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AUG 19 2019

S.C. SUPREME COURT

August 13, 2019

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

Re: Kenneth Robinson vs. State of South Carolina
C/A No: 2010-CP-33-0659

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. Robinson 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

2010-CP-33-0659

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AUG 19 2019

S.C. SUPREME COURT

Kenneth Deon Robinson, # 325713,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Kenneth Deon Robinson, # 325713, 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 13, 2019

Other Counsel of Record:
Samuel L. Key, Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
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STATE OF SOUTH CAROLINA
In The Supreme Court

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

2010-CP-33-0659

Kenneth Deon Robinson, # 325713,

Appellant,

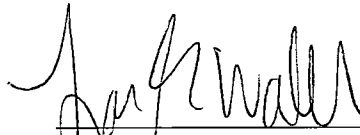
v.

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

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AUG 19 2019
S.C. SUPREME COURT

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF MARION 5 AM 10:13)
2019 AUG

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

MARION COUNTY SO)
Kenneth Robinson #325713)
CLERK Applicant;)

Case No.: 2010-CP-33-0659

v.)

ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)

The matter before the Court is an action for post-conviction relief (PCR) commenced by Kenneth Robinson (Applicant) on August 5, 2010. The State received the PCR application on December 7, 2017; thereafter, the State submitted its return on February 5, 2018. In his PCR application, Applicant alleged ineffective assistance of counsel which rendered his guilty plea unknowing and involuntary.

An evidentiary hearing convened on June 25, 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 presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marion County Clerk of Court. In February 2007, the Marion County Grand Jury indicted Applicant for one count each of murder, homicide by child abuse, first-degree criminal sexual conduct (CSC) with a minor, and conspiracy (2007-GS-33-0078).

Ralph Wilson, Sr., Esquire, (Counsel) represented Applicant. Jack Lawson, Esquire, prosecuted the case on behalf of the Twelfth Circuit Solicitor's Office.

The charges stem from the death of Applicant's girlfriend's minor child. On May 20, 2003, Applicant, in violation of a safety plan agreement with the South Carolina Department of Social Services (DSS), was home alone with the minor child while Applicant's girlfriend was at work. EMS received a call that the child had stopped breathing and responded to Applicant's residence. The minor child was observed to be badly bruised, and an autopsy performed later that evening determined the cause of death was blunt force trauma to the head. The victim also had injuries indicating sexual-abuse, which led to Applicant's first-degree CSC with a minor charge. Applicant later admitted to law enforcement that he had shaken and "manhandled" the child.

On November 26, 2007, Applicant pleaded guilty to homicide by child abuse before the Honorable D. Garrison Hill. The remaining charges were dismissed in exchange for Applicant's plea. Judge Hill sentenced Applicant to a term of imprisonment of forty-five years.

Applicant filed a timely notice of appeal. Celia Robinson, Esquire, of the Office of Appellate Defense perfected the appeal pursuant to *Anders v. California*, 386 U.S. 736 (1967). The court of appeals affirmed Applicant's conviction on December 3, 2009. *State v. Robison*, Op. No. 2009-UP-578 (S.C. Ct. App. filed December 3, 2009). The case was remitted to the circuit court on December 21, 2009.

ISSUE

Applicant alleges ineffective assistance of counsel rendering his guilty plea unknowing and involuntary. Specifically, Applicant alleges ineffective assistance of counsel for failure to investigate resulting in erroneous advice rendering his plea involuntary.

PCR HEARING TESTIMONY

Applicant's Testimony

Applicant recalled Henry "Hank" Anderson was originally appointed to represent him on these charges. Applicant stated he fired Anderson, and was then appointed William Derrick; however, Derrick retired, and Counsel was appointed. Applicant recalled talking to Counsel about his case, and recalled meeting with Counsel a month before his plea. Applicant testified he and Counsel mostly talked about pleading guilty. Applicant testified the State's theory of the case was the victim died from child abuse inflicted by Applicant. Applicant recalled he called 911 because the victim was foaming at the mouth. Applicant stated he told law enforcement he washed the victim because he was getting her ready to go to the hospital. Applicant stated he did not ask Counsel to investigate any potential witnesses. Applicant testified he gave Counsel some medical records, but did not know if Counsel investigated them or not. Applicant testified his medical records were not referenced during his plea hearing.

Applicant stated he and Counsel briefly discussed going to trial, but Counsel did not think going to trial was a good option because of Applicant's statement to the police. Applicant testified he followed Counsel's advice. When asked if he wanted to go to trial, Applicant stated he would have to go to trial if he could have gotten a better outcome.

Applicant knew he would receive significant time for pleading guilty. Applicant stated Counsel told him he was looking at between twenty to twenty-five years. Applicant testified Counsel advised him of the potential exposure he faced by pleading guilty, and agreed twenty to twenty-five years' is a significant amount of time. Applicant stated he never asked Counsel about

going to trial, even with a twenty-year minimum sentence because he relied on Counsel to tell him what was best. Applicant stated he was never named as a defendant in a DSS action.

Applicant testified that at the time of the incident he was going through chemo therapy for stomach cancer, but by the time Counsel represented him, his cancer was in remission. However, Applicant made Counsel aware of his medical condition, and Counsel mentioned it at the plea hearing. Counsel did not discuss any potential defenses regarding Applicant's medical conditions.

Applicant claimed he met with Counsel two times, and he did not think Counsel advised him of his constitutional rights or his right to remain silent. Applicant recalled Counsel discussing his statement to the police. He recalled when he gave the statement, he was not arrested, but was arrested immediately after making the statement.

Applicant recalled discussing going to trial when Anderson represented him, and Anderson was investigating and would let him know. Applicant stated he knew what was occurring in his case, and he thought under *Alford*¹ he would be receive between twenty to twenty-five years. Applicant testified that Counsel gave his opinion as to this amount of years from his experience. Up until the plea hearing, Applicant always maintained his innocence, and Counsel thought Applicant would be able to plead under *Alford*. Applicant stated he and Counsel discussed what occurred the day of the incident, but Applicant mainly just answered Counsel's questions and did not volunteer any information other than his medical history.

Applicant wanted to plead under *Alford*, but when he got in front of the plea court, the court would not accept an *Alford* plea. Applicant recalled speaking to Counsel, and Counsel told him pleading under *Alford* or pleading guilty would not make a difference. Applicant thought pleading guilty would not change the twenty to twenty-five years because Counsel told him it would not

¹ *North Carolina v. Alford*, 400 U.S. 25 (1970).

make a difference. Applicant stated he decided to plead guilty because Counsel told him it would not make a difference. Applicant testified he never told Counsel he wanted to go to trial based on Counsel's advice going to trial was not a good idea.

On cross-examination, Applicant testified he knew he was pleading with no negotiations or recommendations from the State, but the State did drop the other charges against him, and going from an *Alford* plea to a guilty plea did not change anything regarding the State.

Counsel's Testimony

Counsel testified he was appointed to represent Applicant, was Applicant's third or fourth attorney, and he got the defense files from Applicant's previous attorneys. Counsel briefly recalled the State's evidence contained Applicant's statement which was going to be difficult to overcome, and the mother of victim was going to be the State's primary witness.

Counsel remembered doing an initial interview with Applicant which is part of his normal practice. Counsel stated he went to Marion and met with Applicant and they went through the interview sheet to get personal information from Applicant, information about Applicant's family, and who Counsel can contact. Then Counsel talked to Applicant about the charges, one by one, and explained what the penalties are. Counsel stated he never tells a defendant to plead or go trial because that is their decision. However, Counsel explained he does tell his clients what he thinks is in their best interest, but they are free to take that advice or not; sometimes they do not agree. Counsel stated it was his practice to give advice so the client can make their own decision.

Counsel recalled Applicant was charged with murder, homicide by child abuse, and maybe a few other charges. Counsel testified he told Applicant the State informed him there would be no plea offer, and he told Applicant that from day one. Counsel recalled the State's first offer was for

a plea to murder—straight up. Counsel stated the State never made offers with a sentence, and the offers were always straight up.

Counsel could not recall whether he ever told Applicant he was looking at twenty to twenty-five years. Counsel stated he may have told Applicant if pleading to homicide by child abuse, a judge could give that, but Counsel would let Applicant know judges are unpredictable, based on prior experiences, but would not have guaranteed anything. Counsel testified if he said anything, he may have said he could see a judge giving twenty to twenty-five years.

Counsel testified he absolutely went over Applicant's constitutional rights and talked about Applicant's right to have a trial. Counsel stated he explained in his experience, if you lose at trial, you are going to get a greater sentence. Counsel explained there were basically no wins on Applicant's side. Counsel stated Applicant did tell him about Applicant's cancer, and Applicant was taking chemo and maybe the treatments affected Applicant. However, Applicant never gave Counsel anything specific that would say he was mentally ill or incompetent at time the events occurred. Counsel testified he did use Applicant's health issues in trying to negotiate a sentence/deal for him. Counsel testified he and Applicant discussed at length the State's main witness would also be his co-defendant, the child's mother.

Counsel recalled originally Applicant was going to plead under *Alford*, but the plea court refused to accept an *Alford* plea. Counsel testified he explained to Applicant how that would change his plea, and he and Applicant talked several times about how to do a plea. Counsel recalled Applicant was reluctant to say "I am guilty," which is pretty common. He also explained the State was not really offering anything, so the only other alternative was a trial. Counsel told Applicant about *Alford*, asked if that would make Applicant feel more comfortable. Counsel stated when they went into court, he and Applicant intended to do an *Alford* plea, but the court would not accept

an *Alford* plea to the charge. Counsel recalled going back to little room and talking to Applicant about whether to continue the plea or not, understanding it would not be an *Alford* plea. Counsel further explained the case was scheduled for trial, which is why Applicant had to decide that day or the case was going to be a trial.

Counsel testified he discussed potential defenses with Applicant, but there were not any of any significance. The problem was that Applicant was alone with the child when the incident occurred, so there was nowhere else to shift the blame. Counsel stated the mother was not in the home at time these things occurred, and could not be perpetrator even though she condoned it to some degree after becoming aware. Counsel stated in his professional opinion there was no real defense.

Counsel testified he did not recommend for Applicant to plead guilty, but he did tell Applicant he would be found guilty at trial; Counsel had very little doubt about that. Counsel stated the State was going to try Applicant for murder, and Applicant never said he wanted a trial and always wanted a plea deal. However, Applicant wanted a specific deal and the State was never offering anything other than straight up. Counsel testified he probably did tell Applicant pleading guilty would not change anything rather than pleading under *Alford*, because all the legal consequences are the same. Counsel stated the only difference was *Alford* would keep Applicant from saying he was guilty.

On cross-examination, Counsel admitted Applicant was correct Anderson had gotten some medical records, and he remembered seeing those. There were also some notes about Anderson's conversations with Applicant, but there was nothing in the file that Applicant and Counsel did not also go over. Counsel stated he did not do any further independent investigation because there

were really no other issues. Counsel stated he did talk to one of the detectives about Applicant's statement.

Counsel testified he was aware Applicant was being treated for cancer at the time of the incident, but did not investigate to see if the treatment might have affected the voluntariness of Applicant's statement to challenge it. Counsel admitted he did not do any medical research. Counsel stated he had several jail conversations with Applicant, at least three times, and two conversations at the courthouse. Counsel further stated that in conversations with Applicant, Applicant was lucid and clear minded, and gave no inclination that he had any kind of problem whatsoever. Counsel stated if Applicant had not told Counsel he had undergone chemo, Counsel would not have known about it. Counsel stated Applicant was not currently in treatment at time of their meetings, but Applicant told Counsel he was at time of incident. Counsel stated the meetings were two years later, and Applicant's mental state could have been different, but there was nothing to indicate Applicant had any problem or there was a *M'Naghten*² issue. Counsel testified first of all, Applicant denied he did these things, but if Applicant was saying he had done them, Counsel would have wanted to know. However, Applicant always maintained his innocence to Counsel.

Counsel testified he did not examine Applicant under *M'Naghten* because the situation was the child was physically and sexually abused to the point of death. Counsel stated he had never heard of chemo causing an individual to do the alleged acts, or driving someone crazy. Counsel explained Applicant had stomach cancer, and the situation might have been different if Applicant had brain cancer, but opined stomach cancer does not cause someone to rape or beat a child.

² *M'Naghten's Case*, 8 Eng. Rep. 718 (1843); see also *State v. Lewis*, 328 S.C. 273, 277, 494 S.E.2d 115, 117 (1997) (stating South Carolina follows the *M'Naghten* test to determine insanity).

Counsel stated in his my mind, Applicant was always very clear and gave no indication during their conversations Applicant was anything other than completely lucid. Counsel recalled Applicant saying he would not feel well after treatments, but nothing further. Further, during their conversations, Applicant never indicated to Counsel he did not recall calling 911 or giving his statement to the police.

Counsel recalled when in front of the plea court, Applicant did not want a trial, but was taken aback because Counsel did not expect the court to reject *Alford*. The court gave the defense an opportunity to decide if Applicant wanted to continue or not. Counsel told Applicant he did not have to plead guilty but it is not unusual based on his experience for people to claim they are not guilty and then turn around and plead guilty. Counsel stated he advised Applicant he would have to admit guilt on the record, and Applicant said he wanted to do it.

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.

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 failure to investigate resulting in erroneous advice rendering his guilty plea involuntary. 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).

1. Prejudice

The Court finds Applicant has failed to show any prejudice resulted from Counsel's alleged deficiencies. The Court finds the combined record from the plea hearing and the evidentiary hearing clearly establishes Applicant pleaded guilty freely and voluntarily, and the Court is not convinced Applicant would have chosen to go to trial instead of pleading guilty.

"[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. At the beginning of the plea hearing, Applicant informed the court he was not under influence of any substance, nor did he have any mental conditions, which would affect his ability to understand what he was doing. (Plea Tr. 4). When asked by the plea court if the facts as narrated by the State was what happened, Applicant answered, "That's pretty much it." (Plea Tr. 13). Applicant further agreed with the plea court he committed child abuse or neglect of the victim resulting in the victim's death. (Plea Tr. 13). 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. 7-9). Applicant indicated he understood his rights and wished to give them up in order to plead guilty. (Plea Tr. 9). Importantly, Applicant indicated no one had pressured him to plead guilty, he was satisfied with Counsel, had no complaints against Counsel, and did not need any more time to confer with Counsel. (Plea Tr. 4-5, 9, 10). 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 no time during the plea hearing did Applicant state or indicate he did not wish to plead guilty and instead wished to proceed to trial. At the PCR hearing, Applicant admitted he did not

want to go to trial because of his discussions with Counsel. Applicant testified Counsel told him he was looking at between twenty to twenty-five years' if he pleaded guilty; however, Applicant stated Counsel never promised him anything. Applicant testified he would have gone to trial *if* he could have gotten a better outcome than pleading guilty. Applicant's testimony on this issue does not convince this Court Applicant would have chosen to proceed to trial instead of pleading guilty despite Counsel's alleged erroneous advice. *Hill*, 474 U.S. at 59 (stating 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). As such, the Court finds Applicant has failed to meet his burden of proof on the prejudice prong of *Strickland*.

2. Deficient Performance

As discussed in the previous section, no prejudice resulted from Counsel's alleged deficient performance. Even so, Applicant alleges Counsel was ineffective for providing erroneous advice concerning the guilty plea, and Counsel failed to properly investigate the case. For the reasons discussed below, the Court disagrees.

Counsel's advice concerning the shift from an *Alford* plea to a guilty plea

Applicant alleges Counsel was ineffective for providing erroneous advice concerning his guilty plea, and because Counsel advised him he would receive between twenty to twenty-five years' imprisonment. The Court disagrees.

"The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." *Watson*, 287 S.C. at 357, 338 S.E.2d at 637.

Applicant testified Counsel told him during their off the record discussion whether Applicant pleaded under *Alford* or pleaded guilty would not make a difference. Counsel testified

he probably did tell Applicant the change did not make a difference during their discussion because there is no legally significant difference between pleading under *Alford* and pleading guilty. Counsel's advice to Applicant in this regard was reasonable, and correct. *See Alford*, 400 U.S. at 37 (stating there is no material difference "between a plea that refuses to admit commission of the criminal act and a plea containing a protestation of innocence when . . . a defendant intelligently concludes that his interests require entry of a guilty plea . . ."). Therefore, Counsel's advice to Applicant the shift from an *Alford* plea to a guilty plea did not make a difference was correct. Accordingly, the Court finds Counsel's advice to Applicant the shift from an *Alford* plea to a guilty plea would not make a difference was correct, reasonable, and Counsel's advice did not render his performance deficient.

Applicant alleges Counsel was deficient for advising Applicant he was facing between twenty to twenty-five years' by pleading guilty. The Court disagrees. Plea counsel is not deficient for advising a defendant to plead guilty based on what counsel reasonably believes the sentence would be if the defendant were convicted at trial. *Bennett v. State*, 371 S.C. 198, 204–05, 638 S.E.2d 673, 676 (2006).

As stated above, Counsel could not recall whether he ever told Applicant he was looking at twenty to twenty-five years. Counsel stated he may have told Applicant if pleading to homicide by child abuse, a judge could give that, but Counsel would have let Applicant know judges are unpredictable based on prior experience, but would not have guaranteed anything. Counsel testified if he said anything, he may have said he could see a judge giving twenty to twenty-five years. Applicant admitted Counsel never made him any promises regarding sentencing. Based on this testimony, the Court finds Counsel was not deficient because Applicant knew he could receive a substantial sentence and merely wished for the twenty to twenty-five year sentence, as Applicant

admitted Counsel made him no promises. *See Wolfe*, 326 S.C. at 165, 485 S.E.2d at 371 (“Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made.”). Therefore, the court denies relief on this allegation and dismisses it with prejudice.

Counsel’s investigation and advice to Applicant whether to plead guilty or proceed to trial

Applicant alleges Counsel was ineffective for advising Applicant to plead guilty instead of proceeding to trial because Counsel failed to fully investigate the facts and legal circumstances surrounding the case. The Court disagrees.

Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant, and make 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); *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). However, counsel is presumed to have adequately assisted and exercised reasonable professional judgment in making decisions in the case. *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011). “[W]here counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel.” *Whitehead v. State*, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

First, at the PCR hearing, an issue arose as to whether Counsel conducted a full independent investigation of Applicant’s case. Applicant and Counsel both testified Counsel was not the first attorney appointed to represent Applicant. Counsel testified he received the previous attorneys’ case files when he was appointed, and he reviewed those files. Counsel testified from his review of the discovery and the previous attorneys’ files, there was no further investigation needed. The Court finds credible Counsel’s testimony he reviewed all the discovery and the previous attorneys’

case files. The Court finds reasonable Counsel's decision no further investigation was needed from his review of all the materials he received. This Court will not second guess Counsel's decision no further investigation was needed; therefore, this allegation is denied and dismissed with prejudice.

Applicant next contends Counsel was ineffective for failing to research whether Applicant's medical condition at the time of the incident—being treated for stomach cancer with chemo therapy—could have affected Applicant's culpability. The Court finds this issue is without merit. Counsel testified Applicant informed him Applicant was being treated for stomach cancer at the time the incident occurred; however, Applicant never claimed his treatment had any effect on his mental capacity, and Applicant never indicated he did not remember calling 911 or giving his statement to the police. Further, nothing has been presented to this Court to indicate Applicant did not recall the incident or his mental state was altered by his treatment. Applicant's own PCR hearing testimony indicates his treatment did not affect his mental state at the time of the incident, and his testimony regarding the incident supports Counsel's decision not to investigate whether Applicant's mental state was altered from the treatment. Therefore, the Court finds Counsel was not deficient for failing to investigate whether Applicant's cancer treatment altered his mental state at the time of the incident.

Applicant alleges Counsel was ineffective for advising him to plead guilty rather than proceed to trial. The Court disagrees. Plea counsel is not deficient for advising a defendant to plead guilty based on what counsel reasonably believes the sentence would be if the defendant were convicted at trial. *Bennett v. State*, 371 S.C. 198, 204–05, 638 S.E.2d 673, 676 (2006).

As discussed above, Counsel testified he did not recommend Applicant to plead guilty, but he did tell Applicant he would be found guilty at trial; Counsel had very little doubt about that.

Counsel stated he explained in his experience, if you lose at trial, you are going to get a greater sentence. Counsel testified he discussed potential defenses with Applicant, but there were not any of any significance. Counsel stated the State was going to try Applicant for murder, and Applicant never said he wanted trial and always wanted a plea deal. Counsel stated the situation was the child was physically and sexually abused to the point of death, and Counsel explained to Applicant there were basically no wins on Applicant's side.

The Court finds Counsel's advice whether to plead guilty to go to trial reasonable. Counsel credibly testified he did not tell Applicant he should plead guilty, but did tell Applicant his opinion of the outcome he expected if the case went to trial. Counsel explained the State had a compelling case against Applicant and explained to Applicant his options. Applicant chose to plead guilty based upon Counsel's sound advice. Therefore, Counsel was not deficient in advising Applicant whether to plead guilty to proceed to trial. As such, the Court denies this allegation and dismisses it 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 for failing to undertake a reasonable investigation in the case, and Counsel provided sound and competent advice based on his view of the evidence. 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), 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.

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.

7/30, 2019.


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

2019 AUG -5 AM 10:13
CLERK OF SUPERIOR COURT
TWELFTH JUDICIAL CIRCUIT
TALLAHASSEE, FLORIDA

FILED



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

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

Re: Kenneth Robinson, #325713 v. State of South Carolina
2010-CP-33-0659

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

\$1.60⁰
US POSTAGE
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Daniel E. Shearouse
Clerk of Court
Supreme Court of South Carolina
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