Case No.: 2016-CP-15-00199

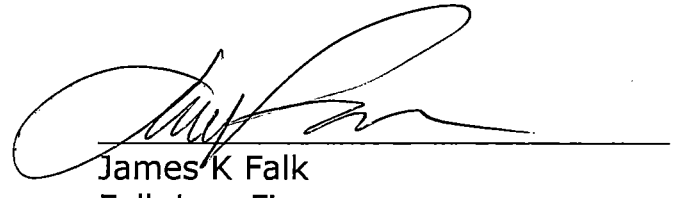
Raymond Powell 346648.....PETITIONER

V.

State of South Carolina.....RESPONDENT

NOTICE OF APPEAL

The Petitioner Raymond Powell appeals the Honorable Thomas A Russo's July 23, 2018 Order of Dismissal. Undersigned counsel received notice of entry of the order on August 2, 2018. A copy of the order on appeal is attached hereto.



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Christian Saville, Esq.
Office of S.C. Attorney General
PO Box 11549
Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM COLLETON COUNTY

Court of Common Pleas

Honorable Thomas A Russo, Circuit Judge

Case No.: 2016-CP-15-0199

Raymond Powell 346648.....PETITIONER

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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, Christian Saville, 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 August 2, 2018.

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STATE OF SOUTH CAROLINA COUNTY OF COLLETON	)	IN THE COURT OF COMMON PLEAS THE FOURTEENTH JUDICIAL CIRCUIT
Raymond Powell, #346648 Applicant,	)	Case No. 2016-CP-15-0199
v.	)	**ORDER OF DISMISSAL**
State of South Carolina, Respondent.	)	

The above-captioned matter is before the court based on a post-conviction relief (PCR) application filed by Raymond Powell on February 10, 2016. This Court convened an evidentiary hearing into this matter on October 12, 2017 at the Beaufort County Courthouse. Applicant was present at the hearing and represented by James K. Falk, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Respondent. Applicant's plea counsel was David Mathews (Counsel), Esquire, who was present and testified. This Court had the opportunity to listen to the testimony of Applicant and Counsel. This Court had before it the records of the Colleton County Clerk of Court regarding the subject conviction, the guilty plea transcript, direct appellate records, Applicant's records from the South Carolina Department of Corrections, and the pleadings in this matter.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Colleton County Clerk of Court. Applicant was indicted at the March 2013 term of the Colleton County Grand Jury for two counts of attempted murder and one count of possession of a weapon during the commission of a violent crime (2013-GS-15-165; 166; 163). On November 17, 2014, Applicant pleaded guilty as indicted. The Honorable R.

Markley Dennis, Jr. sentenced Applicant, following the State's recommended cap of twenty years, to incarceration for nineteen years for each count of attempted murder and five years for the count of possession of a weapon during the commission of a violent crime. The sentences were ordered to run concurrently.

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to Anders v. California, 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Powell, Appellate Case No. 2014-2561 (filed on May 21, 2015). The remittitur was issued on June 9, 2015.

II. ALLEGATIONS

In his PCR application, Applicant alleged he is being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel:
   a. Failed to properly investigate and prepare for trial.
2. Involuntary Guilty plea

III. SUMMARY OF TESTIMONY

Applicant testified he spoke with Counsel twice while incarcerated. Applicant claimed he wasn't taking the medication he was supposed to be taking when he pleaded guilty. Applicant claimed he feels dizzy and anxious when not on medication and has been diagnosed with depression and schizophrenia. He testified Counsel told him the sentencing ranges. He testified the Friday before his guilty plea, Counsel showed him his discovery and told him that the State would be seeking the maximum of the recommended cap of twenty years. He testified he pleaded guilty because he was scared to go to trial. He also testified he only said what the judge wanted to hear so the plea court would accept his plea. He testified he wanted Counsel to get him a mental evaluation. Applicant testified Counsel told him he would receive seventy years if he

went to trial. Applicant testified he only plead because he felt Counsel was not prepared. Applicant testified he wasn't sure if he would have filed a PCR application if he had received a five-year sentence instead of nineteen years.

Counsel testified he spoke with Applicant four times and the investigator spoke with him twice as well. Counsel testified Applicant told the investigator he did not have any witnesses. Counsel did tell Applicant he thought he would be convicted at trial, but Counsel was ready to go to trial on Applicant's behalf if he wished for a trial. Counsel testified he attempted to negotiate a cap of fifteen years for Applicant, but the lowest the State would go was a cap of twenty years. Counsel had represented Applicant five times in the past from 2009-2014. Counsel believed Applicant was competent and understood what was going on. Counsel testified Applicant was able to speak with him, understand him, was responsive, followed his logic, and asked questions about his case during their conversations. The maximum potential sentence was sixty-five years. Counsel testified he did not tell Applicant he could receive seventy years' incarceration, where the maximum consecutive sentence was sixty-five years. Counsel testified he had been reviewing Applicant's case for months in preparation for trial and had a trial notebook prepared. Counsel requested a ten year sentence at the guilty plea. Counsel testified it is his practice to tell his clients there is always a chance they receive the maximum sentence.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court reviewed the record in its entirety, listened to the testimony given, and heard the arguments presented at the evidentiary hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. This Court finds Counsel's testimony was credible and persuasive and

Applicant's testimony lacked credibility. Therefore, this Court dismisses Applicant's application for the reasons set out below:

A. Ineffective Assistance of Plea Counsel

This Court finds the record fully supports the knowing and voluntary nature of Applicant's guilty plea. Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Thus, an applicant must show both error and prejudice to win relief in a PCR proceeding." Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001).

The court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. The transcript reflects the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. 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)). Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing. For the reasons set out below, this Court finds the record and credible testimony support Applicant had a full understanding of the charges and consequences of his guilty plea:

Failed to properly investigate and prepare for trial.

Based on Counsel's credible testimony, this Court finds Counsel reasonably investigated and prepared for trial. At the guilty plea, Applicant testified he did not need additional time with Counsel and was satisfied with his representation. Tr. 18. Counsel testified he was prepared to go to trial and had been preparing for trial for months. This Court finds Applicant's assertion he pleaded guilty because he did not trust Counsel's trial preparation lacks credibility. This Court notes Applicant testified he was not sure if he would have filed for PCR if he had received a better sentence. Further, Applicant presented no evidence on how further preparation and investigation would have helped his case. "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). Here, Applicant's assertion Counsel should have investigated further is supported by mere speculation.

Therefore, this Court finds Applicant failed to prove Counsel was deficient. This Court finds Applicant failed to prove he would have gone to trial, but for Counsel's alleged deficiency. This Court also finds the record clearly reflects Applicant's plea of guilty was knowingly,

intelligently, and voluntarily entered into. Accordingly, this allegation is denied and dismissed.

B. Involuntary Guilty Plea

Applicant asserts his guilty plea was entered involuntarily as the result of ineffective assistance of counsel. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the Applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin, 395 U.S. at 243. 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).

The transcript reflects the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. 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, 431 U.S. at 73-74. 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, 519 F.2d at 350. Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing.

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 there is a reasonable probability, but for trial counsel's errors, he would not have pleaded guilty, but would have insisted on going to trial instead. See Roscoe, 345 S.C. at 20, 546 S.E.2d at 419. Given the Applicant's burden of proof and the analysis to be applied to this claim, the Applicant's claim of involuntary plea is, in essence, a

claim of ineffective assistance of counsel, and it will be treated as such.

An applicant'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, 339 S.C. at 34, 528 S.E.2d at 421. "'[T]he voluntariness of a guilty plea is not determined by an examination of the 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 the record of the post-conviction hearing.'" Dalton, 376 S.C. at 138, 654 S.E.2d at 874. Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874.

Having reviewed the pleadings, considered the applicable law, and reflected upon the plea transcript and testimony provided at the evidentiary hearing, this Court denies Applicant's request for post-conviction relief. Counsel testified Applicant was able to speak with him, seemed to understand him, was responsive, followed his logic, and asked questions about his case during their conversations. Counsel further testified he represented Applicant on many occasions through past years and believed he was competent. Applicant testified he understood how to answer the judge's questions and answered the questions so that the plea judge would not stop his plea. Applicant opined his medical conditions could have rendered him incompetent. Without an expert witness to show what the results of a competency evaluation would have been, any prejudice is purely speculation on the part of Applicant. See Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005).

This Court finds Applicant's assertion he was not on medication and, therefore, anxious and prone to outbursts, lacks credibility. Neither anxiousness nor outbursts prevented Applicant

from understanding the plea judge's questions well enough to answer them correctly. Further, any allegation of mental incompetence is speculation without an expert. This Court finds Applicant has failed to prove his plea was involuntary, unknowing, or unintelligent. Therefore, this Court finds Applicant has failed to prove Counsel was deficient or he was prejudiced by any alleged deficiency of Counsel. Accordingly, this Court denies and dismisses this allegation.

IV. CONCLUSION

Based on the foregoing, this Court finds and concludes 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 notes Applicant must file and serve a notice of appeal within thirty (30) days from 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, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

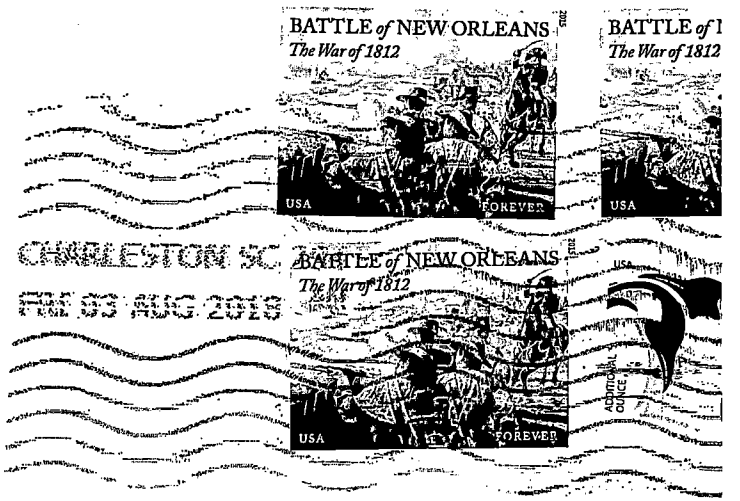
1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and

2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 23rd day of July, 2018.

THOMAS A. RUSSO
Presiding Judge

Florence, South Carolina



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