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RECEIVED

June 21, 2019

JUN 27 2019

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

S.C. SUPREME COURT

RE: Keishawn McManus, #375011 v. State of South Carolina
2018-CP-29-0418

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal along with the accompanying Order for the above-referenced matter. By way of this letter I am copying the Office of Appellate of Defense, as I was appointed to represent Mr. McManus.

Best regards,



Donae A. Minor, Esq.
Attorney at Law

cc: Keishawn McManus (#373636)
Samuel L. Key
Lancaster County Clerk of Court
Office of Appellate Defense

“WHERE FAMILY, LAW, & BUSINESS MEET”

D/B/A MINOR LAW OFFICES, LLC IN SOUTH CAROLINA AND MINOR LAW OFFICES, PLLC IN NORTH CAROLINA

STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

JUN 27 2019

S.C. SUPREME COURT

The Honorable Paul M. Burch, Circuit Court Judge

Case No. 2018-CP-29-0536

Keishawn McManus, #375011, Petitioner,

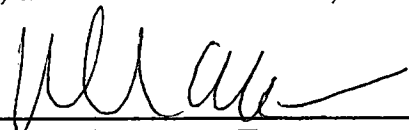
v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Applicant, Keishawn McManus, appeals the order of the Honorable Paul M. Burch, dated May 28, 2019, filed June 11, 2019, and received June 18, 2019.

June 24, 2019


DONAE A. MINOR, ESQUIRE
Minor Law Offices, LLC
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803-504-0971
SC Bar No. 102550
ATTORNEY FOR APPLICANT

Opposing Counsel:
Samuel L. Key
Post-Conviction Relief
6th and 13th Judicial Circuits
P.O. Box 11549
Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

JUN 27 2019

The Honorable Paul M. Burch, Circuit Court Judge S.C. SUPREME COURT

Case No. 2018-CP-29-0418

Keishawn McManus, #375011

Petitioner,

v.

State of South Carolina

Respondent.


PROOF OF SERVICE

I, Brittany Clark, certify that I have served the within Notice of Appeal on Respondent by depositing a copy of the same in the United States Mail, postage prepaid, on June 24, 2019, addressed as follows:

Samuel L. Key
Post Conviction Relief
6th and 13th Judicial Circuits
PO Box 11549
Columbia, SC 29211-1549

I further certify that all parties required by Rule to be served have been served.

6/24, 2019



BRITTANY E. CLARK
PARALEGAL TO ATTORNEY DONAE A. MINOR
1750 SC Highway 160 West,
Suite 101-259
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803-504-0971

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

Keishawn McManus, # 375011

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE SIXTH JUDICIAL CIRCUIT
)

) 2018-CP-29-0418
)

) **ORDER GRANTING BELATED APPELLATE
) REVIEW UNDER WHITE V. STATE AND
) DISMISSING ALL OTHER ALLEGATIONS**
)
)
)

The matter before the Court is an action for post-conviction relief (PCR) commenced by Keishawn McManus (Applicant) on April 13, 2018. In his PCR application and amendments, Applicant alleged ineffective assistance of counsel for: (1) failure to investigate, (2) failure to adequately provide Applicant with discovery, (3) failure to adequately advise Applicant, (4) failure to discuss possible defenses and trial strategy with Applicant, (5) failure to file an appeal despite Applicant's request, and (6) promising a lower sentence in exchange for Applicant's plea. The Court held an evidentiary hearing January 23, 2019. Applicant was present and represented by Donae A. Minor, Esquire. Assistant Attorney General Samuel Key represented the State. After hearing the testimony at the PCR hearing and a full review of the record, the Court finds, as explained below, Applicant is entitled to relief in the form of belated appellate review of direct appeal issues pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974). However, the Court finds Applicant's other allegations are without merit and denies relief on the remaining issues.

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LANCASTER, SC

2018-CP-29-0418

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lancaster County Clerk of Court. Applicant was indicted at the April 2016 term of the Lansater County Grand Jury for murder and possession of a deadly weapon during the commission of a violent crime (2016-GS-29-638). Creighton Coleman, Esquire represented Applicant. On December 19, 2017, Applicant entered a plea pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), to the lesser-included offense of voluntary manslaughter before the Honorable Brian M. Gibbons. Applicant pleaded guilty without recommendations or negotiations. Judge Gibbons accepted Applicant's plea and sentenced him to twenty-one years imprisonment for voluntary manslaughter. Applicant did not appeal his sentence or conviction.

II. FACTS

Applicant's charges stem from the death of his girlfriend, Quatavia Robinson. On December 23, 2014, Applicant called 911 and reported Robinson had been shot. Applicant told the dispatcher he found Robinson lying on the floor with what appeared to be a gun shot wound. The dispatcher asked Applicant if Robinson was still alive. He responded that Robinson was going in and out. The dispatcher asked if there was a gun near Robinson. Applicant did not answer. The dispatcher repeated the question, and Applicant did not immediately reply. After a brief pause, Applicant stated there was a gun in Robinson's right hand. He explained he could not see the gun before because Robinson was lying on it. Law enforcement found Robinson with a gun in her right hand. (Tr. 10).

During the early stages of the investigation, Applicant informed law enforcement that Robinson had sent him a text message indicating she wanted to harm herself. (Tr. 10). Initially, law enforcement was investigating Robinson's death as a possible suicide. An autopsy report

indicated that Robinson suffered one gunshot wound to the upper chest above her left breast. There was no exit wound, and there was no burning or charring of the skin at the entry wound. (Tr. 10–11). The lack of burning or charring around the entry wound led to a further investigation of the crime. This further investigation led law enforcement to believe the gunshot was not self-inflicted, and that Robinson’s body had been moved after she was shot. (Tr. 11–12). Robinson’s mother told law enforcement Applicant admitted to her that he was present when Robinson was shot, and her death was the result of an accident. (Tr. 13).

A Lancaster County Magistrate issued a warrant for Applicant’s arrest on January 6, 2015. Applicant was arrested on December 30, 2015—almost a year after the warrant was issued. (Tr. 13–14). Applicant entered an *Alford* plea on December 19, 2017.

During the plea hearing, the plea court asked Applicant if he understood that he was pleading pursuant to *Alford*. The court explained to him the meaning and consequences of an *Alford* plea. (Tr. 4–6). The plea court then asked Applicant if plea counsel discussed the sentencing ranges he could receive. The court went on to explain, “And, of course, you understand that any conversations with you aren’t guaranteed, it’s just like I can’t guarantee you and tell you what I’ll do either because I haven’t heard everything, do you understand that?” (Tr. 6). Applicant affirmed (Tr. 6). The plea court then conducted a colloquy with Applicant, explaining the rights he was giving up in deciding to enter an *Alford* plea instead of proceeding to a jury trial. (Tr. 7–9). The State then recited the factual basis for the plea. (Tr. 9–14).

After the State provided the factual basis for the plea, the plea court asked Applicant if he still wished to enter an *Alford* plea. Applicant affirmed. (Tr. 15). The plea court accepted Applicant’s plea and sentenced him to twenty-one years for voluntary manslaughter. (Tr. 15,

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26). Applicant did not appeal his plea or conviction. He commenced this PCR action on April 13, 2018.

III. ALLEGATIONS

Applicant alleges ineffective assistance of counsel. Specifically, Applicant alleges plea counsel was ineffective for:

1. Failure to pursue an appeal despite Applicant's request to do so;
2. Involuntary Guilty Plea;
 - a. Failure to investigate Applicant's case including but not limited to interviewing potential witnesses and evaluating the veracity of evidence sought against Applicant;
 - b. Failure to adequately provide Applicant with all discovery and properly discuss all discovery and evidence sought against him prior to Applicant accepting his plea bargain;
 - c. Failure to properly counsel, discuss, and explain the pending charges and consequences so Applicant could make an informed decision as to whether to take a plea bargain or pursue a trial;
 - d. Failure to discuss possible defenses and challenges to the evidence with Applicant; and
 - e. Promised a lower sentence for taking plea bargain.

IV. PCR TESTIMONY

Applicant's Testimony

Applicant testified at the PCR hearing as follows. Applicant met with plea counsel about three times before he pleaded guilty. Applicant stated he and plea counsel discussed pursuing a plea offer of zero to twenty years. Applicant stated plea counsel never advised him of the pitfalls or benefits of pleading guilty or going to trial. Applicant stated plea counsel never reviewed the discovery with him, and he did not receive the discovery in his case until the week he was scheduled for court. On cross examination, Applicant reiterated plea counsel never discussed the indictments against him, the discovery, or the sentences he could receive if convicted at trial. Applicant stated he asked plea counsel about his case, but plea counsel only somewhat answered his questions. Applicant explained he asked plea counsel about the gun-shot residue (GSR) kit in

his case, but plea counsel never answered his questions. Applicant stated plea counsel only wanted to answer questions regarding plea negotiations.

Applicant stated he informed plea counsel of several individuals to investigate. Specifically, Applicant asked plea counsel to reach out to Sable Fox. Applicant was unsure whether plea counsel investigated the witnesses he named.

Applicant testified plea counsel advised him the State's offer was for an open plea of zero to twenty years' imprisonment, but plea counsel guaranteed Applicant he would receive between ten to fifteen years. On cross, Applicant testified plea counsel also informed him he could get a maximum of twenty years for his plea. Applicant testified he learned the State's offer was for two to thirty years imprisonment when he appeared in court.

Applicant acknowledged the colloquy with the plea court regarding his plea. Applicant stated he was originally charged with murder, but was allowed to plead to the lesser-included offense of voluntary manslaughter. Applicant admitted he told the plea court he still wished to plead guilty after the plea court's colloquy. Applicant stated he would have refused the State's offer and gone to trial if he knew he was not guaranteed a ten to fifteen year sentence.

Finally, Applicant testified he asked plea counsel to appeal his guilty plea. Applicant stated he asked plea counsel to file an appeal while he was in the courtroom following his plea, and he wrote plea counsel a letter the same day from the detention center.

Plea Counsel's Testimony

The State called plea counsel to testify at the PCR hearing. Plea counsel recalled meeting with Applicant more than three times. Plea counsel stated he frequently spoke with Applicant's mother regarding his case, and she would come by his office to meet with him. Plea counsel stated he met with Applicant and Applicant's mother at least ten times to discuss the case. Plea

counsel stated he always spoke to Applicant and Applicant's mother together, and Applicant did not have an issue with plea counsel discussing the case with Applicant's mother.

Plea counsel testified he gave Applicant a copy of his defense file and he investigated into the gun used in the case. Plea counsel stated he discovered through his investigation the victim, Applicant's girlfriend, purchased the gun in Cheraw. Plea counsel stated he and Applicant discussed Applicant's version of the events that took place. Plea counsel recalled that initially, Applicant claimed the victim committed suicide; however, the discovery indicated the victim was shot two times, there was no GSR present on the victim, the victim had no burning of the skin, and the forensic pathologist concluded the victim did not commit suicide in the autopsy report. Plea counsel testified he reviewed all the evidence with Applicant, and Applicant understood the State's case against him. Plea counsel recalled discussing with Applicant text messages between Applicant and the victim that indicated the victim possibly had some mental health issues. However, plea counsel stated Applicant did not want to assassinate the victim's character. Further, plea counsel stated he discussed the GSR results with Applicant.

Plea counsel testified he spoke to Applicant's mother during his investigation of the case. Plea counsel recalled Applicant stating he was with someone earlier the day of the incident, and Applicant's mother provided plea counsel with the person's name and address. Plea counsel stated he attempted to contact the person multiple times, but the person would not cooperate.

Plea counsel testified he explained to Applicant the elements of the crime alleged and the State's evidence in the case. He explained Applicant had a second, unrelated, murder charge against him, and he and Applicant were dealing with both murder charges simultaneously.¹ Plea counsel stated he also explained Applicant would have serious credibility issues if the case went

¹ Plea counsel stated Applicant eventually pleaded guilty to the second murder charge at a separate plea hearing.

to trial because Applicant originally reported the incident as a suicide—which was ruled out by the autopsy—and because Applicant absconded during the State’s investigation. Plea counsel testified Applicant wanted to plead guilty in this case, and Applicant seemed to understand everything going on.

Plea counsel testified he met with the State and the plea judge during the plea negotiations, and the plea court mentioned a sentence of twenty years during the meeting. Plea counsel stated he conveyed the offer to Applicant; however, he advised Applicant the twenty year recommendation was not a “done deal.” Plea counsel stated he explained to Applicant he thought Applicant would receive a twenty-year sentence, but he also explained sentencing was ultimately up to the plea court. Plea counsel explained to Applicant he could receive anywhere from two to thirty years, and he explained to Applicant the twenty year sentence was just plea counsel’s estimation. Plea counsel recalled the victim’s family being present during the plea hearing, and the victim’s family members were very passionate during sentencing. However, plea counsel felt Applicant presented compelling mitigation evidence during sentencing because Applicant suffered from sickle-cell anemia. Plea counsel stated he conveyed this information during mitigation. Plea counsel stated the plea court gave Applicant one year more than the State recommended.

Plea counsel recalled Applicant requesting him to file an appeal in the case; however, plea counsel admitted he failed to file an appeal.

V. DISCUSSION

The issue before the Court is whether Applicant received ineffective assistance of counsel. To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness, and (2) the applicant

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sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To prove prejudice, the applicant must show a reasonable probability he would not have pleaded guilty and would have insisted on going to trial absent plea counsel's alleged deficiency. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

1. Failure to File a Direct Appeal

Applicant contends plea counsel was ineffective for failing to file a direct appeal. The Court agrees. Applicant is entitled to petition the Supreme Court for belated appellate review of his guilty plea. See *White v. State*, 263 S.C. 110, 118, 208 S.E.2d 35, 39 (1974) (stating in the absence of an intelligent waiver by the defendant, counsel should pursue an appeal on the defendant's behalf). Here, Applicant testified he asked plea counsel to file an appeal the day he pleaded guilty and subsequently wrote a letter to plea counsel requesting plea counsel file an appeal. Plea counsel agreed Applicant requested he file an appeal of his case and admitted he failed to do so. Therefore, based on the testimony given at the PCR hearing, the Court finds Applicant did not knowingly and voluntarily waive his right to petition the Supreme Court for belated appellate review of his guilty plea. The Court concludes Applicant is entitled to a belated review of his convictions. A petition for belated review pursuant to *White v. State* can remedy Applicant's lack of a direct appeal.

2. Involuntary Guilty Plea

Applicant also alleges ineffective assistance of counsel attacking the knowing and voluntary nature of his guilty plea. Specifically, Applicant contends his guilty plea was

unknowing and involuntary alleging: (a) failure to investigate, (b) failure to provide and review discovery, (c) failure to advise Applicant of the pending charges and consequences so that Applicant could make an informed decision between taking a plea bargain and pursuing a trial, (d) failure to discuss potential defenses and strategies, and (e) for promising a different sentence than Applicant received. These allegations are properly before the Court as attacks on the knowing and voluntary nature of Applicant's plea. See *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (stating a defendant who entered a plea on the advice of counsel may only attack the voluntary and intelligent nature of the plea). As explained below, the Court finds Applicant knowingly and voluntarily pleaded guilty.

The test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). "[A] defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). To prove prejudice, the applicant must show a reasonable probability he would not have pleaded guilty and would have insisted on going to trial absent plea counsel's alleged deficiency. *Hill*, 474 U.S. at 59.

a. Failure to Investigate

Applicant claims plea counsel was ineffective for failing to properly investigate the case including interviewing potential witnesses and evaluating the veracity of evidence against Applicant. The Court disagrees.

"[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation

of the facts and circumstances of the case.” *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011). However, “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, 334, 496 S.E.2d 415, 417 (1998). “In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments.” *Wiggins v. Smith*, 539 U.S. 510, 521–22 (2003).

In support of his allegation plea counsel failed to interview potential witnesses, Applicant testified he informed plea counsel of several individuals to investigate; however, Applicant could only remember requesting plea counsel to investigate Sable Fox. Applicant presented no witnesses other than himself at the PCR hearing. Plea counsel testified Applicant’s mother provided him with the name and address of a potential witness to interview, and he attempted to contact the potential witness several times. Plea counsel recalled the witness being uncooperative.

The Court finds plea counsel was not deficient for failing to interview potential witnesses. In making this finding, the Court finds credible plea counsel’s testimony he attempted to contact the witness several times, but the potential witness would not cooperate. The Court finds plea counsel’s investigation of potential witnesses reasonable. The Court further finds Applicant has failed to prove any prejudice resulted from plea counsel’s alleged deficiency of failure to interview potential witnesses because Applicant presented no witness in support of his allegation at the PCR hearing. *See Moorehead*, 329 S.C. at 334, 496 S.E.2d at 417 (“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.”). Because Applicant

presented no testimony as to what the witnesses would have offered had plea counsel interviewed them, any evidence or testimony those witnesses may have provided is mere speculation.

As for plea counsel's alleged failure to evaluate the veracity of the evidence against Applicant, the Court finds credible plea counsel's testimony regarding his investigation of the evidence in the case. As mentioned above, plea counsel testified he investigated the background of the gun found at the scene of the crime. He stated he discovered through his investigation the victim was the registered owner of the gun and had purchased the gun in Cheraw. Plea counsel also testified he reviewed the text-message conversations between Applicant and the victim which indicated the victim possibly suffered from a mental illness. Plea counsel stated he and Applicant discussed the text-message conversations and began to develop a defense based on those messages. Plea counsel also stated he reviewed the GSR results and the autopsy report that ruled out suicide as the victim's cause of death. Based upon plea counsel's credible testimony, the Court finds plea counsel was not deficient in his investigation and evaluation of the evidence in Applicant's case.

As for prejudice, Applicant acknowledged the colloquy with the plea court regarding his plea. Applicant stated he was originally charged with murder, but was allowed to plead instead to voluntary manslaughter. Applicant admitted he told the plea court he still wished to plead guilty after the plea court's colloquy. At the plea hearing, after the State recited the facts they intended to prove if the case proceeded to trial, Applicant informed the plea court he still wished to enter an *Alford* plea. (Plea Tr. 15). The Court finds any alleged deficiency on behalf of plea counsel for failing to evaluate the veracity of the evidence against applicant was cured at the plea hearing. *See Wolfe v. State*, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997) (stating even if

counsel gives erroneous advice, an applicant is not entitled to PCR where any misconceptions are cured by the colloquy during the guilty plea proceeding). Accordingly, the Court finds plea counsel was not ineffective for failing to investigate, and Applicant knowingly and voluntarily pleaded guilty. The Court denies relief on this allegation and dismisses it with prejudice.

b. Failure to provide and review discovery

Applicant alleges plea counsel was ineffective for failing to adequately provide Applicant with all discovery and properly discuss all discovery and evidence sought against him prior to Applicant accepting his plea bargain. The Court disagrees.

As mentioned above, Applicant stated plea counsel never reviewed the discovery with him, and he did not receive the discovery in his case until the week he was scheduled for court. Applicant stated he asked plea counsel about his case, but plea counsel only somewhat answered his questions. Applicant explained he asked plea counsel about the GSR kit in his case, but plea counsel never answered his questions. Plea counsel stated he and Applicant discussed Applicant's version of the events that took place. On the other hand, plea counsel recalled that initially, Applicant claimed the victim committed suicide; however, the discovery indicated the victim was shot two times, there was no GSR present on the victim, the victim had no burning of the skin, and the forensic pathologist concluded the victim did not commit suicide in the autopsy report. Plea counsel testified he reviewed all the evidence with Applicant, and Applicant understood the State's case against him. Plea counsel recalled discussing with Applicant text messages between he and the victim that indicated the victim possibly had some mental health issues. However, plea counsel stated Applicant did not want to assassinate the victim's character. Further, plea counsel stated he discussed the GSR results with Applicant.

The Court finds credible plea counsel's testimony he provided and reviewed all the discovery with Applicant, and Applicant understood the State's case against him. As discussed in the previous subsection, any alleged deficiency on behalf of plea counsel for failing to evaluate the veracity of the evidence against applicant was cured at the plea hearing. *See Wolfe*, 326 S.C. at 164, 485 S.E.2d at 370 (stating even if counsel gives erroneous advice, an applicant is not entitled to PCR where any misconceptions are cured by the colloquy during the guilty plea proceeding). At the plea hearing, after the State recited the facts they intended to prove if the case proceeded to trial, Applicant informed the plea court he still wished to enter an *Alford* plea. (Plea Tr. 15). Applicant knew what the State intended to prove against him at trial, and informed the plea court he still wished to plead under *Alford*. Therefore, plea counsel was not ineffective because Applicant entered his *Alford* plea knowing what the State intended to prove had his case gone to trial. The Court denies relief on this allegation and dismisses it with prejudice.

- c. Failure to advise Applicant of the pending charges and consequences so Applicant could make an informed decision between taking a plea bargain and pursuing a trial.

Applicant alleges plea counsel was ineffective for failing to advise Applicant of the pending charges and consequences so Applicant could make an informed decision between taking a plea bargain and pursuing a trial. The Court disagrees.

The test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *Alford*, 400 U.S. at 31 (1970). "[A] defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman*, 337 S.C. at 599, 524 S.E.2d at 624. To prove prejudice, the applicant must show a reasonable probability he would not have pleaded

guilty and would have insisted on going to trial absent plea counsel's alleged deficiency. *Hill*, 474 U.S. at 59.

As mentioned above, Applicant testified plea counsel never discussed the indictments against him, the discovery, or the sentences he could receive if convicted at trial. Applicant stated plea counsel only wanted to answer questions regarding plea negotiations. Plea counsel testified he explained to Applicant the elements of the crime alleged and the State's evidence in the case. He recalled a big issue in the case was Applicant had a second murder charge against him, and he and Applicant were dealing with both murder charges simultaneously. However, plea counsel explained to Applicant he could receive anywhere from two-to-thirty years' imprisonment. At the plea hearing, Applicant informed the plea court plea counsel had informed him of his rights to a jury trial. (Plea Tr. 7). The plea court then went on to explain Applicant's right to a jury trial, and Applicant stated he understood his right. (Plea Tr. 7-9).

The Court finds credible plea counsel's testimony he explained the elements of the charges to Applicant, the maximum and minimum mandatory exposure Applicant faced, and the nature of the rights Applicant waived by pleading guilty. The Court further finds Applicant has not proven any prejudice resulting from plea counsel alleged deficiency of failing to advise Applicant because the plea court's colloquy cured any defects in Applicant's understanding. *See Wolfe*, 326 S.C. at 164, 485 S.E.2d at 370 (stating even if counsel gives erroneous advice, an applicant is not entitled to PCR where any misconceptions are cured by the colloquy during the guilty plea proceeding). Accordingly, the Court finds plea counsel was not ineffective for failing to advise Applicant of the pending charges and consequences, and Applicant knowingly and voluntarily pleaded guilty. The Court denies relief on this allegation and dismisses it with prejudice.

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d. Failure to discuss potential defenses and strategies.

Applicant alleges plea counsel was ineffective for failing to discuss possible defenses and challenges to the evidence with Applicant. The Court disagrees.

As mentioned above, Applicant stated plea counsel never advised him of the pitfalls or benefits of pleading guilty or going to trial. Applicant stated he asked plea counsel about his case, but plea counsel only somewhat answered his questions. Applicant stated plea counsel only wanted to answer questions regarding plea negotiations. Conversely, plea counsel stated he and Applicant discussed Applicant's version of the events that took place. Plea counsel recalled initially, Applicant claimed the victim committed suicide; however, the discovery indicated the victim was shot two times, there was no GSR present on the victim, the victim had no burning of the skin, and the forensic pathologist concluded the victim did not commit suicide in the autopsy report. Plea counsel recalled discussing with Applicant text messages between he and the victim that indicated the victim possibly had some mental health issues. However, plea counsel stated Applicant did not want to assassinate the victim's character. Further, plea counsel stated he also explained Applicant would have serious credibility issues if the case went to trial because Applicant originally reported the incident as a suicide—which was ruled out by the autopsy—and because Applicant absconded during the State's investigation. Plea counsel testified Applicant wanted to plead guilty in this case, and Applicant seemed to understand all of the issues.

The Court finds credible plea counsel's testimony he discussed possible defenses with Applicant prior to Applicant's plea. Specifically, plea counsel recalled discussing Applicant's version of events and advising applicant he would have serious credibility issues at trial because he absconded and the evidence ruled out suicide. Plea counsel stated he reviewed and explained

how the discovery tended to disprove Applicant's version of the events. Plea counsel also recalled discussing the text-message conversations between Applicant and the victim and how the messages could be used to support Applicant's suicide defense; however, plea counsel stated Applicant did not want to pursue that defense because he did not want to assassinate the victim's character. Plea counsel's credible testimony shows Applicant was aware of possible defenses to his charges. Accordingly, the Court finds plea counsel was not ineffective for failing to discuss potential defenses and strategies with Applicant.

e. Promising a different sentence than Applicant received.

Applicant alleges plea counsel was ineffective for promising a lower sentence for taking the plea bargain. The Court disagrees.

"When a defendant is represented by counsel during the plea process and enters his plea on the advice of counsel, the voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases." *Rayford v. State*, 314 S.C. 56, 48, 443 S.E.2d 805, 806 (1994).

As stated above, Applicant testified plea counsel advised him the State's offer was for an open plea of zero-to-twenty years' imprisonment, but plea counsel guaranteed Applicant he would receive between ten to fifteen years. On cross-examination, Applicant testified plea counsel also informed him he could get a maximum of twenty years for his plea. Applicant testified he learned the State's offer was for two to thirty years' imprisonment when he appeared in court. Applicant recalled the plea court advising him he could be sentenced between two and thirty years' imprisonment; however, Applicant also stated he would have proceeded to trial if he knew he was not guaranteed a ten to fifteen year sentence.

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Plea counsel testified he met with the State and the plea court during the plea negotiations, and the plea court mentioned a sentence of twenty years during the meeting. Plea counsel stated he conveyed the offer to Applicant; however, he advised Applicant the twenty year recommendation was not a "done deal." Plea counsel stated he explained to Applicant he thought Applicant would receive a twenty year sentence, but he also explained sentencing was ultimately up to the plea court. Plea counsel explained to Applicant he could receive anywhere from two to thirty years, and he explained to Applicant the twenty year sentence was just plea counsel's estimation.

The Court finds credible plea counsel's testimony he advised Applicant of the State's offer to recommend a twenty-year sentence, but also explained to Applicant the recommendation was not guaranteed. The Court also finds credible plea counsel's testimony he explained the sentencing range Applicant faced, and he told Applicant he could receive anywhere from two-to-thirty years' imprisonment. The Court finds not credible Applicant's testimony he would have gone to trial if he knew he was not guaranteed to receive between ten fifteen years' imprisonment. The plea transcript shows Applicant knowingly pleaded guilty with a recommended twenty-year sentence. (Plea Tr. 6). Further, Applicant informed the plea court he was not pleading guilty based on any promises other than the recommended sentence. (Plea Tr. 5-6). Accordingly, the Court finds Applicant knowingly entered his plea with a recommended twenty year sentence. Therefore, the Court denies relief on this allegation and dismisses it with prejudice.

VI. CONCLUSION

The Court finds Applicant is entitled to petition the Supreme Court for a belated appellate review of his guilty plea pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974).

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However, the Court finds plea counsel's representation regarding Applicant's guilty plea was neither deficient nor prejudicial. Applicant pleaded guilty pursuant to the advice of plea counsel. Applicant knew the meaning and consequences of pleading guilty to the charges and voluntarily chose to do so. Applicant failed to show plea counsel was deficient for failure to investigate, failure to provide and review discovery with Applicant, failure to advise Applicant of the charges and consequences of the charges against him, or failure to discuss possible defenses and strategies available to Applicant, or for promising a lower sentence than received. Further, the Court finds Applicant knowingly and voluntarily pleaded guilty because the plea court's colloquy cured any of plea counsel's alleged deficiencies. Therefore, based on the foregoing, the Court denies relief on these allegations and dismisses these allegations with prejudice.


Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). 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 Rule 243, SCACR, for appropriate procedures for appeal.

PWB

THEREFORE:

1. The Court grants Applicant a belated appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974);
2. The Court denies relief on Applicant's allegations attacking the knowing and voluntary nature of his plea; and
3. Applicant shall be remanded to the custody of the State.

AND IT IS SO ORDERED.



PAUL M. BURCH
Presiding Judge
Sixth Judicial Circuit

May 28th, 2019.

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