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May 15, 2019

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

RECEIVED

MAY 20 2019

S.C. SUPREME COURT

Re: Arthur Peterson v State 355559, 2014-CP-10- 2878

Dear Clerk Shearouse:

Please find the enclosed Notice of Appeal, Proof of Service, in the above Charleston 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:

Benjamin Limbaugh, Esq
Arthur Peterson, 355559
Charleston County Circuit Court Clerk

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

MAY 20 2019

APPEAL FROM BEAUFORT COUNTY

S.C. SUPREME COURT

Court of Common Pleas

Honorable Michaels G Nettles, Circuit Judge

Case No.: 2014-CP-10-2878

Arthur Peterson 35559.....PETITIONER

V.

State of South Carolina.....RESPONDENT

NOTICE OF APPEAL

The Petitioner Arthur Peterson appeals the Honorable Michael G Nettles' May 6, 2019 Order of Dismissal. Undersigned counsel received notice of entry of the order on May 12, 2019. A copy of the order on appeal is attached hereto.



James K Falk
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PO Box 1058
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May 15, 2019

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

Clerk of Court- Charleston CP
100 Broad Street
Charleston, SC 29401

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

MAY 20 2019

APPEAL FROM CHARLESTON COUNTY

S.C. SUPREME COURT

Court of Common Pleas

Honorable Michael G Nettles, Circuit Judge

Case No.: 2014-CP-10-2878

Arthur Peterson 355559.....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, Benjamin Limbaugh Esq. Office of the S.C. Attorney General, PO Box 11549, Columbia, SC 29211-1549 and the Charleston County Clerk of Court. I further certify that all parties required by Rule to be served have been served this May 15, 2019.



James K Falk
Falk Law Firm
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Charleston, SC 29402

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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Arthur Peterson, SCDC No. 355559,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2014-CP-10-2878

ORDER OF DISMISSAL

FILED
2019 MAY -9 PM 3:19
JULIE J. ARMSTRONG
CLERK OF COURT

This matter comes before this Court by way of an application for post-conviction relief filed on May 5, 2014, by Arthur Peterson (Applicant), alleging he was entitled to post-conviction relief based on constitutionally ineffective counsel and an involuntary guilty plea. Respondent served its return on March 20, 2015, requesting an evidentiary hearing be convened on the application.

An evidentiary hearing was held on October 4, 2018, before this Court at the Charleston County Courthouse. Applicant was present and was represented by counsel James K. Falk. Respondent was represented by Senior Assistant Deputy Attorney General Megan Harrigan Jameson of the South Carolina Attorney General's Office. At the hearing, testimony was taken from plea counsel Rose Mary Parham and Applicant.

Following a thorough review of the record in its entirety, and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations and denies this application with prejudice.

PROCEDURAL HISTORY

The records before this court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. During its July 2011 term, the Charleston County Grand Jury indicted Applicant

for murder (2011-GS-10-4154) following his fatal shooting of Gwendolyn Fields on March 14, 2011. Applicant retained Rose Mary Parham, Esquire, to represent him. Chief Deputy Solicitor Bruce DuRant of the Ninth Circuit Solicitor's Office prosecuted the case.

On January 31, 2013, Applicant appeared in the Charleston County Court of General Sessions before the Honorable Kristi L. Harrington, circuit court judge, for a pre-trial motions hearing on Applicant's motion for a continuance of his trial, set to start the following week, to allow the defense expert to complete her psychiatric evaluation of Applicant and his motion to be evaluated by the State for competency and criminal responsibility. During the hearing, Applicant called Dr. Susan Knight, a forensic psychiatrist at the Medical University of South Carolina who was retained by counsel Parham to evaluate Applicant in March of 2011 and had met with Applicant several times. Dr. Knight specifically told Judge Harrington she did not have any concerns about Applicant's competency. (Jan. 31, 2013 Mot. Tr. p. 35). Following testimony from Dr. Knight and argument by Applicant and the State, Judge Harrington denied Applicant's motion for a continuance and to have Applicant evaluated by the State prior to proceeding forward to trial.

Later that same day, Applicant reappeared before Judge Harrington and pled guilty but mentally ill¹ to the lesser-included offense of voluntary manslaughter pursuant to negotiations with the State for a twenty-four year term of imprisonment and the dismissal of a related weapons charge. During the plea proceeding, Applicant informed the court he had sufficient time to discuss his case with counsel, was satisfied with counsel's representation, and understood the plea agreement with the State. Applicant further affirmed that he understood his constitutional

¹ See S.C. Code Ann. § 17-24-20(A) ("A defendant is guilty but mentally ill if, at the time of the commission of the act constituting the offense, he had the capacity to distinguish right from wrong or to recognize his act as being wrong as defined in Section 17-24-10(A), but because of mental disease or defect he lacked sufficient capacity to conform his conduct to the requirements of the law.")

rights and wished to waive them to enter the negotiated plea of guilty but mentally ill. Applicant informed the court that he had previously been diagnosed as having bi-polar disorder, but that he understood what he was doing and wished to enter his plea of guilty but mentally ill. He informed the court he understood he would be waiving any possible defenses based on competency or criminal responsibility by entering his plea and he wished to do so. He affirmed he was pleading guilty but mentally ill because he was indeed guilty and agreed with the factual recitation as presented by the State. Judge Harrington accepted Applicant's plea but deferred sentencing at Applicant's request.

On May 28, 2013, Judge Harrington reconvened all parties for a sentencing hearing. At that time, Judge Harrington sentenced Applicant to twenty-four years imprisonment pursuant to plea negotiations between applicant and the State. Applicant did not file a notice of appeal.

SUMMARY OF FACTS GIVING RISE TO THE CONVICTION

Applicant, who was a devout Christian, often went to the home of Shakeyra Fields, a paralyzed woman whom he had befriended, to minister and pray with her. Shakeyra shared the home with her mother Gwendolyn, whom she often falsely accused of physical and emotional abuse. On March 14, 2011, Applicant arrived at the Fields home to minister to Shakeyra. Upon arrival, Shakeyra told Applicant that her mother had physically abused her the previous evening. Applicant called 911 for an ambulance and law enforcement assistance removing Shakeyra from the home. Law enforcement arrived and were making arrangement to place Shakeyra into emergency protective custody when Applicant walked into the doorway between the living room and the kitchen and removed a nine-millimeter Glock from underneath his coat. He shot Gwendolyn Fields three times in the back while she was cooking at the stove. Gwendolyn was taken to the hospital and died a short time later. Applicant was apprehended at the scene along with his weapon. (Plea Tr. p. 18-21; Reconstruction Hearing Tr. p. 21-22, Affidavit for Arrest

Warrant M-610236).

CURRENT PROCEEDING

On May 5, 2014, Applicant filed an application for post-conviction relief, alleging the following grounds for relief:

1. Counsel failed to apprise Applicant of the sentencing consequences of his guilty plea;
2. Counsel failed to place his plea agreement on the record;
3. Involuntary guilty plea;
4. Counsel failed to use the Applicant's medical records as mitigation evidence;
5. Counsel failed to put the State's Case through adversarial testing;
6. Counsel failed to inform Applicant of the mandatory two year community supervision program upon release;
7. Counsel failed to request a Blair² hearing; and
8. Counsel improperly advised Applicant to plead guilty but mentally ill.

The Charleston County Clerk of Court appointed James K. Falk, Esquire to represent Applicant. The State of South Carolina (Respondent) made its return on March 20, 2015, requesting an evidentiary hearing be held.

Thereafter, Respondent attempted to order the transcript from Applicant's plea proceeding, but despite diligent efforts by both Respondent and Court Administration, Respondent was notified by Court Administration that the transcript from the plea proceeding could not be located. This case was scheduled for an evidentiary hearing before this Court on December 7, 2017, at which time Applicant moved for a continuance and to reconstruct the record of the plea proceeding based on the unavailable transcript. This Court continued the matter and ordered the parties to attempt to reconstruct the plea proceeding before Judge Harrington.

A reconstruction hearing was held on June 13, 2018, before Judge Harrington. During the hearing, Applicant, plea counsel Parham, and Chief Deputy Solicitor DuRant testified as to what

² State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981).

transpired at the plea proceeding. Following this hearing, Judge Harrington ruled the record was sufficiently reconstructed for meaningful collateral review.³

An evidentiary hearing was held before this Court on October 4, 2018. At the evidentiary hearing, Applicant proceeded forward on the following grounds for relief:

1. Counsel was ineffective for failing to request a hearing on his competency pursuant to State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981);
2. Counsel was ineffective for failing to use his medical records in mitigation; and
3. Applicant's guilty plea was involuntary.

During the evidentiary hearing, the court reporter (Kay H. Richardson), after listening to a portion of the testimony, informed this Court and the parties that she was the court reporter who took Applicant's plea proceeding at the request of the chief administrative judge in 2013 even though she was not assigned to Judge Harrington. She informed the parties that she would be able to provide a copy of the transcript and has so provided a copy of this transcript, which this Court has reviewed and incorporated into the record in this case.

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant called Rose Mary Parham (counsel) to testify. She testified she was retained to represent Applicant in March 2011 shortly after his arrest. She testified she was referred to Applicant by Bill Watkins, a Columbia attorney and friend of hers, who called her and told her Applicant did not like his current attorney, who was Jewish. She elaborated Watkins told her Applicant wished to be represented by a "white, Christian, Baptist female" and that Watkins instantly thought of her as a perfect attorney for Applicant. Counsel testified she came to Charleston to visit Applicant shortly after receiving the referral from Watkins. She testified she arrived at the Charleston County Detention Center during a torrential rainstorm and went to meet with Applicant, who informed her that he did not want to meet with her without a Bible. She testified she asked around the detention center to see if anyone had a

³ A copy of this transcript was ordered and was reviewed by this Court.

Bible she could borrow, and when she was unable to procure one, she drove to Barnes and Noble bookstore to get a Bible. She testified she bought a King James Version of the Bible and returned to the detention center to visit Applicant, who initially expressed displeasure with the version she had selected as it was not his preferred New International Version.

Applicant eventually agreed to speak with counsel and the two discussed his religious beliefs, which counsel described as religious fervor. She testified Applicant told her the Holy Spirit had instructed him to kill the victim. She testified Applicant was an intelligent man, noting he was a certified public accountant (CPA) who graduated from the Citadel, but suffered from mental illness. She testified Applicant told her that his wife had previously been diagnosed with a grave illness and her prognosis was not good. She elaborated that while waiting at one of his wife's medical appointments, Applicant prayed that if God would cure his wife, he would devote the bulk of his time to ministering to those less fortunate. At this appointment, Applicant met Shakeya Fields, a woman who had become paralyzed after a severe bout of food poisoning, and decided to befriend and minister to Shakeya.

Counsel testified Applicant routinely visited Shakeyra at her home, which she described as a crack house that Shakeyra shared with her mother. She testified Shakeyra accused her mother of abusing her and law enforcement had routinely been called to the home to intervene (information of which Applicant was unaware). Counsel testified Shakeyra was in the process of finalizing a large settlement related to her injuries and Applicant was concerned her mother would misuse the money and abuse Shakeyra. She testified on the day of the shooting, Applicant went to Shakeyra's home to minister to her and Shakeyra reported her mother had physically abused her the evening before. Shakeya told Applicant she was worried that her mother would kill her if he did not get her out of the home immediately. She testified Applicant called law enforcement for assistance. Applicant, who was unaware that law enforcement was already

familiar with this address based on the voluminous complaints they had previous received, became agitated that it was taking so long for assistance to arrive. Counsel testified Applicant then went to his car, got his gun, and shot Shakeyra's mother as police officers were nearby. Counsel testified she believed Shakeyra had manipulated Applicant, who had already been concerned for her well-being.

Counsel testified she visited with Applicant frequently, averaging approximately two visits per month for the roughly two years she represented him. She testified she also talked to Applicant by telephone and exchanged letters with him. She testified she also hired an investigator, David Lazar, a former federal Bureau of Alcohol, Firearms and Explosives (ATF) investigator, David Lazar, shortly after she was retained to assist with Applicant's case. She testified Lazar investigated the case and visited with Applicant frequently. She testified the bulk of Lazar's investigation was gathering mitigation evidence, which she repeatedly used while attempting to negotiate a favorable plea deal for Applicant.

She testified she initially had concerns about Applicant's competency during her first visit or two with Applicant. She elaborated Applicant was experiencing hallucinations and had a fascination with numbers, which he often connected back to scripture, during these initial meetings. She testified that based on these concerns, she retained the services of Dr. Knight within two weeks. She testified Dr. Knight evaluated Applicant numerous times. She testified Applicant originally told her he would not be forthcoming with Dr. Knight about his hallucinations, but eventually told counsel he would be open with Dr. Knight. She testified Dr. Knight told her she did not think Applicant was incompetent or lacked criminal responsibility and that any report she issued would not be beneficial to Applicant's case. She elaborated Dr. Knight told her that Applicant knew his actions were wrong but that he believed his actions were justified, which was consistent with what Applicant had told her. She testified Applicant

understood the role of the judge, attorneys, and others in the legal system and was able to assist in his defense. Based on these discussions, counsel asked Dr. Knight not to prepare a report.

Additionally, counsel testified she ultimately did not have any concerns about Applicant's competency. She testified the longer Applicant was in the detention center, the more "normal" his behavior became, citing that he no longer reported any hallucinations or fixation with numbers. She testified Applicant was not only able to fully assist in his own defense, but he also involved himself in the cases of numerous other inmates at the detention center and attempted to assist in their defenses. She testified Applicant also told her that he did not want to pursue any sort of defense based on competency or mental illness, which he deduced to writing in a letter he sent her on October 2, 2011. See Respondent's Ex. No. 1. Additionally, she testified did not give the State any notice that she was challenging Applicant's competency to stand trial or criminal responsibility based on Dr. Knight's numerous evaluations of Applicant, her own experiences with Applicant, and Applicant telling her that he did not want to pursue any defense based on mental illness.

She testified she ultimately made her motion for continuance and to have Applicant evaluated the week prior to trial at Applicant's request because he wanted more time to negotiate a plea offer with the State and was willing to be evaluated if it would delay his trial. She testified the State had only made one plea offer to voluntary manslaughter for twenty-five years imprisonment a few weeks prior and Applicant wanted to delay his trial in the hope he would be able to secure a better plea offer. She testified she was afraid the State would withdraw its only plea offer if the continuance was granted, but she moved for one at her client's request. She testified Applicant never wanted to proceed to trial and was always interested in negotiating a favorable plea offer. She testified she also argued the trial should be delayed based on recently received discovery. She testified once her motion for a continuance was denied, she then asked

Judge Harrington to order an evaluation of Applicant, again to delay his trial. She testified Judge Harrington denied both motions, but did allow Dr. Knight additional time that day to meet with Applicant. She testified Dr. Knight met with Applicant that day for a few hours and her opinion as to his competency was the same as after her previous evaluations—that Applicant was competent and criminally responsible. She testified although Applicant was never evaluated by the State, he was evaluated numerous times by Dr. Knight, including the hours prior to his guilty plea.

Counsel testified that although Applicant never indicated he wanted to go to trial, her defense at trial would have focused on mitigation and presenting evidence of his mental illness. She elaborated Applicant had shot the victim multiple times in the back in front of police officers, so mitigation was all she would have been able to present. She testified she would have called several witnesses on his behalf, including Applicant's wife and members of the community as character witnesses, and also would have cross-examined the State's witnesses vigorously. She testified she believed Applicant would have been convicted of murder at trial because although he would not have killed the victim but if he hadn't suffered from mental illness, he understood that what he did was wrong. She testified the jury might have "thrown him a bone" and found him guilty but mentally ill thinking it would have some benefit to Applicant, but ultimately would have not had any impact on his sentence. She testified she had explained this to Applicant and he appeared to understand. She testified she explained the sentence range for murder, including the mandatory minimum sentence of thirty years, which must be served day for day, up to life imprisonment without the possibility of parole. She testified Applicant wanted a sentence of fifteen to twenty years, but she was never able to get Chief Deputy Solicitor DuRant to agree to a sentence of less than what Applicant ultimately pled guilty. She testified she explained to Applicant that the twenty-four year plea offer would remove the requirement of

servicing his sentence day-for-day and he would likely serve eighty-five percent of his sentence. She testified she also explained what a plea of guilty but mentally ill would entail and he appeared to understand.

Applicant testified next on his own behalf. He testified his mother died when he was younger and was raised by his abusive father. Applicant testified he suffers from mental illness and had previously been hospitalized. He testified he had two "tailspin" moments in his life: first, working for an abusive employer, and second, misdiagnosis of his wife with a grave illness. He testified it was while his wife was suffering from her illness that he met Shakeyra Fields. He testified he was going through an extremely difficult time in his life, including his wife's life-threatening illness, his daughter's recent surgery, and medical issues with the family pet. He testified he had decided to devote his life to helping others and met Shakeyra, who was paraplegic, and decided to minister to her. He testified he regularly visited with Shakeyra for the next two years and she did not want anything from him other than companionship and counseling. He testified he believed the Holy Spirit was guiding him. He testified there is one unforgiveable sin and that is to not listen to the Holy Spirit. He testified he does not remember most of his time at the Charleston County Detention Center and he described the period as "like a dream." He noted he was put on suicide watch twice while at the detention center and was hallucinating.

Applicant testified he never wanted to kill Gwendolyn and he was trying to protect Shakeyra. He testified Shakeyra has told him multiple times that her mother was abusing her and he shot her mother because he believed it was the only way to protect Shakeyra.

Applicant testified he wanted to secure a plea deal because God would get him through without a trial or having to discuss the Holy Spirit with anyone. However, he testified he was coerced into pleading guilty because it was the only option available. He testified counsel did not

fully explain what a plea of guilty but mentally ill entailed. Applicant testified he originally refused to cooperate with Dr. Knight and consider a defense based on his mental illness, but he eventually realized it was his only option and cooperated. He testified he originally refused to speak with Dr. Knight, citing an extreme pain in his jaw and fear of betraying the Holy Spirit, but finally opened up to her during their final meeting before his guilty plea. He testified this final meeting only lasted fifteen minutes and was not long enough.

He testified Counsel should have requested a Blair hearing and had him evaluated by the State. He conceded counsel did move to have him evaluated after the motion got a continuance was denied. He testified Counsel should have used his medical records to support his request for a psychological evaluation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented at the evidentiary hearing, which allowed the Court to scrutinize the credibility of all witnesses presented. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Applicant has alleged plea counsel, Rose Mary Parham, was constitutionally ineffective for failing to request a competency evaluation pursuant to Blair and failing to utilize his medical records to support his request for an evaluation. He also argues his plea was involuntary. Both allegations are addressed below.

Ineffective Assistance of Counsel

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her 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 [it] cannot be relied upon as having produced a just result.” Strickland, 466 U.S. 668. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland does not guarantee perfect representation, only a “ ‘reasonably competent attorney.’ ” 466 U. S. at 687 (quoting McMann v. Richardson, 397 U. S. 759, 770 (1970)). Representation is constitutionally ineffective only if it “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities. Id.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. 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, 300 S.C. at 117-18, 386 S.E.2d at 625.

Although courts may not indulge “post hoc rationalization” for counsel’s decision making that contradicts the available evidence of counsel’s actions, Wiggins, 539 U. S. at 526–527, neither may they insist counsel confirm every aspect of the strategic basis for his or her actions. There is a “strong presumption” that counsel’s attention to certain issues to the exclusion of others reflects trial tactics rather than “sheer neglect.” Yarborough v. Gentry, 540 U. S. 1, 8 (2003) (per curiam). After an adverse verdict at trial even the most experienced counsel may find it difficult to resist asking whether a different strategy might have been better, and, in the course of that reflection, to magnify their own responsibility for an unfavorable outcome. Strickland, however, calls for an inquiry into the objective reasonableness of counsel’s performance, not counsel’s subjective state of mind. Id. at 688; Harrington v. Richter, 562 U.S. 86 (2011).

With respect to prejudice, an applicant must demonstrate “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id. at 694. It is not enough “to show that the errors had some conceivable effect on the outcome of the proceeding.” Id. at 693. Counsel’s errors must be “so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.” Id. at 687. See Harrington, 562 U.S. 86. With respect to guilty plea counsel, Applicant must establish 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 (1985).

“Surmounting Strickland’s high bar is never an easy task.” Padilla v. Kentucky, 559 U.S. 356, 371 (2010), and the strong societal interest in finality has “special force with respect to

convictions based on guilty pleas.” United States v. Timmreck, 441 U.S. 780, 784 (1979). An ineffective assistance of counsel claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so the Strickland standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. Strickland, 466 U.S. at 689–690. Even under de novo review, the standard for judging counsel’s representation is a most deferential one. Unlike a later reviewing court, the attorney observed the relevant proceedings knew of materials outside the record and interacted with the client, with opposing counsel, and with the judge. It is “all too tempting” to “second-guess counsel’s assistance after conviction or adverse sentence.” Id. at 689; see also Bell v. Cone, 535 U. S. 685, 702 (2002); Lockhart v. Fretwell, 506 U. S. 364, 372 (1993). The question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” not whether it deviated from best practices or most common custom. Strickland, 466 U.S at 690.

In assessing prejudice under Strickland, the question is not whether a court can be certain counsel’s performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. Wong v. Belmontes, 558 U. S. 15 (2009); Strickland, 466 U.S. at 693. Instead, Strickland asks whether it is “reasonably likely” the result would have been different. Id. at 696. This does not require a showing that counsel’s actions “more likely than not altered the outcome,” but the difference between Strickland’s prejudice standard and a more-probable-than-not standard is slight and matters “only in the rarest case.” Id. at 693, 697. The likelihood of a different result must be substantial, not just conceivable. Id. at 693. Harrington, 562 U.S. 86.

“When a PCR applicant raises issues of competency in the context of a plea proceeding, the two-prong Strickland analysis still applies; however, because of the nature of the claim, proof

of deficiency of counsel is intertwined with prejudice.” Ramirez v. State, 419 S.C. 14, 21, 795 S.E.2d 841, 844–45 (2017). “Specifically, when establishing Strickland prejudice in the context of plea counsel’s failure to request a mental competency evaluation, ‘the [applicant] need only show a ‘reasonable probability’ that he was . . . incompetent at the time of the plea.’ ” Id. (quoting Jeter v. State, 308 S.C. 230, 233, 417 S.E.2d 594, 596 (1992); see also Matthews v. State, 358 S.C. 456, 458–60, 596 S.E.2d 49, 50–51 (2004) (expanding the reasonable probability standard as the burden for proving both the deficiency of counsel and the prejudice prongs). Once a PCR applicant has established his counsel was deficient in failing to obtain a mental competency evaluation, he is entitled to relief if he demonstrates a reasonable probability that he was incompetent at the time he pled guilty. Ramirez, 419 S.C. at 22, 795 S.E.2d at 845 (citing Jeter, 308 S.C. at 233, 417 S.E.2d at 596; Matthews, 358 S.C. at 459, 596 S.E.2d at 51).

Based on this standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel as to either of his allegations: failing to request a competency evaluation pursuant to Blair and failing to utilize his medical records to support his request for an evaluation. Specifically, this Court finds Applicant has failed to establish deficiency of counsel or any resulting prejudice. Addressing deficiency first, this Court finds Counsel’s performance was effective. Immediately upon visiting with Applicant, Counsel recognized Applicant may suffer from mental illness and retained a forensic psychiatrist, Dr. Susan Knight from MUSC, who evaluated Applicant four separate times. Each time, Dr. Knight informed Counsel that Applicant was competent and criminally responsible, which would be reflected in any report she prepared. Based on this information, and her clients repeated wishes that he did not want to present any defense based on competency or insanity, Counsel did not notify the State that she intended to challenge Applicant’s competency or criminal responsibility. Moreover, despite the opinion from Dr. Knight that Applicant was

competent and criminally responsible, Counsel still moved for Applicant to be evaluated by the State at Applicant's request. This motion was denied by the court, but the court allowed Applicant to be evaluated by Dr. Knight again that afternoon, yielding the same result—Applicant was competent to stand trial or enter his guilty plea. The introduction of any medical records would not have changed this ultimate result. Counsel's performance was effective and exceeded the minimum constitutional standards required. Additionally, this Court finds Applicant cannot establish any requisite prejudice. The consistent testimony and evidence before this Court establishes Applicant was competent to enter his guilty plea and was criminally responsible. Moreover, the plea proceeding establishes that Applicant was specifically asked about his decision to forgo any defenses based on competency or criminal responsibility and he affirmed he wished to do so.

Based on the foregoing, this Court finds Applicant has failed to meet his requisite burden of establishing Counsel was constitutionally ineffective in her treatment of his mental health condition, including her failure to have him evaluated for competency and failing to use his medical records to support a request for an evaluation. These allegations are denied and dismissed with prejudice.

Involuntary Guilty Plea

Applicant further alleges his guilty plea was not voluntarily entered. This Court finds Applicant's guilty plea was freely and voluntarily made. In evaluating issues concerning guilty pleas, this Court will consider the entire record, including the transcript of the guilty plea proceeding and the evidence presented at the post-conviction relief hearing. Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2000). Voluntariness of a guilty plea is not merely determined by an examination of a specific inquiry by the plea court alone but rather is determined by the record of both the guilty plea proceeding and the post-conviction relief hearing. Id. In order to find a guilty

plea was knowingly and voluntarily 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 (1969). Further, “[a] guilty plea is a solemn, judicial admission of the truth of the charges” against the applicant; thus, an applicant’s right to contest the validity of such a plea is usually foreclosed. Dalton v. State, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, 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. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975)); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

This Court finds this allegation is without merit, and Applicant has failed to carry his burden of proving his guilty plea was involuntarily made. The records before this Court, and particularly the transcript of Applicant’s plea proceeding, show that Applicant engaged in a thorough colloquy with the court before electing to forgo his constitutional rights and knowingly, voluntarily, and intelligently enter a plea of guilty but mentally ill. This Court finds Applicant knew the charges he was facing and understood the plea he was entering to the lesser-included offense, including the significant sentence reduction and dismissal of an accompanying weapons charge based on his negotiated plea. This Court also finds Applicant was properly and fully advised of his constitutional rights and knowingly and voluntarily waived those rights to accept a favorable negotiated plea based on the advice of competent counsel.

Therefore, this Court finds Applicant had a full understanding of the consequences of his plea and the charges against him, and the plea court correctly found Applicant’s plea was freely, voluntarily, and intelligently made. This allegation is denied and dismissed with prejudice.

CONCLUSION

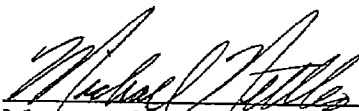
Based on all the foregoing, this Court finds Applicant has not established any other constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief is denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203 and 243, 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 post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

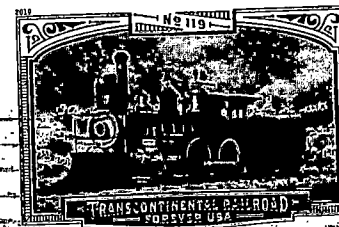
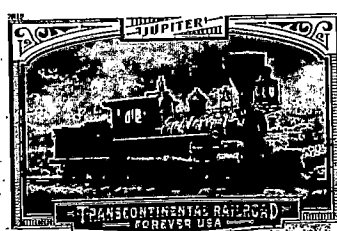
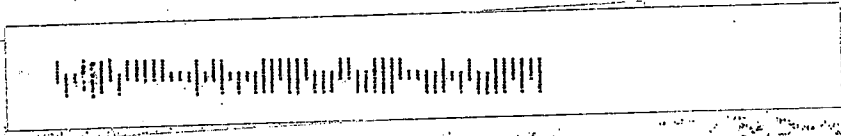
IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

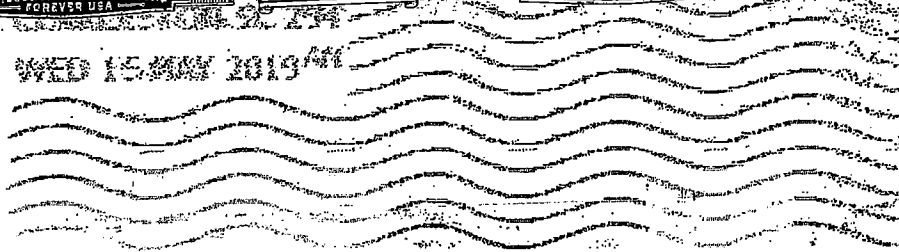
AND IT IS SO ORDERED this 6 day of May, 201~~8~~¹⁹


MICHAEL G. NETTLES
Presiding Judge
Ninth Judicial Circuit

Horace, South Carolina



WED 15 MAR 2010 11



ALK LAW FIRM

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