

August 13, 2019

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

RECEIVED
AUG 19 2019
S.C. SUPREME COURT

Re: Aaron Alonzo Brown vs. State of South Carolina
C/A No: 2017-CP-33-00519

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. Brown 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: Samuel L. Key, South Carolina Office of Attorney General

Enclosures

STATE OF SOUTH CAROLINA
In The Supreme Court

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

2017-CP-33-00519

Aaron Alonzo Brown, # 372577,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

RECEIVED
AUG 19 2019
S.C. SUPREME COURT

Aaron Alonzo Brown, # 372577, 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
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Columbia, SC 29201
803-520-7278 (phone)
jonathan@wallergroupsc.com
ATTORNEY FOR PETITIONER

August 13, 2019

Other Counsel of Record:
Samuel L. Key, Assistant Attorney General
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AUG 19 2019

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

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

2017-CP-33-00519

Aaron Alonzo Brown, # 372577,

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, Samuel L. Key, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this day, to his office located at P.O. Box 11549, Columbia, SC 29211.



Lauren Waller

August 15, 2019

STATE OF SOUTH CAROLINA)
COUNTY OF MARION)
Aaron Alonzo Brown, #372577)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

2017-CP-33-0519

ORDER OF DISMISSAL

FILED
2019 AUG -5 AM 10:14

The matter before the Court is an action for post-conviction relief (PCR) commenced by Aaron Brown (Applicant) on July 17, 2017. The State received the PCR application on January 10, 2018; thereafter, the State submitted its return and motion to dismiss for failure to state a claim on April 30, 2018. A conditional order of dismissal was issued on May 7, 2018, and Applicant responded to the conditional order on July 8, 2018. In his response to the conditional order, Applicant amended his PCR application alleging ineffective assistance of counsel which rendered his guilty plea unknowing and involuntary.

An evidentiary hearing convened on March 5, 2019, at the Florence County Courthouse before the undersigned. Applicant was present and represented by Jonathan D. Waller, Esquire. Assistant Attorney General Samuel L. Key represented the State. Applicant and his former plea counsel testified at the hearing. After hearing the testimony at the PCR hearing and a full review of the record, the Court finds, as explained below, Applicant's allegations are without merit, denies relief, and dismisses the action with prejudice.

FACTS & PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to the Marion County Clerk of Court's order of commitment. Applicant was indicted at the July 2016 term of the Marion County Grand Jury for murder (2016-GS-33-0371). His charge resulted from

an incident in which Applicant shot the victim multiple times resulting in the victim's death. Assistant Public Defender William Vickery Meetze (Counsel) represented Applicant. Assistant Solicitor Todd Tucker prosecuted the case.

On May 12, 2017, Applicant pleaded guilty to the lesser-included offense of voluntary manslaughter before the Honorable Michael G. Nettles. Applicant pleaded guilty with the State's recommendation of a twenty-five year sentencing cap. Judge Nettles sentenced Applicant to twenty-five years' imprisonment. Applicant did not appeal.

PCR HEARING TESTIMONY

Applicant testified he met with Counsel two times prior to his guilty plea. Applicant stated Counsel did not show him any discovery during their first meeting; however, Counsel provided him a copy of the discovery during their second meeting. Applicant testified when he received the discovery of his case after he pleaded guilty, there were additional discovery documents he had never previously seen—specifically, DNA and fingerprint reports. Applicant explained no one ever advised him of the legal significance of these reports until he met with PCR counsel. Applicant felt as though this evidence was helpful to his defense claims and would have altered his decision to plead guilty. Applicant admitted he made inconsistent statements to the police, first admitting and later denying his involvement, and he told Counsel about his statements. However, Applicant claimed Counsel did not respond to his questions about his statements.

Applicant stated he pleaded guilty because Counsel advised him to because they would lose at trial. Applicant asked Counsel to try and obtain a ten year plea offer. Counsel told Applicant he would try to negotiate a ten year offer, but Counsel did not promise Applicant anything. Applicant stated Counsel informed him the State's offer was for a recommended twenty-

five years sentencing cap. Applicant testified he pleaded guilty because he did not feel as though Counsel was prepared for trial.

Counsel testified he met with Applicant many times, and recalled specific instances and places of some of the meetings. Counsel testified Applicant wanted a trial because the State originally made no offers. Applicant was indicted for murder, so the minimum he could receive if he pleaded as charged was thirty-years' imprisonment. Counsel testified he reviewed the discovery with Applicant as the discovery came in. Counsel stated the forensics took longer than the other discovery, and he discussed the reasoning for this with Applicant. Counsel recalled Applicant made an admission to a witness and to the police, which was the strongest evidence against him. Counsel also recalled Applicant made a second statement to the police denying any involvement. Counsel testified he explained the weaknesses in their defense to Applicant. Counsel testified Applicant claimed the victim also had a gun, but no other gun was found. Counsel testified he explained the possibility of presenting a defense of accident with Applicant. Counsel also testified he discussed with Applicant the possibility of pursuing self-defense. However, Counsel felt there would be difficulty getting past the first prong of self-defense, and he explained this difficulty to Applicant. Counsel testified he relayed the State's twenty-five year offer to Applicant, and Applicant wanted to accept the offer. Counsel testified Applicant wanted less than thirty years' imprisonment, and he got it.

Counsel recalled receiving the DNA and fingerprint results before the plea. Counsel testified he may not have given Applicant the paperwork of the reports, but he explained the results of the reports with Applicant. However, Counsel stated the State did not need this evidence to go forward with their case because the case was never a "who done it" because Applicant confessed. Counsel knew Applicant's co-defendant also gave differing statements to the police, and he

discussed the issues regarding the co-defendant's statements with Applicant. Counsel told Applicant the co-defendant would probably be a witness in his case.

Counsel testified the State's case was mostly circumstantial. Counsel stated he may not have explained the meaning of circumstantial evidence to Applicant, but he did review all the evidence with Applicant and explained to Applicant what the evidence showed. Counsel testified he explained to Applicant that if the case went to trial, the jury would likely hear all three of Applicant's previous statements. Counsel testified he was prepared to go to trial on the case, but Applicant wanted to plead guilty.¹

ISSUE

Applicant alleges ineffective assistance of counsel rendering his guilty plea unknowing and involuntary. Specifically, Applicant alleges:

1. Counsel was ineffective in failing to provide or review discovery materials with Applicant, which rendered his decision to enter a plea of guilt unintelligent and unknowing. Applicant contends that when he obtained a copy of his discovery materials, he became aware of materials and evidence which would have provided Applicant with a valid defense, should he have had knowledge of such materials prior to entering his plea.

DISCUSSION

This Court has reviewed the record and heard the testimony at the PCR hearing. This Court has observed the evidence and 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.

¹ While this Court allowed the deceased victim's daughter to testify, over Applicant's objection, at the PCR hearing, the Court clarifies the victim's daughter's testimony took no part in its decision. The Court allowed the testimony not because it had any relevance to the proceeding, but, rather, out of an abundance of caution in acknowledgement of the victim's rights.

The issue before the Court is whether Applicant's guilty plea was the result of ineffective assistance of counsel. Specifically, Applicant alleges Counsel was ineffective for failing to provide or review the discovery materials with Applicant. Applicant further claims he would not have pleaded guilty and would have insisted on proceeding to trial absent the alleged deficiencies. 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 with the advice of counsel may only attack the voluntary and intelligent nature of the plea). For the reasons discussed below, the Court concludes Counsel was not ineffective, and finds Applicant knowingly and voluntarily pleaded guilty.

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 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 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). "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).

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 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.” *Hill*, 474 U.S. at 56. Further, 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. *Id.* at 59.

The plea transcript reflects Applicant entered his plea knowingly and voluntarily, engaged in an intelligent and coherent colloquy with the plea court, and gave appropriate responses to the plea court’s questions. Therefore, Applicant has failed to prove any prejudice resulted from Counsel’s alleged deficiency. *See Wolfe v. State*, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997) (stating any possible misconceptions due to counsel’s alleged deficiencies can be cured by the plea court’s colloquy). At the beginning of the plea hearing, Applicant informed the court he was not under influence of any substance which would affect his ability to understand what he was doing. (Plea Tr. 5). Applicant affirmed to the plea court the facts as narrated by the State were accurate. (Plea Tr. 10). The plea court explained Applicant’s right to remain silent, right to a jury trial, the right to confront witnesses and present a defense, and the State’s burden of proof beyond a reasonable doubt. (Plea Tr. 10–11). Applicant indicated he understood his rights and wished to give them up in order to plead guilty. (Plea Tr. 11). Importantly, Applicant indicated no one had pressured him to plead guilty, he was satisfied with Counsel, and had no complaints against Counsel. (Plea Tr. 11).

Applicant's assertion Counsel failed to provide or review the discovery with him is contradicted by his own testimony at the PCR hearing. Applicant testified he met with Counsel two times prior to his guilty plea. Applicant stated Counsel did not show him any discovery during their first meeting; however, Counsel provided him a copy of the discovery during their second meeting. The Court finds not credible Applicant's testimony he was unaware of the DNA and fingerprint reports before he pleaded guilty. The Court finds credible Counsel's testimony he reviewed all the discovery with Applicant before Applicant pleaded guilty, discussed possible trial defenses with Applicant, and explained to Applicant the charge and exposure he faced if convicted at trial. While Counsel may not have provided Applicant with copies of the DNA and fingerprint reports, Counsel credibly testified he reviewed the contents of the reports with Applicant before Applicant pleaded guilty.

Counsel's credible testimony, along with the plea court's colloquy, show Applicant knowingly and voluntarily pleaded guilty. Counsel was not deficient in any way during his representation of Applicant, and Applicant has shown no prejudice as a result of the alleged deficiency. Therefore, Counsel was not ineffective. As such, this Court denies relief and dismisses this allegation with prejudice.

CONCLUSION

The Court finds Counsel's representation 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 Counsel was deficient in failing to review the discovery with him based on his own admission Counsel provided him discovery during their second meeting, and Counsel's credible testimony at the PCR hearing. Further, the Court finds the plea court's thorough colloquy cured any alleged


deficiencies of Counsel. Therefore, based on the foregoing, the Court denies relief on the allegation and dismisses this PCR action 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), SCRCR, 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.


THEREFORE:

1. The Court denies relief and dismisses the action with prejudice; and
2. Applicant shall be remanded to the custody of the State.

AND IT IS SO ORDERED.



WILLIAM F. SEALS, JR.
Presiding Judge
Twelfth Judicial Circuit

 _____, South Carolina

7/30, 2019.

FILED
2019 AUG -5 AM 10:14
CLERK OF COURT
TWELFTH JUDICIAL CIRCUIT
COLUMBIA, SOUTH CAROLINA



ALAN WILSON
ATTORNEY GENERAL

August 1, 2019

The Honorable Christy M. Gray
Clerk of Court, Marion County
Post Office Box 295
Marion, South Carolina 29571

Re: Aaron Alonzo Brown, #372577 v. State of South Carolina
2017-CP-33-0519

FILED
2019 AUG -5 AM 10:13
CLERK OF COURT
MARION COUNTY
SOUTH CAROLINA

Dear Ms. Gray:

Enclosed please find the original **Order of Dismissal**, signed by the Honorable William H. Seals, Jr. in the above-captioned case for filing in your office. Please forward a **time stamped copy** back to our office for our file.

Sincerely,

Samuel L. Key
Assistant Attorney General

SLK/kk
Enclosure(s)

cc: Jonathan D. Waller, Esquire

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