

MINOR
LAW OFFICES

Mailing Address: 1750 SC HWY 160, Suite 101-259, Fort Mill, SC 29708
Physical Address: 223 E. Main Street, Suite 302, Rock Hill, SC 29730
Telephone: 803-504-0971 | **Fax:** 844-878-2015 | **Email:** info@attorneyminor.com
www.attorneyminor.com

October 7, 2019

RECEIVED

OCT 10 2019

S.C. SUPREME COURT

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

RE: Danielle Lamar Peay (#318430) v. State of South Carolina | 2017-CP-29-1278

Dear Mr. Shearouse:

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

Best regards,



Donae A. Minor, Esq.
Attorney at Law

cc: Danielle Lamar Peay, (#318430)
Samuel L. Key, Esq.
Lancaster County Clerk of Court
Office of Appellate Defense

STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

OCT 10 2019

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable D. Craig Brown, Circuit Court Judge

Case No. 2017-CP-29-1278

Danielle Lamar Peay, #318430, ... Petitioner,

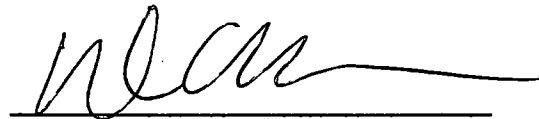
v.

State of South Carolina, ... Respondent.

NOTICE OF APPEAL

Applicant, Danielle Lamar Peay, appeals the order of the Honorable D. Craig Brown, dated September 24, 2019, filed October 2, 2019, and received October 4, 2019.

October 7, 2019



DONAE A. MINOR, ESQUIRE
Minor Law Offices, LLC
1750 SC Highway 160 West,
Suite 101-259
Fort Mill, SC 29708
803-504-0971
SC Bar No. 102550
ATTORNEY FOR APPLICANT

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

STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

OCT 10 2019

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable D. Craig Brown, Circuit Court Judge

Case No. 2017-CP-29-1278

Danielle Lamar Peay, #318430, ... Petitioner,

v.

State of South Carolina, ... Respondent.

PROOF OF SERVICE

I, Ella Williams, certify that I have served the within Notice of Appeal on Respondent by depositing a copy of the same in the United States mail, postage prepaid, on October 7, 2019, addressed as follows:

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

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

October 7, 2019



ELLA WILLIAMS
PARALEGAL TO ATTORNEY DONAE A. MINOR
1750 SC Highway 160 West,
Ste. 101-259
Fort Mill, SC 29708
803-504-0971

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

Danielle Lamar Peay, #318430,)

Case No.: 2017-CP-29-1278

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

CLERK OF COURT
LANCASTER, SC

2019 OCT -2 PM 2-19

FILED
CLERK OF COURT
LANCASTER, SC

The matter before the Court is an action for post-conviction relief (PCR) commenced by Danielle L. Peay (Applicant) on December 1, 2017. The State submitted its return on June 8, 2018, requesting an evidentiary hearing. In his PCR application, Applicant alleged ineffective assistance of counsel which rendered his guilty plea unknowing and involuntary.

An evidentiary hearing convened on July 29, 2019, at the Lancaster County Courthouse before the undersigned. Applicant was present and represented by Donae A. Minor, 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 orders of commitment of the Lancaster County Clerk of Court. In February 2016, the Lancaster County Grand Jury indicted Applicant for attempted murder (2016-GS-29-303), murder (2016-GS-29-304), possession of firearm or ammunition by person convicted of violent felony (2016-GS-29-305), possession of a stolen handgun (2016-GS-29-306), and possession or display of firearm or

DCS
10/19

knife during the commission of a violent crime (2016-GS-29-307). M. Kay Boulware, Esquire (Counsel), represented Applicant. Solicitor Randy Newman and Chief Deputy Solicitor Lisa Collins prosecuted the case.

Applicant's charges stem from an incident on November 25, 2015. Applicant was arrested for the murder of Delvelceo Kirk and the attempted murder of Dayqwann Blakeney. (Plea. Tr. 15-19).

Kirk and Blakeney were in Kirk's car when they decided to give Applicant a ride. Kirk was driving, Blakeney was in the front passenger's seat, and Applicant rode in the back seat. Blakeney informed law enforcement that while they were all in the car, Applicant purchased and used drugs, and Applicant had a firearm. Blakeney later informed law enforcement he was nervous because he had recently learned there was a hit out on him and Kirk. However, he was not afraid of Applicant because he knew Applicant, and he believed he was safe because he was with Kirk. Suddenly, as they were driving, Applicant shot Kirk in the back of the head, and Blakeney immediately fled from the moving vehicle. When law enforcement arrived, the car's engine was running and Kirk's foot was on the brake. (Plea. Tr. 15-19).

When Blakeney first spoke to law enforcement, he was terrified and did not want to identify the shooter. Blakeney said he and Kirk had given a ride to the person who shot Kirk and tried to shoot Blakeney as he fled. However, after learning of Kirk's death, Blakeney implicated Applicant as the shooter. (Plea. Tr. 15-19).

Several eye witnesses informed law enforcement they heard a bang, saw the car stop, and saw Blakeney flee the vehicle. The witnesses also saw Applicant get out of the car and chase Blakeney, shooting at Blakeney as Blakeney fled. Luckily, Blakeney was unharmed. (Plea. Tr. 15-19).

After Blakeney identified Applicant as the shooter, law enforcement went to Applicant's residence with a search warrant and found a firearm hidden in the attic insulation. Applicant was then arrested, waived his *Miranda*¹ rights, and gave a minimal statement—he was afraid for his life. (Plea Tr. 15-19).

On July 21, 2017, Applicant pleaded guilty before the Honorable Daniel D. Hall to attempted murder, the lesser included offense of voluntary manslaughter, possession of a weapon by a felon, possession of a stolen handgun, and pointing and presenting a firearm. Judge Hall sentenced Applicant to an aggregate term of forty years' imprisonment: ten years for attempted murder consecutive to thirty years for voluntary manslaughter; and concurrent terms of five years for possession of firearm by a felon, five years for possession of a stolen handgun, and five years for pointing and presenting a firearm. Applicant appealed his convictions and sentences.

Counsel filed a timely notice of appeal on Applicant's behalf on November 14, 2016. However, the Court of Appeals dismissed the appeal for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv), SCACR. *State v. Peay*, S.C. Ct. App. Order dated August 31, 2017. The case was remitted back to the circuit court on September 19, 2017.

ISSUES

In his original PCR application, Applicant alleged:

1. Ineffective assistance of plea counsel:
 - a. Failure to investigate.
2. Ineffective assistance of appellate counsel:
 - a. Failure to raise a direct appeal issue.

On November 13, 2018, Applicant, through PCR counsel, amended his application, alleging:

1. Ineffective assistance of counsel:

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

DCB
p. 3 of 19

- a. Failure to investigate Applicant's case including but not limited to interviewing potential witnesses and evaluating the veracity of the evidence against Applicant;
- b. Failure to adequately provide Applicant with all discovery and properly discuss all discovery and evidence sought against him prior to Applicant accepting his plea bargain;
- c. Failure to properly counsel, discuss, and explain the pending charges, sentencing, and consequences so that Applicant could make an informed decision as to whether to accept a plea bargain or pursue a trial;
- d. Failure to discuss possible defenses and challenges to the evidence with Applicant; and
- e. Failure to sufficiently meet with Applicant to discuss the case during course of representation (Counsel only met with Applicant approximately twice during the course of representation).

At the outset of the PCR hearing, Applicant, through PCR counsel, stated he was proceeding on the allegations set forth in the amended application. To the extent the allegations set forth in Applicant's original application can be construed as separate grounds for relief from the grounds stated at the PCR hearing, this Court finds Applicant waived and abandoned those allegations.

PCR HEARING TESTIMONY

Applicant's Testimony

Applicant testified Counsel was appointed to represent him. Applicant recalled meeting with Counsel five or six times to prepare his case. Initially, Applicant claimed he and Counsel never discussed the evidence in his case or the difficulties Applicant would face had the case gone to trial. However, Applicant testified Counsel told him if he went to trial, he could receive life without parole (LWOP) due to a prior burglary conviction. Applicant testified he told Counsel he wished to plead guilty after learning the State could seek LWOP because of his prior conviction.

Applicant testified he was provided with the discovery, and he reviewed the discovery with Counsel. However, Applicant asserted Counsel did not answer any questions regarding the

discovery. Even so, Applicant testified he understood the discovery represented the evidence against him, and he never told Counsel he did not understand the evidence against him. Applicant testified he understood the evidence against him. Applicant testified he asked Counsel what the concurrent and consecutive sentences would be, but Counsel did not answer these questions regarding sentencing. Applicant felt Counsel did not provide sufficient answers to his questions. Applicant testified every time Counsel returned to see him, their discussions remained the same—there was no plea offer from the State and if Applicant went to trial, he would catch life.

Applicant testified he pleaded guilty because Counsel promised him if he pleaded guilty, he would receive no more than twenty years' imprisonment. However, Applicant testified he knew he could receive up to sixty years by pleading guilty. On cross-examination, Applicant testified Counsel basically promised him he would receive twenty years because Counsel told him she would try to get him twenty years.

Applicant recalled Counsel's investigator coming to meet him one time. Applicant stated the investigator told Applicant he would come back to talk to Applicant after talking to the witnesses who saw Applicant chasing Blakeney, but the investigator never returned. Applicant testified Counsel did not really explain herself each time they met, but Counsel just kept saying the same thing about Applicant being exposed to life imprisonment if convicted at trial. Applicant testified if Counsel had taken more time to explain the evidence and answer his questions, he would have gone to trial.

Counsel's Testimony

Counsel testified she is an Assistant Public Defender, and she was in the same position when she represented Applicant. Counsel recalled meeting with Applicant six or seven times during her representation, and recalled she met with Applicant two or three times the week of

DCB
p. 5 of 19

Applicant's guilty plea. Counsel testified she replaced Applicant's original attorney who left the Public Defender's Office. Counsel recalled discussing with Applicant whether he wanted a bond hearing, and Applicant did not want a bond hearing because Applicant knew he would be sentenced to prison time. Counsel stated Applicant initially did not want bond because he wanted to keep earning credit towards his eventual sentence. However, Counsel recalled her conversations with Applicant regarding bond went back and forth because Applicant was getting antsy towards the end of the case because he was in jail for about 600 days. Counsel stated the plea hearing was originally set as a bond hearing, but then the State offered a plea to voluntary manslaughter instead of murder.

Counsel testified she and Applicant discussed possible defenses at trial, specifically pursuing self-defense as to the murder charge. In Counsel's opinion, they had a good strategy if Applicant only faced the murder charge, but the companion attempted murder charge presented a problem. Counsel recalled reviewing the discovery with Applicant, and she testified they mostly discussed the strong circumstantial evidence that made a good self-defense case as to the murder charge. However, Counsel testified the problem was the attempted murder charge because Applicant chased and shot at that victim several times. Counsel recalled discussing pursuing a stand-your-ground hearing for the murder charge, but the attempted murder facts were harmful to that strategy.

Counsel recalled the State's theory of the case was there was a volatile situation between Applicant and other people in the community. Counsel recalled people on both sides of the situation had taken hits out on each other. Counsel stated the State theorized Applicant got into the car with the victims to do a hit on them. Counsel stated the State's theory did not make much sense because Applicant entered the car without a gun. Counsel recalled the victims picked

Applicant up to give him a ride—Applicant was in the backseat, the murder victim was driving, and the attempted murder victim was in front passenger seat. The attempted murder victim did not hear any words spoken or see any aggression from either Applicant or the murder victim. However, the attempted murder victim jumped out of the moving car and ran once Applicant shot the driver. Then, Applicant started shooting at the attempted murder victim as that victim ran away, and Applicant chased after him and continued shooting. Counsel testified she explained all of these factors to Applicant, and that the murder and attempted murder charges would be tried together.

Counsel recalled Applicant was out on bond for an armed robbery charge when this incident occurred, and Applicant faced armed robbery; murder, attempted murder, and the weapons charges; plus an additional assault by mob charge he picked up while at the county jail.

Counsel recalled the State originally would not offer anything less than murder in exchange for Applicant's guilty plea. Counsel recalled moving for a speedy trial, and as a result, the judge ordered Applicant's murder case to be tried by June or July of 2017. Once the judge ordered the case to be placed on the June or July trial docket, the State made the voluntary manslaughter plea offer on the murder charge, which is what Counsel thought Applicant would be convicted of at trial. Counsel stated she explained to Applicant the exposure he faced if he went to trial, and Applicant knew he could receive a life sentence if convicted of murder at trial.

Counsel recalled if Applicant turned down the State's offer, the State would try the armed robbery charge separately, after the murder and attempted murder trial. Counsel testified Applicant had a prior conviction for second-degree burglary, which exposed him to LWOP if convicted of either of the murder or attempted murder charges at trial. Counsel explained to Applicant the State intended to seek LWOP on the pending armed robbery charge if he was

convicted of either murder or attempted murder at trial. Counsel testified she explained all these factors to Applicant and he understood what she explained to him.

Counsel testified Applicant would frequently ask her questions about sentencing. Counsel testified she felt it was reasonable to ask for twenty years with the circumstances surrounding the case, but Counsel always tells her clients she cannot promise what the judge will do. Counsel testified she spoke to the plea judge and the solicitor informally before the plea hearing, and the plea judge indicated he would probably not run the sentences consecutive; however, the plea judge did sentence Applicant to consecutive terms. Counsel thought Applicant had a good chance of receiving twenty years because of the conference with the plea judge, but Counsel told Applicant there was no guarantee because it was a "straight up" plea. Counsel testified she never promised Applicant he would receive twenty years. Counsel had Applicant complete a plea affidavit which she explained to him, and Counsel wrote Applicant a letter telling him he faced anywhere from zero to sixty years if he accepted the plea offer. Counsel recalled Applicant hesitated and did not know what he wanted to do; however, Applicant talked to his family during the plea week and decided he wanted to accept the State's offer.

Counsel felt as though Applicant's decision to plead guilty was not rushed because during their meetings, they discussed that if State ever offered voluntary manslaughter, the offer needed to be seriously considered. However, Counsel believed Applicant hesitated because of the facts surrounding the murder charge, but he ultimately understood there were serious problems with the attempted murder charge. Counsel reiterated she explained all these factors to Applicant.

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

PCh
p. 8719

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 rendering his guilty plea unknowing and 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).

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).

DCS
p. 9 of 19

Applicant alleges his guilty plea was unknowing and involuntary because plea counsel: (a) failed to investigate and evaluate the veracity of the evidence against Applicant; (b) failed to adequately provide Applicant with all discovery and properly discuss all discovery and evidence sought against him prior to Applicant accepting his plea bargain; (c) failed to properly counsel, discuss, and explain the pending charges, sentencing, and consequences so that Applicant could make an informed decision as to whether to accept a plea bargain or pursue a trial; (d) failed to discuss possible defenses and challenges to the evidence with Applicant; and (e) failed to sufficiently meet with Applicant to discuss the case during course of representation. For the reasons discussed below, the Court concludes Applicant knowingly and voluntarily pleaded guilty; therefore, Counsel was not constitutionally ineffective.

a. Failure to investigate and evaluate the veracity of the evidence against Applicant.

Applicant alleges Counsel was ineffective for failure to investigate and evaluate the veracity of the evidence against him. The Court disagrees and finds reasonable Counsel's investigation and evaluation of the evidence in this case.

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). "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. To prove prejudice, the applicant must show a reasonable probability he would not have pleaded guilty and would have insisted on going to trial absent plea counsel's alleged deficiency. *Hill*, 474 U.S. at 59.

DCB
1.10.19

The Court finds credible Counsel's testimony on this issue. As stated above, Counsel recalled Applicant was out on bond for armed robbery when this incident occurred. Counsel testified Applicant faced armed robbery, murder, and attempted murder charges, plus an additional assault-by-mob charge he picked up while at the jail. Counsel recalled the State's theory of the case was there was a volatile situation between Applicant and other people in the community. Counsel recalled people from both sides of the situation had taken hits out on each other. Counsel stated the State theorized Applicant got into car with the victims to do a hit on them. Counsel stated the State's theory did not make much sense because Applicant got into the car without a gun. However, the problem with the attempted murder charge was the victims picked Applicant up to give him a ride—Applicant was in the backseat, the murder victim was driving, and the attempted murder victim was in front passenger seat. The attempted murder victim did not hear any words spoken or see any aggression from either Applicant or the murder victim. However, the attempted murder victim jumped out of the moving car and ran once Applicant shot the driver. Then, Applicant started shooting at the attempted murder victim as that victim ran away, and Applicant chased after him and continued shooting. In Counsel's opinion, they had a good strategy if Applicant only faced the murder charge, but the problem was the companion attempted murder charge. Counsel testified she explained all of these factors to Applicant, and that the murder and attempted murder charges would be tried together.

The Court finds Counsel's above referenced credible testimony shows that Counsel reasonably and thoroughly investigated Applicant's case and evaluated the veracity of the evidence against Applicant. Therefore, based on Counsel's credible testimony, the Court finds Counsel was not deficient for failure to investigate or evaluate the evidence against Applicant.

PCB
11/17/19

The Court further finds Applicant has failed to show any prejudice from Counsel's alleged failure to investigate and evaluate the evidence. The Court finds not credible Applicant's testimony he would have proceeded to trial had Counsel properly reviewed the discovery with him. However, Applicant testified he asked Counsel to enter plea negotiations on his behalf after Counsel explained to him he was LWOP eligible because of his prior burglary conviction. The Court finds this specific testimony by Applicant credible. This Court is not convinced Applicant would have proceeded to trial on the murder and attempted murder charges, rather than plead guilty, when the State indicated it would serve LWOP notice on Applicant if his armed robbery, murder, or attempted murder charges went to trial. Because the Court is not convinced Applicant would have proceeded to trial rather than plead guilty, Applicant has failed to show any prejudice resulted from Counsel's alleged failure to investigate and evaluate the veracity of the evidence.

Because this Court finds Counsel reasonably investigated and evaluated the veracity of the evidence against Applicant, Counsel was not deficient. Further, because the Court is not convinced Applicant would have proceeded to trial instead of pleading guilty, there was no prejudice from Counsel's alleged deficiency. Therefore, the Court concludes Counsel was not constitutionally ineffective as to this allegation, and this allegation is denied and dismissed with prejudice.

- b. Failure to adequately provide Applicant with all discovery and properly discuss all discovery and evidence sought against him prior to Applicant accepting his plea bargain; and**
- c. Failure to properly counsel, discuss, and explain the pending charges, sentencing, and consequences so that Applicant could make an informed decision as to whether to accept a plea bargain or pursue a trial.**

Applicant alleges Counsel was ineffective for failure to adequately provide Applicant with all discovery and properly discuss all discovery and evidence sought against him before Applicant accepted the State's plea offer. Applicant also alleges Counsel was ineffective for failure to properly counsel, discuss, and explain the pending charges, sentencing, and consequences so

*Dec
1-17-19*

Applicant could make an informed decision as to whether to accept a plea bargain or pursue a trial. The Court disagrees and finds both of these allegations are without merit.

The test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *Alford*, 400 U.S. at 31. "[A] defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman*, 337 S.C. at 599, 524 S.E.2d at 624.

As for Counsel's alleged failure to provide Applicant with the discovery, the Court finds Applicant's testimony on this issue dispositive. Applicant testified he was provided with the discovery, and he reviewed the discovery with Counsel. Applicant testified he understood the discovery represented the evidence against him, and he never told Counsel he did not understand the evidence against him. Further, Applicant understood the evidence against him and testified he wanted to plead guilty after he realized he potentially faced LWOP if convicted at trial.

The Court finds Applicant's above referenced testimony shows that Applicant did receive and understand the discovery in his case. Because Applicant received the discovery and understood the evidence against him, Counsel was not deficient for failing to provide and explain the discovery with Applicant. Further, Applicant has failed to show prejudice because he testified that after discussing his case with Counsel and realizing he faced life imprisonment if convicted at trial, he told Counsel he wished to plead guilty. The State's offer of voluntary manslaughter took LWOP off the table; therefore, the Court is not convinced Applicant would have chosen to proceed to trial instead of pleading guilty. This allegation is denied and dismissed with prejudice.

As for Counsel's alleged failure to properly counsel, discuss, and explain the pending charges, sentencing, and consequences so Applicant could make an informed decision as to

whether to accept a plea bargain or pursue a trial, the Court finds Applicant and Counsel's testimony dispositive of these issues.

Applicant testified he knew he faced life imprisonment if he were convicted of murder at trial. Applicant also testified he knew, because of Counsel's advice he was LWOP eligible if he went to trial. Further, Applicant testified he knew he faced up to sixty years' imprisonment by pleading to his charges "straight up." Finally, Applicant testified Counsel promised him he would receive a twenty year sentence if he pleaded guilty; however, Applicant later testified he felt Counsel promised him twenty years because she told him she would try to get him twenty years. Counsel testified she never promised Applicant he would receive twenty years if he pleaded guilty. The Court finds credible Counsel's testimony she never promised Applicant he would receive a twenty year sentence by pleading guilty. Therefore, Counsel was not deficient for failing to advise Applicant of his potential exposure, and Counsel properly advised Applicant what she believed Applicant might receive if he pleaded guilty.

Additionally, from the overall testimony from Applicant and Counsel at the PCR hearing, this Court finds Applicant was aware he faced life imprisonment if convicted of murder at trial. The Court also finds Applicant understood he would become LWOP eligible if he did not dispose of all of his charges at the same time by pleading guilty. The State dropped the unrelated armed robbery charge in exchange for his guilty plea. (Plea Tr. 3). Applicant testified he knew he could get LWOP if he decided not to plead guilty and proceeded to trial. Counsel testified she explained to Applicant the State intended to try him for murder and attempted murder first, then separately try him for armed robbery.

Applicant's prior second-degree burglary conviction is a "serious" offense. S.C. Code Ann. 17-45-25(C)(2)(b) (2014 & Supp. 2018); *see also* 1997 Act No. 113, § 4. Applicant's murder,

DCB
1-17-19

attempted murder, and armed robbery charges were all classified as "most serious" offenses. S.C. Code Ann. 17-45-25(C)(1) (2014 & Supp. 2018). Applicant knew if he went to trial on the murder and attempted murder charges, the State intended to then try him on the armed robbery charge. Counsel explained to Applicant if he was convicted of murder or attempted murder at trial, the State intended to seek LWOP on the armed robbery charge. As admitted by Applicant at the PCR hearing, this advice from Counsel is what led him to accept the State's plea offer. Counsel's advice to Applicant regarding Applicant's sentencing exposure at trial, and pleading guilty, was correct. Therefore, Counsel was not deficient for failing to advise Applicant of his sentencing exposure.

It is also apparent from Applicant's and Counsel's testimony that Applicant knew the charges against him and the consequences of those charges. Applicant testified he knew he was LWOP eligible because of his prior burglary conviction. Because of his LWOP exposure, Applicant told Counsel he wanted to plead guilty. Counsel testified the State offered voluntary manslaughter, and Applicant thought about the plea offer before deciding to plead guilty.

Applicant received the discovery, and Counsel reviewed the discovery with him; Applicant knew the potential exposure he faced from the charges against him; and knew he faced life imprisonment had he been convicted at trial. Based on the totality of Applicant and Counsel's testimony, the Court finds Applicant knowingly and voluntarily elected to plead guilty. Therefore, these allegations are without merit, are denied, and dismissed with prejudice.

d. Failure to discuss possible defenses and challenges to the evidence with Applicant.

Applicant alleges Counsel was ineffective for failure to discuss the possible defense and challenges to the evidence with Applicant. The Court disagrees and finds Counsel's credible testimony on this issue dispositive.

DCB
P. 15/1/9

As stated above, Counsel testified she and Applicant discussed possible defenses at trial, specifically pursuing self-defense as to the murder charge. In Counsel's opinion, they had a good strategy if Applicant only faced the murder charge, but the problem was the companion attempted murder charge. Counsel recalled the State's theory of the case was there was a volatile situation between Applicant and other people in the community. Counsel recalled people from both sides of the situation had taken hits out on each other. Counsel stated the State theorized Applicant got into car with the victims to do a hit on them. Counsel stated the State's theory did not make much sense because Applicant got into the car without a gun. However, the problem was with the attempted murder. The victims picked Applicant up to give him a ride—Applicant was in the backseat, the murder victim was driving, and the attempted murder victim was in front passenger seat. The attempted murder victim did not hear any words spoken or see any aggression from either Applicant or the murder victim. However, the attempted murder victim jumped out of the moving car and ran once Applicant shot the driver. Then, Applicant started shooting at the attempted murder victim as that victim ran away, and Applicant chased after him and continued shooting. Counsel testified she explained all of these factors to Applicant, and that the murder and attempted murder charges would be tried together. Further, at the plea hearing, Applicant indicated Counsel had reviewed all the discovery with him, and any possible defenses. (Plea Tr. 12).

The Court finds credible Counsel's testimony she discussed potential defenses with Applicant and advised Applicant how his self-defense claim would not apply to his attempted murder charge. Because Counsel discussed potential defenses and trial strategy with Applicant, Counsel was not deficient.

The Court further finds Applicant has failed to show any prejudice from Counsel's alleged failure to discuss potential defenses with Applicant. As stated above, Applicant testified he asked

Counsel to enter plea negotiations on his behalf after Counsel explained to him he was faced life imprisonment if he proceeded to trial. The Court finds this specific testimony by Applicant credible. This Court is not convinced Applicant would have proceeded to trial rather than plead guilty. Further, Applicant did not present any evidence or defenses at the PCR hearing he could not present before because of Counsel's alleged failure. Therefore, Applicant has failed to show prejudice.

Counsel was not deficient because she discussed and explained potential defenses and trial strategy with Applicant. Further, the Court is not convinced Applicant would have proceeded to trial absent Counsel's alleged deficiency. Therefore, Counsel was not constitutionally ineffective on this allegation, and the allegation is denied and dismissed with prejudice.

c. Failure to sufficiently meet with Applicant to discuss the case during course of representation.

In Applicant's amended PCR application, Applicant alleged Counsel only met with him approximately two times during the course of Counsel's representation. However, at the PCR hearing, Applicant testified he met with Counsel five or six times. Further, Counsel testified she recalled meeting with Applicant six or seven times during her representation. The Court finds the PCR hearing testimony and the plea transcript dispositive of this issue.

At the plea hearing, Applicant informed the plea court he had plenty of time to meet with Counsel regarding this case. (Plea Tr. 11-12). Applicant indicated Counsel had reviewed all the discovery with him, and any possible defenses. (Plea Tr. 12). Finally, Applicant indicated he was satisfied with Counsel's representation and had no complaints against her. (Plea Tr. 12). The plea transcript shows Applicant was satisfied with Counsel's representation when he pleaded guilty. Therefore, the Court finds Counsel adequately met with Applicant while representing him. Further, based on Applicant and Counsel's testimony at the PCR hearing, the Court finds Counsel

and Applicant met a reasonable number of times to prepare the case for trial and the eventual guilty plea. Therefore, this allegation is denied and dismissed with prejudice.

CONCLUSION

The Court finds Counsel's representation was neither deficient nor prejudicial because Applicant knowingly and voluntarily pleaded guilty. Counsel (a) reasonably investigated and evaluated the veracity of the evidence against Applicant; (b) provided and properly discussed the discovery with Applicant; (c) properly advised Applicant of the charges against him, the exposure he faced, and the consequences of proceeding to trial versus pleading guilty; (d) discussed possible defenses and trial strategy with Applicant; and (e) met with Applicant a reasonable amount of times in preparation of the case. Therefore, Counsel was not deficient. Further, Applicant has wholly failed to show any prejudice resulted from any of Counsel's alleged deficiencies because the Court is not convinced Applicant would have proceeded to trial rather than plead guilty in this case. Therefore, based on the foregoing, the Court denies relief on the allegations 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 the 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.

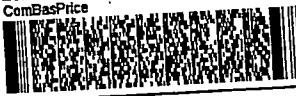


D. CRAIG BROWN
Presiding Judge
Sixth Judicial Circuit

8-27, 2019

DCB
8/19/19

I understand that Priority Mail Express™, Priority Mail®, and Global Express Guaranteed® packaging is the property of the United States Postal Service® and is provided free of charge for use with USPS® services. Misuse may be a violation of federal law.

P	\$6.95 US POSTAGE 1 LB PRIORITY MAIL RATE ZONE 2 NO SURCHARGE ComBasPrice	062S0010446262 FROM 29708
		stamps endicia 10/07/2019
PRIORITY MAIL 2-DAY™		
Minor Law Offices 1750 SC Highway 160 Suite 101-259 Fort Mill SC 29708		
SHIP TO: The Honorable Daniel E. Shearouse Clerk, Supreme Court of South Carol PO Box 11330 Columbia SC 29211-1330		B099
USPS TRACKING #		
		
9405 5118 9956 1990 2077 14		