



August 6, 2019

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

RECEIVED

AUG 12 2019

S.C. SUPREME COURT

Re: Orlando Paul vs. State of South Carolina
C/A No: 2017-CP-21-112

Dear Mr. Shearouse:

Please find enclosed one (1) original and one (1) copy each of Applicant's Notice of Appeal and Certificate of Service in the above referenced case. I would appreciate you filing the original and returning the clocked copies in the enclosed envelope:

I was appointed to represent Mr. Paul in this matter and am also enclosing a copy of the Order of Dismissal. If you have any questions, please do not hesitate to ask. My telephone number is 803-520-7278.

Sincerely,

Jonathan D. Waller

Cc: Lindsey A. McCallister, South Carolina Office of Attorney General

Enclosures

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

AUG 12 2019

APPEAL FROM FLORENCE COUNTY
William H. Seals, Jr., Circuit Court Judge

S.C. SUPREME COURT

2017-CP-21-112

Orlando Paul, # 231996,

Appellant,

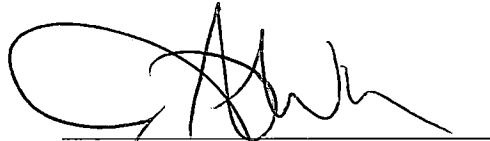
v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Orlando Paul, # 231996, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed August 5, 2019, issued by the Honorable William H. Seals, Jr., Presiding Judge, Twelfth Judicial Circuit.



Jonathan D. Waller

Waller Law Group
SC Bar No.: 76290
1116 Blanding Street
Suite 2B
Columbia, SC 29201
803-520-7278 (phone)
jonathan@wallergroupsc.com
ATTORNEY FOR PETITIONER

August 6, 2019

Other Counsel of Record:
Lindsey A. McCallister, Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3319

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
William H. Seals, Jr., Circuit Court Judge

2017-CP-21-112

RECEIVED

AUG 12 2019

S.C. SUPREME COURT

Orlando Paul, # 231996,

Appellant,

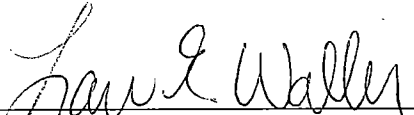
v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Appellant's Notice of Appeal in the above-entitled case has been served upon opposing counsel, Lindsey A. McCallister, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this day, to her office located at P.O. Box 11549, Columbia, SC 29211.


Lauren Waller

August ⁷~~6~~, 2019

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

FILED

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2017CP2100112

Orlando Paul
2019 AUG -5 PM 1:40
South Carolina State Of

PLAINTIFF(S) DEFENDANT(S)
Submitted by: DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:
ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

8/5/2019
Date

For Clerk of Court Office Use Only

This judgment was entered on August 5, 2019, and a copy mailed first class or placed in the appropriate attorney's box on August 5, 2019, to attorneys of record or to parties (when appearing pro se) as follows:

CERTIFIED: A TRUE COPY
Doris Poulos O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Jonathan D Waller 1116 Blanding Street Suite 2B
Columbia, SC 29201

Samuel Leonard Key Rembert C. Dennis Building 1000
Assembly Street Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Doris P. O'Hara

Court Reporter

Doris Poulos O'Hara - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

Orlando Paul, #231996,)
)
Applicant,)

C.A. No. 2017-CP-21-0112

v.)

ORDER OF DISMISSAL

State of South Carolina,)
)
Respondent.)

FILED
2019 AUG -5 PM 1:14
DORIS FAYLOS O'NEAL
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Orlando Paul (Applicant) on January 17, 2017. Respondent made its Return and Motion to Dismiss on April 26, 2017. After a hearing on the motion, Respondent's motion was denied. Respondent then filed an Amended Return and Partial Motion to Dismiss on September 18, 2018. An evidentiary hearing into the matter was convened March 3, 2019, at the Florence County Courthouse before the undersigned. Jonathan D. Waller, Esquire, represented Applicant. Assistant Attorney General Lindsey A. McCallister represented Respondent.

At the hearing, Applicant testified on his own behalf. William Vickery Meetze, Esquire, Applicant's plea counsel, was also called to testify. This Court also had before it a copy of the records of the Florence County Clerk of Court, records from the South Carolina Department of Corrections, the PCR application, Respondent's Amended Return, and the guilty plea transcript. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies this application for relief.

CERTIFIED: A TRUE COPY
Doris Faylos O'Neal
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the March 2015 term of the Florence County Grand Jury for two counts of attempted murder, possession of a firearm by a convicted felon, and armed robbery (2015-GS-21-0272). The charges arose from an incident which took place on October 11, 2014. The victims, Adunte Gibson and Latasha Davis, who are married, went with Applicant that morning to Walmart to purchase cell phones. Tr. p. 15. They planned to sell the phones for a profit on Craigslist; however, they left Walmart without purchasing any phones. Tr. p. 15. When they left Walmart, Davis was driving the car, Gibson was in the front passenger seat, and Applicant was riding in the back seat. Davis drove Applicant to two different houses, as Applicant requested. When the group arrived at the second house, Applicant shot Gibson and Davis from the back seat of the car. Tr. pp. 15-16.

Gibson fled the car and entered a neighboring house, whose occupants called 911. Tr. pp. 13-14, 16. After Gibson fled the car, Applicant exited the car and moved next to the driver's side window where he held Davis at gunpoint. Tr. p. 16. Applicant demanded Davis tell him where the money was located, and Davis responded the money was in the glovebox. Davis fled to a nearby field after Applicant turned his attention towards the glovebox. Davis hid in the field until she heard Applicant get in the car and drive away. Tr. p. 16. Gibson's phone was still in the car when Applicant drove away. Tr. p. 16. At some point after the shooting, Applicant used Gibson's cell phone to call 911. The police traced Gibson's cell phone to an abandoned house and found Applicant inside. Tr. p. 18.

William Vickery Meetze, Esquire, represented Applicant. Todd Tucker, Esquire, prosecuted the case on behalf of the State. The State served Applicant with its notice of intent to seek life without parole (LWOP) based on Applicant's prior convictions for common law robbery in 1996 and armed robbery in 2004. Tr. p. 19. Instead of proceeding to trial, on January 14, 2016, Applicant pleaded guilty to two counts of attempted murder and armed robbery.¹ Pursuant to a negotiated plea agreement between Applicant and the State, the Honorable D. Craig Brown sentenced Applicant to imprisonment for concurrent terms of twenty-eight years. Applicant did not appeal his plea or sentence.

ALLEGATIONS

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

1. "Ineffective assistance of counsel"
 - a. "failure of investigators to perform investigation and follow several leads [I] provided;"
 - b. "Counsel did not: alert of plea offers; contact key witnesses; did not follow leads provided; pursue any reasonable or logical actions relegated to him as defined by law; did not ask whether under control of medications which altered my thinking, reasoning, and/or decision making;"
2. "Failure of trial judge to ensure that [I] was not under influence of meds and that plea was voluntary"
3. "State failed burden of proof"

¹ Applicant was also indicted at the December 2015 term for third-degree arson (2015-GS-21-0465), and he pleaded guilty to that charge on the same day. Judge Brown sentenced him to fifteen years to be run concurrently to his sentence for the charges on indictment 2015-GS-21-0272. The State dismissed the charge for possession of weapon *nolle prosequi*. Applicant did not challenge his guilty plea with respect to the arson conviction in this application.

Applicant requests relief in the form of a “sentence reduction in the amount of fifteen years subtracted from current sentence, as well as any other remedies and reliefs accorded by law.”

At the evidentiary hearing, Respondent renewed its partial motion to dismiss regarding Applicant’s second and third claims. This Court grants Respondent motion and finds these allegations of trial court error and lack of sufficient evidence are issues not properly before this Court. See Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (finding trial court error and sufficiency of evidence are not a cognizable claims for PCR); S.C. Code Ann. § 17–27–20(b). Through counsel, Applicant stated he wished to proceed on his remaining claims of ineffective assistance of counsel. Applicant’s PCR counsel also informed the Court he had explained to Applicant the relief available in PCR is a remand for a new trial, and this Court cannot reduce Applicant’s sentence, and Applicant still wished to proceed with this action.

SUMMARY OF TESTIMONY

Applicant testified after he was arrested on these charges, he first went to the hospital for a suicide attempt, then to the detention center. Applicant testified Counsel represented him throughout the entire case, and he served fifteen months prior to entering his guilty plea. According to Applicant, he was heavily medicated the first few months after his arrest and had a hard time communicating, so he did not remember the first time he met with Counsel. Applicant explained he was able to think clearly once he stopped taking the medications. Applicant testified he saw a psychiatrist once a week while he was in pretrial detention. On cross-examination, Applicant agreed he had a mental health evaluation prior to his guilty plea, but he stated Counsel never showed him the report; Counsel simply told him it would not be useful.

Applicant further testified he and Counsel discussed Applicant's version of events. Applicant explained he told Counsel he was the one being robbed, and he took control of the gun and shot because he was scared. According to Applicant, Counsel said he needed a better story because no one would believe Applicant's version. Applicant also testified he gave Counsel the names of three potential witnesses but Counsel told him they were not credible. Applicant also testified although he called 911 to report the shooting, he never heard a recording of the call, and Counsel told him Counsel had not listened to it, nor did Counsel have a transcript of the recording. Applicant did not recall that witnesses had also called 911 to report the shooting and stated he and Counsel never discussed it.

Applicant stated he gave a recorded statement to law enforcement, and Counsel never discussed that statement with him either. Applicant testified he gave the statement approximately two days after being released from the hospital, during the time period when he was still having difficulty communicating. Applicant stated he and Counsel never discussed Applicant being medicated at the time he gave the statement, and according to Applicant, Counsel did not have a copy of the statement or Applicant's suicide note. Applicant also testified he wanted Counsel to obtain an inventory of the victims' belongings and clothes from the hospital because if he had robbed them, they should not have had any money or belongings with them. Applicant further stated he and Counsel never discussed the possibility of raising self-defense, and Applicant stated he never mentioned it to Counsel.

Applicant agreed he and Counsel discussed the technical aspects of trial such as the order of events, but Applicant felt Counsel wanted him to plead guilty. Applicant explained he received

the State's notice of intent to seek life without parole (LWOP) approximately three weeks before his trial date, and the notice changed his opinion of his options. Applicant stated he had previously rejected a twenty-five-year offer, and he found out later the State had made two other offers. Applicant testified he would not have accepted them prior to the service of the LWOP notice, but he also did not know exactly what the terms of the offers were. Applicant stated he did not feel Counsel had investigated his case because he did not have a copy of the suicide note, Applicant's statement, or mental health records, and therefore, Applicant did not think Counsel was prepared for trial. Applicant testified he wanted a trial to defend himself, and he would have gone to trial if Counsel had done the things Applicant asked him to do.

On cross-examination, Applicant agreed he told the plea court he was satisfied with Counsel's representation and wished to plead guilty, but he did so because Counsel instructed him to say yes to all of the questions. Applicant testified he initially told Counsel he did not want to plead guilty, and he would only agree to a ten-year sentence. However, Applicant also testified he and Counsel discussed the LWOP notice once the State served it, and Counsel explained the strikes law to him. Applicant agreed he had previous robbery convictions on his record, had been through the justice system in the past, and he knew this was his chance to speak to a judge about his case. Applicant also admitted he was aware Counsel allegedly had not done the investigation he requested at the time of the guilty plea, but he stated he did not inform the plea court because the courtroom was more volatile than he expected it to be.

Counsel testified he was appointed to Applicant's case approximately a month after Applicant's arrest, and he represented Applicant for just over a year. Counsel testified they met

many times to discuss the case. Counsel explained Applicant knew the female victim, and the robbery and shooting took place in a car with only the two victims and Applicant present. Counsel further explained Applicant had an opportunity to tell law enforcement his version of the story in which Applicant was actually the victim, but Applicant never told them that. Counsel did not recall Applicant giving him the names of any witnesses and stated there would not have been any witnesses to the event except him and the victims, so it was Applicant's word against theirs.

Counsel testified he made a motion to have Applicant evaluated due to the suicide attempt, and Applicant was sent to the Department of Mental Health (DMH). Counsel testified he reviewed the DMH report with Applicant, and in Counsel's opinion, mental health was not a viable defense. Counsel agreed he never received a written copy of Applicant's statement, but he testified the statement was mostly Applicant saying he did not remember the events. Counsel testified he reviewed the incident report, and it did not indicate any further witnesses to investigate, nor did Applicant ever tell Counsel any of the information contained in the report was incorrect. Counsel also stated he did not have a copy of the 911 call, which was unusual, but he would have informed Applicant he did not have that information. Counsel explained the 911 call was made by Applicant sometime after the shooting, from the house where Applicant was hiding when he tried to commit suicide. Counsel stated he did not recall Applicant indicating the 911 call would be helpful for a defense. Counsel also testified Applicant never asked him to investigate whether the victims had any money or items with them at the hospital. Further, Counsel testified he would have filed a motion to determine the admissibility of Applicant's statement had the case ended up at trial, but it never got to that stage. Counsel also explained Applicant would have had to testify to establish

self-defense, and in doing so, Applicant would have exposed himself to cross-examination about his prior record.

Counsel testified the State made only one offer, which was the twenty-five year offer. Counsel explained Applicant initially declined the offer, but then Applicant contacted Counsel by letter a few days later saying he had changed his mind and was prepared to accept. Counsel testified the State was set on serving the LWOP notice after Applicant rejected the twenty-five-year offer and would not agree to re-extend it. Counsel stated Applicant's case was put on the trial roster, but they never picked a jury in the case because it was never in a trial posture after Applicant decided to plead guilty. However, he testified he would have been prepared if Applicant refused the plea. Counsel stated he continued to negotiate with the State, and the State eventually agreed to withdraw the LWOP notice and to allow Applicant to plead to a negotiated twenty-eight-year sentence. According to Counsel, he read through his standard plea affidavit with Applicant, Applicant did not raise any concerns and signed it, and Counsel made it part of the record at the plea hearing. Counsel testified he had no concerns about whether Applicant understood what he was doing in entering the plea, and it was Applicant's decision to do so. Counsel further denied directing Applicant's answers during the plea colloquy and stated Applicant declined to speak to the judge when offered the chance.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record and heard the testimony at the PCR hearing. This Court has observed the witnesses presented at the evidentiary hearing, judged their credibility, and

weighed their testimony accordingly in its discussion below. Set forth below are findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code.

Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the 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). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel’s performance was deficient. Id. Under this prong, the court measures an attorney’s performance by its “reasonableness under professional norms.” Id. (quoting Strickland, 466 U.S. at 688). Second, counsel’s allegedly deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 117-18, 386 S.E.2d at 625. When there has been a

guilty plea, the applicant must prove counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

For the reasons stated below, the Court denies relief and dismisses the allegation with prejudice.

Involuntary guilty plea

Applicant alleges his guilty plea was unknowingly and involuntarily entered. This Court disagrees and finds the plea transcript is dispositive as to this issue. The Court finds the combined record from the plea hearing and the evidentiary hearing clearly establishes Applicant pleaded guilty freely and voluntarily.

"[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced." Reed v. Becka, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). An applicant who pleads guilty with the advice of counsel may collaterally attack the plea only by showing (1) counsel was deficient and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pleaded guilty

and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994); Lockhart, 474 U.S. at 52). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Lockhart, 474 U.S. at 56.

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. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "[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." Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. Harres, 282 S.C. at 133, 318 S.E.2d at 361. However, statements 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. Crawford v. United States, 519 F.2d 347 (4th Cir. 1975), overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir. 1985).

The plea transcript reflects Applicant informed the plea court he was clearheaded and understood what he was doing in entering the guilty plea. Tr. pp. 7-8. The plea court specifically inquired as to Applicant's medication and Applicant stated it did not prevent him from understanding what he was doing. Tr. pp. 7-8. The plea court clearly explained the terms of the agreement for a negotiated sentence of twenty-eight years, and Applicant stated he wanted the plea court to accept the agreement. Tr. pp. 8-10. Further, the plea court explained Applicant's right to a jury trial, and Applicant's right to present evidence in his defense. Tr. p. 11. Importantly, Applicant stated he was fully satisfied with Counsel, he had enough time to meet with him to discuss his options and he had no more questions for Counsel. Applicant also averred no one had threatened him or promised him anything to induce his plea, and he was entering it of his own free will. Tr. pp. 12-13. Counsel then informed the plea court he had discussed the case with Applicant and reviewed the plea affidavit with him, and Applicant did not object or correct Counsel's assertions. Tr. p. 23.

In addition to the plea transcript, this Court finds credible Counsel's testimony as to how the guilty plea came about. Specifically, the Court finds credible Counsel's testimony there was originally only one plea offer, for twenty-five years, which Applicant initially rejected. Counsel testified the State insisted on pursuing LWOP after Applicant rejected that offer, but Counsel continued to negotiate until the State agreed to withdraw its notice and allow Applicant to plead guilty for a negotiated twenty-eight-year sentence. Although Applicant has alleged Counsel's failure to investigate induced his plea, Applicant has offered no witnesses or evidence to meet his burden as to prejudice.

Accordingly, this Court finds Applicant pleaded guilty freely and voluntarily after discussing his options with Counsel in order to avoid receiving a life sentence if convicted at trial. This Court further finds Counsel's representation of Applicant was not deficient, nor was Applicant prejudiced by Counsel's representation. The plea transcript reflects Applicant understood the terms of the plea agreement and chose to waive his rights and plead guilty. Therefore, this Court denies relief and dismisses this allegation with prejudice.

CONCLUSION


Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. Therefore, this application for post-conviction relief is denied and dismissed 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. See Rule 203, SCACR (providing the appropriate procedure to perfect an appeal). Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has the right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Further, 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 the appropriate procedures for appealing a judgment in a PCR action.

IT IS THEREFORE ORDERED:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall be remanded to the custody of Respondent.

AND IT IS SO ORDERED.




WILLIAM M. SEALS, JR.
Presiding Circuit Court Judge
Twelfth Judicial Circuit

7/30, 2019

DORIS POULOS O'HARA
C.C.P. & G.S.
FLORENCE COUNTY, SC

2019 AUG -5 PM 1:14

FILED

CERTIFIED: A TRUE COPY

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

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

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