

FALK LAW FIRM, LLC.

James K. Falk

(843) 606-6007

(843) 972-9005 Fax

Admitted to practice: KY(1984) S.C. (2010) jfalklaw@gmail.com

August 29, 2019

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

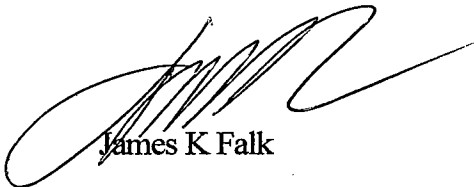
Re: Malikaih Taylor 235209 v State , 2018-CP-26-5445

Dear Clerk Shearouse:

Please find the enclosed Notice of Appeal, Proof of Service, in the above Horry County PCR action. Please return a clocked copy of the Notice of Appeal and Proof of Service in the enclosed SASE.

Should you have any additional questions please do not hesitate to contact my office.

With best regards, I am,



James K Falk

Thank you for your assistance.

Cc:

Jacob Isenberg, Esq
Malikaih Taylor 235209
Horry County Circuit Court Clerk

RECEIVED

SEP 04 2019

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM Horry COUNTY

Court of Common Pleas

Honorable John C Hayes, Circuit Judge

Case No.: 2018-CP-26-5445

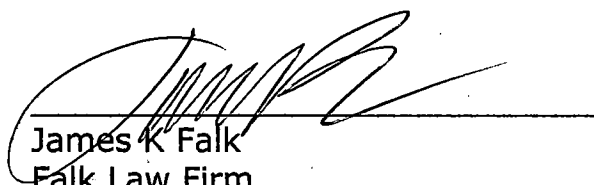
Malikaih Taylor, Jr. 235209.....PETITIONER

V.

State of South Carolina.....RESPONDENT

NOTICE OF APPEAL

The Petitioner Malikaih Taylor, Jr. appeals the Honorable John C. Hayes' August 14, 2019 Order of Dismissal. Undersigned counsel received notice of entry of the order on August 29, 2019. A copy of the order on appeal is attached hereto.


James K Falk
Falk Law Firm
PO Box 1058
Charleston, SC 29402

August 29, 2019

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

Clerk of Court- Horry County CP
PO Box 677
Horry, SC 29526

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Honorable John C Hayes, Circuit Judge

Case No.: 2018-CP-26-5445

Malikaih Taylor, Jr 235209.....PETITIONER

V.

State of South Carolina.....RESPONDENT

CERTIFICATE OF SERVICE

I, James Falk, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the U.S. Mail, postage prepaid, addressed to its attorney of record, Jacob Isenberg Esq. Office of the S.C. Attorney General, PO Box 11549, Columbia, SC 29211-1549 and the Horry County Clerk of Court, PO Box 677, Conway, SC 29526. I further certify that all parties required by Rule to be served have been served this August 29, 2019.



James K Falk
Falk Law Firm
PO Box 1058
Charleston, SC 29402

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the April 2017 term of the Horry County Grand Jury for criminal sexual conduct with a minor, first degree (2017-GS-26-02245). The underlying facts are as follows:

Your Honor, the defendant, Malikaiah Taylor, between the dates, on or between the dates of January 1, 2013 and November 30 of 2014 committed a sexual battery upon his biological daughter, [Victim]. He raped her on an almost weekly basis over a period of two years.

[Victim] is present today with her mother and her family and she would like to address the Court before you sentence the defendant.

(Tr. 8-9). The State noted Applicant decided to plead immediately before a jury was set to be selected for trial.

C. Leigh Andrew, Esq., of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On November 6, 2017, Applicant pled guilty as indicted. Without negotiations or recommendations, the Honorable Steven H. John sentenced Applicant to imprisonment for a term of 27 years. Applicant did not appeal his plea or sentence.

II. PRESENT APPLICATION

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

i. "Insufficient Counseling"

- a. "I was not notify or served any indictment documents."
- b. "I was being taken to [trial] without being arraign."
- c. "I was offer a plea for 20 years and my lawyer Thomas Floyd never came to explain the plea offer to me. However, after the expiration of the plea he came and visit me concerning [trial]. When I question him about the plea offer, he stated that he was out sick."
- d. "Because Mr. Floyd was getting ready to retire I feel that there was no effort in representing my case."

JEH

e. "On the first day of [trial] I was advise by Mr. Floyd to plea guilty. That if I was to take it to [trial], I would probably get the maximum penalty if I lose. Therefore leading me to plea guilty out of fear. Rather than going to [trial] base on no tangible evidence."

Applicant requests relief as follows:

- Sentence Reduction

At the evidentiary hearing, Applicant proceeded forward on the above-mentioned allegations. Additionally, Applicant proceeded forward on the allegation of ineffective assistance of counsel based upon failure to review discovery. Applicant did not offer any tangible evidence or testimony to support his allegation based upon the failure to arraign. Accordingly, this Court finds failure to arraign allegation is dismissed with prejudice.

III. SUMMARY OF TESTIMONY PRESENTED AT EVIDENTIARY HEARING

Applicant

Applicant testified on his own behalf at the evidentiary hearing. He testified Counsel met with him one time over the first twelve months of representation. Applicant testified Counsel did not review anything relevant at their first meeting.

Applicant testified he received a plea offer from the Fifteenth Circuit Solicitor's Office in July 2017. Applicant testified the offer was for twenty years based upon second degree criminal sexual conduct with a minor. He further testified the offer was set to expire on August 21, 2017. Applicant testified he tried to contact Counsel about the initial plea offer to discuss parole eligibility possibilities. Applicant testified he wanted to know if there was exposure to sixty-five mandatory service, eighty-five percent mandatory service, whether he would be parole eligible, and whether he would have to wear a GPS monitor upon release. Thereafter, Applicant testified he called the Fifteenth Circuit Public Defender's Office daily to talk with Counsel about the above-mentioned issues. However, Applicant testified he did not get a response from Counsel

26743

on any of these issue before the initial offer's expiration date. Therefore, Applicant testified he failed to accept the offer on time. Applicant testified he would have taken the initial plea offer to do the right thing. He further testified he would have accepted an offer containing the sixty-five percent mandatory service of twenty years. However, Applicant testified he would not have accepted an offer with the eighty-five percent mandatory service of twenty years. Thereafter, Applicant testified he would have taken an offer with eighty-five percent mandatory service to do the right thing.

Subsequently, Applicant testified Counsel met with him to prepare for trial shortly after the plea offer expired. Applicant further testified Counsel claimed a long-term sickness prevented him from meeting about the initial plea offer. Applicant testified Counsel did not bring any DNA evidence or forensic evidence to review at this meeting. However, Applicant testified Counsel merely said a jury would probably believe the victim.

Additionally, Applicant testified he met with Counsel right before trial. Applicant testified Counsel assessed this case would come down to a he said, she said. Applicant testified Counsel advised him the jury would probably believe the victim. Thereafter, Applicant testified Counsel advised him to plead guilty to twenty-five to life. Applicant testified Counsel again did not produce any DNA or forensic evidence.

Thereafter, Applicant testified he was not satisfied with Counsel when entering a guilty plea. Applicant testified he lied at the plea hearing about being satisfied with Counsel. Applicant testified he lied at the plea hearing about needing time to talk to Counsel. Applicant testified he lied at the plea hearing about not having any questions for Counsel. Applicant testified he lied at the plea hearing because he was afraid of the repercussions of speaking out

JCV 74

against Counsel. Thereafter, Applicant testified he had no mental health issues when accepting the plea.

Finally, Applicant testified he never saw the victim statements. Applicant testified there was never strategy discussions in meetings with Counsel.

Counsel

Counsel testified on behalf of Respondent at the evidentiary hearing. Specifically, Counsel testified the Fifteenth Circuit Public Defender's Office mailed Applicant a plea offer on July 24, 2017. Counsel testified offers are physically delivered to jailhouse clients followed by the requirement to get their signature. Thereafter, Counsel testified he went to the jail and discussed this plea offer with Applicant on the same day or a couple days later.¹ Counsel testified they reviewed the initial plea offer of second degree criminal sexual conduct with a recommendation of twenty years. Counsel further testified they discussed the potential exposure to a heavier sentence at trial based upon the mandatory minimum of twenty-five years with first degree criminal sexual conduct. Counsel also testified they reviewed the potential sentencing range Applicant would be subject to under this lesser-included offense at the discretion of the plea judge. Counsel testified he reviewed the mandatory amount of incarceration before eligibility for release under community supervision based upon the sentence percentage.

Counsel testified he reviewed evidence with Applicant at the above-mentioned meeting. Counsel testified he reviewed the forensic interview transcript with Applicant. Counsel testified he advised Applicant twenty years was good offer based upon the lesser-included offense

¹ Counsel testified there are customarily lawyers at this jailhouse to handle emergency plea offer issues on behalf of the Fifteenth Circuit Public Defender's Office. Counsel testified he customarily notified clients to request assistance from the on-site lawyer if he was not available. Counsel testified the lawyers conducted a group effort to ensure offers could be considered and accepted. However, Counsel testified there was never a communication issue with Applicant.

preventing exposure to the sentencing range of twenty five to life. However, Counsel testified he did not force Applicant to take the plea offer since twenty years is also a long time. Finally, Counsel testified he told Applicant a decision to reject the plea offer would mean the trial would be put on the roster.

Thereafter, Counsel testified Applicant became indecisive on accepting the initial plea offer. Counsel testified he notified Applicant he needed affirmative permission to accept the plea offer before he was able to do so. Counsel testified Applicant would say he did not want to plead guilty then say he did not want to go to trial. Counsel testified he anticipated Applicant would plead guilty based upon accepting responsibility at the meeting. However, Counsel testified Applicant wanted to avoid going to prison as long as possible. Furthermore, Counsel testified Applicant wanted to delay his decision to make up his mind. Therefore, Counsel testified Applicant repeatedly asked for more time to decide. Counsel testified he does not remember the specific date of expiration. However, Counsel testified both parties were aware of the date this offer expired. Counsel testified he remembered having concerns Applicant did not appreciate the expiration date being the last step before scheduling trial. Therefore, Counsel testified he intentionally explained to Applicant the failure to accept by this set expiration date would result in the trial being put on the roster. However, Counsel testified Applicant did not make a decision on accepting the plea offer by the expiration date.

A couple days later, Counsel testified he met with Applicant to prepare for trial. Counsel testified Applicant acted surprised trial would be scheduled immediately after the plea offer expired. Counsel testified he reminded Applicant about the previous warning this trial would be put on the roster if the initial offer was rejected. Furthermore, Counsel testified Applicant did raise concerns about unanswered questions as well as the failure to accept this initial plea.

Thereafter, Counsel testified he moved on to discussing trial strategy. Counsel testified he reiterated his opinion this case would revolved around a he said, she said. Finally, Counsel testified Applicant did take responsibility for what happened again.

Shortly before trial, Counsel testified he met with Applicant to discuss strategy. Counsel testified he reiterated this case was a he said, she said. Counsel testified he said if they believe the victim then Applicant could receive a life sentence. Thereafter, Counsel testified he advised Applicant serving life is a lot of time. Counsel testified Applicant stated he hurt his daughter enough so he did not want to hurt her anymore. Counsel then testified Applicant requested to avoid trial. Counsel testified Applicant mentioned accepting the initial plea offer. Counsel testified this was the first time Applicant had brought it up in about three months. However, Counsel testified Applicant was aware it was too late to accept that offer.

Thereafter, Counsel testified the Assistant Solicitor only offered to allow Applicant to plea to first degree criminal sexual conduct with a minor in the first degree without recommendation. Counsel assessed the plea was not much of an offer since they were so close to trial. Finally, Counsel testified Applicant agreed to follow through to avoid forcing his daughter to testify.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel's performance was deficient. Strickland, 466 U.S. at 686; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109-10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees

reasonable competence, not perfect advocacy judged with the benefit of hindsight.” Yarborough at 6; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” United States v. Basham, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting Elmore v. Ozmint, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he/she would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant’s right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977) (“Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.”). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975)).

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. Strickland, 466 U.S. at 696. 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. Id. at 696-97.

1. Failure to Advise Consequences of Plea²

Applicant contends Counsel failed to properly advise him about consequences of accepting the initial plea offer before it expired. Plea counsel has no duty to inform an applicant about collateral consequences, which are defined as those having a direct, immediate, and automatic effect on the range of punishment. Page v. State, 364 S.C. 632, 637, 615 S.E.2d 740, 742 (2005) (finding future civil proceedings are not a direct consequence of pleading guilty); See Randall v. State, 356 S.C. 639, 641, 591 S.E.2d 608, 609 (2004) (reaffirming parole eligibility is a collateral consequence where counsel has no duty to advise); See Smith v. State, 329 S.C. 280, 286, 494 S.E.2d 626, 629 (1997) (finding the consequences of pleading to a violent crime are collateral so counsel had no duty to advise); See Jackson v. State, 349 S.C. 62, 64, 562 S.E.2d 475, 475 (2002) (finding release under community supervision is a collateral consequence where counsel has no duty to inform). However, counsel has a duty not to misadvise an applicant on collateral consequences. Coats v. State, 352 S.C. 500, 503, 575 S.E.2d 557, 558 (2003) (finding

² Applicant approached this claim as a failure to communicate a plea offer at the evidentiary hearing. However, the undisputed testimony indicates Applicant received this offer in the mail. The dispute is centered upon advice about collateral consequences of accepting the initial plea offer. Therefore, it is best addressed as a failure to give advice on the initial offer's collateral consequences.

advice which made applicant believe he would be eligible for parole could affect the validity of the plea entered).

Here, Applicant testified Counsel failed to answer any questions about parole eligibility, early release under community supervision, and GPS monitoring. These are collateral consequences where Counsel had no duty to inform. However, Counsel testified he may have advised Applicant the requirement would be to serve at least sixty-five percent of this initial offer's sentence. However, second degree criminal sexual conduct with a minor has a mandatory service requirement of eighty-five percent.³ Therefore, this Court finds Counsel deficiently misadvised Applicant about the initial offer's mandatory incarceration requirement.

Counsel contends Applicant failed to accept the initial plea offer based upon not being able to make up his mind before it expired. Here, Counsel credibly testified Applicant ultimately decided to plea to prevent the victim, his daughter, from having to testify. Similarly, at the plea hearing, Counsel stated Applicant pled guilty out of desire not to put his family through any more pain. (Tr. 12). Counsel then stated this decision came after a great deal of recent conversations with Applicant. (Tr. 12). Therefore, this Court finds Applicant decided to plea shortly before trial to avoid requiring his daughter to testify.⁴ Additionally, Counsel credibly testified Applicant always accepted responsibility. However, Counsel credibly testified Applicant tried to delay going to prison as long as possible. Counsel credibly testified Applicant did not want to plea and did not want to go to trial. Counsel credibly testified Applicant allowed the expiration date to pass without making a decision on the initial plea offer. Similarly, at the plea hearing, Counsel stated Applicant missed out on the initial twenty year offer based upon not

³ Sec S.C. Code Ann. § 24-13-125 (no parole offenses require eighty-five percent of actual sentence be spent incarcerated).

⁴ This Court notes the Assistant Solicitor stated Applicant pled right before jury selection. (Tr. 9).

exercising his ability to plead guilty earlier on. (Tr. 12). Therefore, this Court finds Applicant failed to accept the initial offer because he did not make a decision before the expiration date.⁵ Therefore; this Court finds improper advice on collateral consequences did not prejudice his decision to reject the initial plea.

Alternatively, Respondent contends the improper advice could not have impacted the failure to accept this offer. Counsel advised this sentence would contain a sixty-five percent mandatory incarceration despite no-parole offense requiring eighty-five percent service. However, Applicant conceded he would not have accepted the initial offer if it came with a mandatory of serving eighty-five percent. Therefore, this Court finds Counsel's error did not impact Applicant's failure to accept the initial plea offer.

As a result, Applicant has not overcome the burden to prove he suffered any prejudice from improper advice about the mandatory amount of actual incarceration required for plead guilty to the initial offer.

2. Failure to Indict

Applicant contends he was not indicted before pleading guilty. At the plea hearing, Applicant confirmed he remembered being indicted on April 20, 2017. (Tr. 4). The record

⁵ Additionally, Applicant would fail on the allegation of a failure to communicate a plea offer. When alleging plea counsel was deficient in his or her handling of a plea offer, an applicant "must demonstrate a reasonable probability he 'would have accepted the earlier plea offer had [he] been afforded effective assistance of counsel.'" Collins v. State, 422 S.C. 250, 262, 810 S.E.2d 871, 877 (2018) (citing Missouri v. Frye, 566 U.S. 134, 147 (2012)); see Lafler v. Cooper, 566 U.S. 156, 164 (2012) (stating "a defendant must show that but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court (i.e., that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed"). Here, the credible testimony reflects Applicant did not accept the plea offer based upon an inability to make up his mind. Accordingly, this Court finds Applicant has not provided sufficient evidence to show he would have accepted this initial offer with effective counsel.

reflects he was indicted on that date. Applicant did not offer any testimony on this issue at his evidentiary hearing. Therefore, this Court finds he has not overcome the burden to prove a failure to indict had any impact on his case.

3. Involuntary Plea based upon Coercion

Applicant contends his plea was involuntary based upon advice from Counsel that going through with trial would guarantee a life sentence. To find a guilty plea voluntarily and knowingly, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2000). Also, an applicant's statements during the plea hearing are considered "conclusive unless [he] presents valid reasons why he should be allowed to depart from the truth" of them. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007). Finally, the plea colloquy can cure any alleged deficiency if counsel not properly advise an applicant about the consequences of accepting it. See Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997) (stating that plea counsel's deficient performance can be cured by the plea court's colloquy).

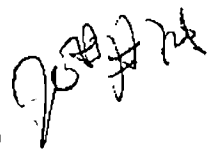
At the plea hearing, Applicant testified nobody forced him in any way to plead guilty. (Tr. 7). Applicant also said Counsel answered all of his questions. (Tr. 7). Applicant further said he had enough time to talk to Counsel. (Tr. 7). Applicant then said he was satisfied with Counsel. (Tr. 7). At this evidentiary hearing, Applicant testified he lied to the plea judge during all of these questions about Counsel. Applicant testified he wanted to tell the plea judge he was dissatisfied, needed more time, and had several questions for Counsel. Applicant testified he lied because he was afraid of sentence repercussions. Applicant testified the truth was Counsel forced him to plead guilty after claiming a life sentence was almost certain if they went through with trial.

On the other hand, Counsel credibly recalled Applicant taking responsibility for the crime multiple times. Counsel credibly testified he advised Applicant this case would come down to which witness the jury believed. Counsel further credibly testified he warned Applicant if a jury believed the victim it could result in a life sentence.

Accordingly, it is undisputed Counsel advised Applicant the worst-case scenario at trial would have been a life sentence. Thereafter, Applicant was seemingly satisfied with Counsel at the plea hearing. However, he currently wishes to depart from those statements based upon the fear he had of sentencing repercussions. He wishes to replace them with extreme dissatisfaction of Counsel forcing him to plead guilty after threatening the trial would result in a life sentence. However, Applicant conceded he accepted the plea offer to do the right thing. Applicant then conceded he accepted the plea offer to take responsibility for his actions. This contradicts directly his assertion that Counsel played the primary role in his decision to plead guilty. Thus, this Court finds Applicant has failed to provide a valid reason to depart from his conclusive plea hearing statements about satisfaction with Counsel. Accordingly, this Court finds Applicant has failed to provide credible evidence to support his contention the plea was entered for reasons outside of accurate advice. That accurate advice being life in prison was a possible outcome at trial. Therefore, this Court finds Applicant entered in his plea agreement knowing and voluntary.

4. Failure to Review Discovery

Applicant contends Counsel failed to review victim statements or DNA evidence with him despite receiving them in discovery. However, Counsel credibly testified he reviewed all the evidence with Applicant on multiple occasions. Specifically, Counsel credibly recalled reviewing all the evidence when they discussed the initial plea offer, after the case was put on a trial roster, and a couple of days before trial was scheduled. Counsel credibly testified a



transcript of the victim's forensic interview was in the evidence he reviewed with Applicant. Additionally, Counsel credibly testified he could not recall any DNA evidence. However, Counsel credibly recalled labeling this a he said, she said case based upon the lack of physical evidence. Therefore, Counsel credibly testified he does not believe he received any DNA evidence in discovery. Accordingly, this Court finds Counsel produced a credible explanation about his process of reviewing discovery with Applicant. Therefore, this Court finds Applicant has failed to overcome the burden to prove Counsel was deficient in failing to review discovery with him.

Additionally, Applicant contends the failure to review victim statements prevented him from understanding the strength of evidence against him. An applicant cannot meet the prejudicial prong if he or she states they would have pled guilty in any event. Johnson v. Catoe, 336 S.C. 354, 358, 520 S.E.2d 617, 619 (1999) (finding an applicant could not satisfy the prejudicial prong, for a guilty plea, where they would have pled guilty again if granted a new trial). Here, Counsel credibly testified Counsel took responsibility for everything throughout this process. Furthermore, Applicant admitted twice pleading guilty was the right thing to do. Applicant also conceded he would plead guilty again to take responsibility for his actions. Applicant further testified his only desire is to plead guilty to a better offer. However, Applicant failed to provide any testimony to show he has reviewed previously undisclosed victim statements. Therefore, this Court finds a failure to review victim statements did not prejudicially impact his decision to plead guilty.

III. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his

application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

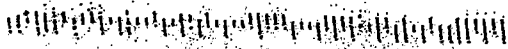
1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 14th day of August, 2019.

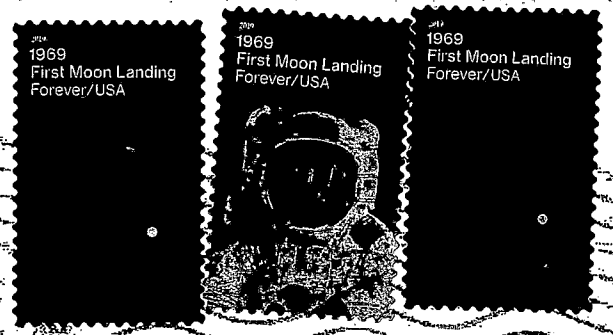
JOHN C. HAYES
Presiding Judge #16
Fifteenth Judicial Circuit

Rock Hill, South Carolina

RECEIVED
SEP 04 2019
S.C. SUPREME COURT



CHARLESTON SC
FRI 30 AUG 2019



FALK LAW FIRM
PO Box 1058
Charleston, SC 29402

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