

McMAHAN & TAYLOR
ATTORNEYS^{LLP}

December 10, 2019

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

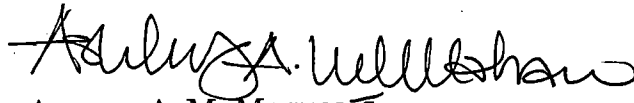
RECEIVED
DEC 10 2019
S.C. SUPREME COURT

RE: Tito O. Marin, #375585, v. State of South Carolina
2018-CP-30-00512

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. Marin.

Best regards,



ASHLEY A. McMAHAN
ATTORNEY AT LAW

AAM

cc: Tito O. Marin, #375585
Brianna L. Schill, Asst. Attorney General
Laurens County Clerk of Court
Office of Appellate Offense

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

The Honorable L. Casey Manning, Circuit Court Judge

RECEIVED

DEC 10 2019

S.C. SUPREME COURT

Case No. 2018-CP-30-00512

Tito O. Marin, #375585, Petitioner,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Applicant, Tito O. Marin, appeals the order of the Honorable L. Casey Maning, dated November 18, 2019, and filed November 25, 2019.

Dec 10th, 2019

Ashley A. McMahan

ASHLEY A. MCMAHAN, ESQUIRE

MCMAHAN & TAYLOR, ATTORNEYS, LLC

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ATTORNEY FOR APPLICANT

Opposing Counsel:
Brianna L. Schill, Asst, Attorney General
S.C. Attorney General's Office
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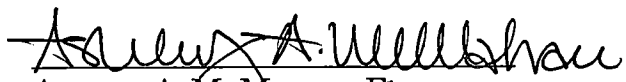
PROOF OF SERVICE

I, Ashley A. McMahan, 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, addressed to:

Brianna L. Schill, Asst. Attorney General
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

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

Dec 10th, 2019



ASHLEY A. MCMAHAN, ESQUIRE

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PO Box 5501
West Columbia, SC 29171
803-219-1110

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)

Tito O. Marin,)
S.C.D.C. No. 375585,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
OF THE EIGHTH JUDICIAL CIRCUIT

2018-CP-30-512

ORDER OF DISMISSAL

RECEIVED

DEC 10 2019

S.C. SUPREME COURT

LAURENS COUNTY
CLERK OF COURT
NOV 25 AM 11:00
LYNN W. LANCASTER

This matter comes before the Court by way of an application for post-conviction relief filed on July 5, 2018, by Tito O. Marin (Applicant). The State (Respondent) filed a Return on December 14, 2018, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on October 17, 2019, at the Greenwood County Courthouse. Applicant was present at the hearing and represented by Ashley McMahan, Esquire. Assistant Attorney General Brianna L. Schill of the South Carolina Attorney General's Office appeared on behalf of Respondent. At the hearing, Applicant testified on his own behalf. Joel T. Broome (Broome) and Lydia Angelica Hernandez (Hernandez), Esquires, also testified. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies this application with prejudice.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Laurens County Clerk of Court. During the May 2017 term, the Laurens County Grand Jury indicted Applicant for two counts of first degree criminal sexual conduct with a minor (2017-GS-30-0989; -0990). Hernandez represented Applicant. Deputy Solicitor C. Dale Scott of the Eighth Circuit Solicitor's Office prosecuted the case.

On February 27, 2018, Applicant appeared before the Honorable Frank R. Addy, Jr. and pled guilty as indicted. Pursuant to a negotiated sentence between the State and Applicant, Judge Addy sentenced Applicant to concurrent terms of twenty-five-years' imprisonment on each charge, along with credit for time served of 358 days. Applicant did not appeal his guilty plea or sentence.

II. FACTUAL HISTORY

On March 7, 2017, Victim 1 was in fourth grade and was learning about good touches and bad touches. (GP Tr. 9-10.) During the class, Victim 1 began to cry and physically react to the information she was learning. (GP Tr. 10.) The teacher took Victim 1 aside and asked her if everything was alright. (GP Tr. 10.) Victim 1 told her teacher she had received bad touches from Applicant. (GP Tr. 10.) The teacher notified the principal, who in turn notified DSS. (GP Tr. 10.) The Victim was interviewed by Jared Honeycutt (Honeycutt) with the Laurens County Sheriff's Department and she told him about incidents that occurred when she was eight years old. (GP Tr. 10.) Victim 1 was sent to a forensic interviewer and disclosed the details of Applicant's actions. (GP Tr. 10.) Victim 1 stated Applicant – who is her second cousin – would babysit her while her mother was at work. (GP Tr. 10.) During the first assault, Applicant walked into her room and locked the door behind him. (GP Tr. 11.) He began touching Victim 1's breasts, body, and vagina. (GP Tr. 11.) Victim 1 described being frightened because only her mother had seen her without clothes on at that time. (GP Tr. 11.) At some point, Applicant began to take her clothes off and laid her on the bed. (GP Tr. 11.) Applicant covered Victim 1's face with a pillow, but she described being able to hear his belt rattling and his boots on the floor. (GP Tr. 11.) Applicant then proceeded to have sexual intercourse with Victim 1. (GP Tr. 11.) Victim 1 stated she vomited after the first assault and "felt so sick." (GP Tr. 11.) Applicant left the pillow over her head and told her to get dressed when he left her room. (GP Tr. 11.)

Applicant assaulted Victim 1 more than one time and each time he would place a pillow over her head. (GP Tr. 11-12.) Applicant told Victim 1 his actions were her fault too and what they did was wrong, so she better not tell her parents because they would not love her anymore. (GP Tr. 12.)

Upon further investigation into the family by the Laurens County Sheriff's Office, they located Victim 2. (GP Tr. 12.) Victim 2 was interviewed by Honeycutt, and, without knowing the specifics of Victim 1's allegations, Victim 2 began to cry when Honeycutt asked certain questions about Applicant. (GP Tr. 12.) Victim 2, who is now seventeen years old, told Honeycutt Applicant raped her when she was ten years old. (GP Tr. 12.) Victim 2 said Applicant took her into his bedroom, locked the door behind him, and began touching her body. (GP Tr. 12.) Applicant took her clothes off and placed a pillow over her head. (GP Tr. 13.) Applicant then had sexual intercourse with Victim 2, and told her if her parents found out they would hate her forever. (GP Tr. 13.)

III. ALLEGATIONS RAISED

In his application for post-conviction relief, Applicant makes the following allegations as to Hernandez:

1. Ineffective Assistance of Counsel
 - a. "failure to discharge his duty of due diligence to investigate the evidence, facts, and witnesses in this case"
 - b. "for coercing the defendant into a guilty plea"
 - c. "for an involuntary plea"
 - d. "for his abandonment of his client, before trial"
 - e. "counsel failed to investigate the case"
 - f. "counsel failed to provide a proper defense for physical evidence for the case"
 - g. "counsel failed to spend adequate time with petitioner reviewing discovery with him and preparing for trial"
 - h. "counsel failed to adequately investigate the alleged crime scene or the allegations so as to be prepared to present testimony of relevant evidence related to the matter"

- i. "counsel failed to investigate witnesses and prepare for trial"
- j. "counsel was ineffective for providing erroneous and incorrect advice to plead guilty instead of challenging the state's evidence through the protections of trial"

2. Involuntary Guilty Plea

- a. "Petitioner's plea was unknowing and involuntary entered into, due to incomprehension of the indictment and the guilty plea. Petitioner has never seen the indictment or reviewed it with counsel. Furthermore, petitioner did not understand that a guilty plea must be entered voluntarily and intelligently. The defendant must be advised of his privilege against self-incrimination, the right by trial by jury and the right to confront one's accusers"
- b. "The Petitioner's counsel used coercion and scare tactics with a threat of a life sentence, to obtain a guilty plea in this case"
- c. "Before the day of the trial, defendant's attorney used terror and scare tactics, towards his client telling him to enter the plea bargain for 25 years or he was going into court and for sure, get a life sentence." Thereby, effectively abandoning him/his client before trial"

An evidentiary hearing was held on October 17, 2019. At the outset of the hearing, PCR stated Applicant would be going forward on the allegations as set forth in Applicant's PCR application.

IV. SUMMARY OF PCR TESTIMONY

Applicant's Testimony

Applicant testified Broome was his first attorney. Applicant testified he met with Broome approximately six times. Applicant testified when he met with Broome they mainly discussed trial strategy. Applicant testified he could not understand his conversations with Broome because Broome never used an interpreter.

Applicant testified Broome represented him until Applicant retained Hernandez. Applicant testified he retained Hernandez because Broome kept asking him the same questions repeatedly. Applicant also testified he instructed Broome to contact his cousin Santiago, but that Broome did not do so.

Applicant testified he did not visit with Hernandez personally until immediately prior to his plea hearing. Applicant testified he mostly consulted with someone else from Hernandez's office, although he could not specifically recall who. Applicant testified he received news from Hernandez's office that there was plea offer of twenty-five years. Applicant testified the unknown individual from Hernandez's office told him to go to trial if he did not want to accept that plea offer. Applicant testified he was worried about the proof the State had against him. Applicant testified he was scared of receiving a life sentence and that he pleaded guilty because he thought he did not have a choice. Applicant testified he was coerced into taking the plea offer. Applicant testified he believed the guilty plea offer was not adequately explained to him, and that if it had, he would not have taken the plea offer.

Applicant testified Hernandez did not discuss the evidence the State had against him. Applicant also testified Hernandez did not discuss possible defenses with Applicant. Applicant testified he gave his W2s to Hernandez as well, but she didn't do anything with them.

Applicant testified he could not recall whether he gave Santiago's name to Hernandez, but he testified he did give it to Broome. Applicant testified Santiago would have corroborated his story that he was working in North Carolina during the underlying incidents in this case. Applicant testified Hernandez told him she could get him a sentence of time-served.

Applicant testified he recalled Judge Addy discussing his constitutional rights with him at his guilty plea hearing, and he recalled waiving those constitutional rights. Applicant testified he recalled telling Judge Addy he was satisfied with Hernandez's representation, although Applicant testified he responded "yes" to Judge Addy's questions when appropriate so he could "get the deal." Applicant testified he recalled telling Judge Addy that Hernandez did everything he wanted her to do, and then subsequently reaffirmed that he was satisfied with Hernandez's representation.

Applicant testified he recalled telling the Court he was not promised anything other than what was offered to him under the terms of his plea offer in exchange for his guilty plea. Applicant testified he recalled telling Judge Addy that he was pleading guilty on his own free will and he was pleading guilty because he was in fact guilty.

Broome's Testimony

Broome testified he represented Applicant from his appointment date until Applicant hired Hernandez in 2018. Broome testified he visited Applicant in the detention center several times. Broome testified they were in a trial posture during his representation of Applicant. Broome testified the plea offer Applicant received during Broome's representation of Applicant was to plead straight up for a sentence of twenty-five years, but Applicant declined that offer.

Broome testified he did not have issues communicating with Applicant without an interpreter. Broome testified Applicant answered Broome's questions in English and appropriately. Broome testified Applicant appeared to understand Broome, and Broome testified he could understand Applicant.

Broome testified Applicant told him he was working for a construction company in North Carolina during the time frame of the underlying incidents. Broome testified he received W2s for an individual named Jose Morrara, which indicated Morrara was employed by the construction company during the summer of 2014. Broome testified the date of employment contained in the W2s only coincided with one of the two incidents in this case. The first indictment referred to an incident occurring between June 1 and August 1, 2010, and the second indictment referred to an incident occurring between June 15 and July 15, 2014. Broome also testified that he could not verify whether Applicant had an alias and was in fact the individual whose name appeared on the W2s. Broome also testified he attempted to obtain Applicant's paystubs so he could specifically

corroborate whether Applicant was working during the timeframe listed on the indictment pertaining to the 2014 incident, but the construction company indicated Applicant had to sign a release. Broome testified he sent the release to Applicant but he never heard back from Applicant, and Applicant subsequently hired Hernandez.

Hernandez's Testimony

Hernandez testified she had no trouble communicating with Applicant because she is from Mexico and could speak fluent Spanish. Hernandez testified she began representing Applicant after her friend James Chrissley contacted her about Applicant. Hernandez testified Applicant retained her for the purpose of obtaining the best plea offer possible. Hernandez testified Applicant told her Broome wanted to go to trial, but that Applicant did not want to go to trial. Hernandez testified she got Applicant's case continued shortly after she was retained so she could work on getting Applicant the best plea offer possible. Hernandez testified Solicitor Scott was adamant that he would not re-offer a plea offer, in part because the Victims wanted Applicant to go to trial. Hernandez testified that after some encouragement from the Court to reach a solution, Solicitor Scott agreed to offer the twenty-five year plea offer in exchange to pleading to both charges.

Hernandez testified Applicant told her he was working in North Carolina during the 2014 incident, but that Applicant came home every two weeks and stayed at the home where the incident occurred on the weekends. Hernandez also testified that the dates of Applicant's alleged employment with the construction company in North Carolina did not coincide with the 2010 incident. Hernandez testified she received a letter for income tax and filing for the year 2014, but did not receive any actual W2s or paystubs. Hernandez testified she did not know whether Applicant had a second legal name or alias. Hernandez testified Applicant never gave the name of any witnesses, including the name of a cousin named Santiago. Hernandez testified she

reviewed the State's evidence with Applicant and that he was aware of the evidence the State had against him.

Hernandez testified Applicant wanted her to get him deported as soon as possible, but that she told Applicant his charges were too severe and he would be deported after he served his time. Hernandez testified she discussed with Applicant the elements of the charges and the possible sentences for his charges. Hernandez testified she did not force Applicant to plead guilty. Hernandez testified she never promised him a sentence of time-served, and would never make such a promise to any of her clients. Hernandez testified she discussed the terms of the plea agreement with Applicant prior to the plea hearing and Applicant appeared to understand the terms of the plea agreement. Hernandez testified she believed it was in Applicant's best interest to plead guilty, and that it is ultimately Applicant's decision to plead guilty or to go to trial.

V. APPLICABLE LAW

Ineffective Assistance of Counsel, Generally

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her 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, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional

judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 300 S.C. 115. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 300 S.C. 115. When there has been a guilty plea, the applicant must prove that but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985).

Involuntary Guilty Plea

In evaluating issues concerning guilty pleas, this Court will consider the entire record, including the transcript of the guilty plea proceeding and the evidence presented at the post-conviction relief hearing. Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2000). Voluntariness of a guilty plea is not merely determined by an examination of a specific inquiry by the plea court alone but rather is determined by the record of both the guilty plea proceeding and the post-conviction relief hearing. Id. In order to find a guilty plea was knowingly and voluntarily entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, an applicant's right to contest the validity of such a plea is usually foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions

“made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.” Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975)); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

VI. FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This Court viewed 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 Clerk of Court records regarding the subject convictions, the plea transcript, Applicant’s records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

I. Failure to Investigate¹

Applicant alleges Hernandez was ineffective for failing to investigate the facts and witnesses pertaining to his case.

Hernandez testified Applicant contacted her for the purpose of getting Applicant the best plea offer possible. Hernandez testified she reviewed the file and the evidence against Applicant, which primarily consisted of statements made by the two victims. Hernandez testified Applicant never gave her any witness names or contact information, including Applicant’s cousin Santiago. However, Hernandez testified Applicant alleged he was working in North Carolina at the time of one of the incidents, and that Applicant gave her a letter for income tax and filing for the year 2014

¹ This allegation encompasses allegations 1(a), 1(e), 1(h), and 1(i) contained in Applicant’s application.

in an attempt to corroborate this allegation. However, Applicant did not provide the actual W2 form, nor did Applicant have on any paystubs that would corroborate the specific dates and times he was in North Carolina. Furthermore, Hernandez testified the income tax letter only concerned the timeframe of one of the two underlying incidents in this case.

Applicant testified he could not recall whether he gave Santiago's name to Hernandez for her to investigate. Applicant testified he gave Hernandez his W2s, which, according to Applicant, would have proven his innocence. Applicant testified he generally believed Hernandez did not investigate his case thoroughly.

This Court finds the testimony of Hernandez as to this allegation very credible, while also finding Applicant's testimony not credible. This Court finds Applicant has failed to establish how Hernandez was deficient in any way regarding investigating Applicant's case. Hernandez reviewed the evidence and file pertaining to Applicant's case. Furthermore, Applicant did not provide Hernandez with any possible witness names to investigate. Applicant hired Hernandez for the purpose of obtaining the best possible plea offer for Applicant, and by pleading guilty, Applicant waived his right to pursue any defenses that would have been supported by findings of any additional investigation. Moreover, Applicant testified at his guilty plea hearing that he was satisfied with Hernandez's representation and that he did not need any more time to discuss his case with Hernandez. (GP Tr. 18.)

The credible evidence shows Hernandez did not force Applicant to answer Judge Addy's questions in any particular manner. Accordingly, the allegation made by Applicant that Hernandez forced Applicant to answer the plea court's questions in a particular way is not credible and therefore, does not negate the testimony that is contained in the guilty plea transcript. Applicant has also failed to establish any resulting prejudice from Hernandez's alleged deficiency. Based on

the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing constitutional ineffectiveness of Hernandez and, therefore, this allegation is denied and dismissed with prejudice.

II. Failure to Prepare for Trial²

Applicant alleges Hernandez was ineffective for failing to adequately prepare for a trial.

To establish counsel failed to adequately prepare for trial, the applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. See Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (finding trial counsel not ineffective for failing to timely request discovery because the contents of the documents were not presented at the PCR hearing); Moorehead, 329 S.C. at 334, 496 S.E.2d at 417 (holding trial counsel's failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing applicant would have had a defense with additional time to prepare for trial); Skeen v. State, 325 S.C. 210, 217, 481 S.E.2d 129, 133 (1997) (finding applicant was not entitled to relief where no evidence was presented at the PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

As previously discussed, Hernandez testified she and Applicant were never in a trial posture because Applicant retained her for the purpose of getting him the best offer possible. Hernandez testified she reviewed the evidence with Applicant and Applicant was aware of the evidence against him. Hernandez also reviewed documentation provided by Applicant in an

² This discussion encompasses allegations 1(d), 1(f), 1(g) of the application.

attempt to corroborate his alibi defense. Furthermore, Applicant never gave Hernandez names of any witnesses to contact or investigate.

Applicant testified Hernandez did not review the discovery in his case or the evidence against him. Applicant testified he did not believe she was prepared to go to trial and had not prepared any defenses for his case.

This Court finds the testimony of Hernandez as to this allegation very credible, and Applicant's testimony on this issue not credible. This Court finds Applicant has failed to establish how Hernandez was deficient in any way regarding the preparation of Applicant's case. Hernandez reviewed the evidence and file pertaining to Applicant's case. Furthermore, Applicant did not provide Hernandez any possible witness names to investigate. Applicant hired Hernandez for the purpose of obtaining the best possible plea offer for Applicant, and by pleading guilty, Applicant waived his right to a jury trial. Moreover, as previously discussed, Applicant testified at his guilty plea hearing that he was satisfied with Hernandez's representation and that he did not need any more time to discuss his case with Hernandez. (GP Tr. 18.) Applicant has also failed to establish any resulting prejudice from Hernandez's alleged deficiency. Based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing constitutional ineffectiveness of Hernandez and, therefore, this allegation is denied and dismissed with prejudice.

Involuntary Guilty Plea³

Applicant alleges his plea was involuntary because his plea offer was not adequately explained to him and because he was coerced into pleading guilty.

³ This discussion encompasses allegations 1(b), 1(c), 1(j), 2(a), 2(b), 2(c) of Applicant's application.

Hernandez testified she discussed the charges, elements of the charges, and the possible sentences with Applicant. Hernandez also testified she did not coerce Applicant in any way to plead guilty. To the contrary, Hernandez testified Applicant retained her for the purpose of obtaining the best plea offer possible and that Applicant was adamant that he wanted to plead guilty rather than proceed to a jury trial. Furthermore, Hernandez testified she discussed the plea offer with Applicant prior to the plea hearing and that he understood the terms of the plea offer. Hernandez told Applicant that due to the severity of the crime, Applicant would likely be deported after he completed his sentence. As Hernandez testified, the terms of Applicant's guilty plea were that he would plead guilty to two counts of first-degree criminal sexual conduct with a minor in exchange for a negotiated sentence of twenty-five years for each charge, and the sentences would run concurrent to each other. Hernandez testified she believed it was in Applicant's best interest to plead guilty, and that it was ultimately Applicant's decision to plead guilty or go to trial.

Applicant testified he pled guilty because he was "told" he did not have a choice, although he did not indicate who specifically told him he did not have a choice. Applicant also testified he plead guilty because he was scared of getting life in prison. Applicant testified Hernandez forced him to answer the plea court's questions appropriately at his guilty plea hearing. Applicant testified he felt like he was forced to plead guilty.

This Court finds the testimony of Hernandez as to this allegation very credible, while also finding Applicant's testimony not credible. This Court finds Applicant's plea was entered freely and voluntarily. The credible testimony shows Applicant wanted to plead guilty and received a great benefit in accepting the State's plea offer. The record shows Applicant testified at his guilty plea hearing he was pleading guilty voluntarily of his own free will. (GP Tr. 19.) Furthermore, Applicant testified at his guilty plea hearing he was not promised anything other than the

negotiated sentence he received in exchange for his guilty plea. (GP Tr. 19.) Applicant told the plea court he was not suffering from any mental condition, nor was he under the influence of drugs or alcohol at the time of his guilty plea hearing. (GP Tr. 8.) As previously noted, the assertion that Hernandez coerced Applicant to answer a particular way during the guilty plea hearing is not credible, and therefore, does not negate the testimony that is contained in the guilty plea transcript.

The credible testimony shows Applicant was aware of the charges he was facing, the elements of the offense, and the potential sentences for each offense. Additionally, the plea court advised Applicant of the maximum sentences of the charges, as well as the terms of his plea agreement. (GP Tr. 5-9.) The credible testimony shows Applicant was not forced to plead guilty. To the contrary, Applicant retained Hernandez for the purpose of obtaining the best plea offer for Applicant. Based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing that his plea was not entered freely and voluntarily. Therefore, this allegation is denied and dismissed with prejudice.

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief pursuant to the Uniform Post Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10 to -160. Hernandez was not deficient in any manner regarding her performance before or during trial, nor was Applicant prejudiced by Hernandez's representation. Furthermore, the record and the PCR testimony show Applicant freely and voluntarily entered his plea. Accordingly, all allegations are denied and dismissed with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule

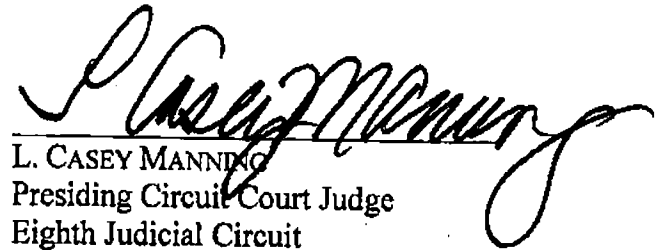
203, SCACR (providing the appropriate procedure to perfect an appeal). Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Further, Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for the appropriate procedures for appealing a judgment in a PCR action.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED.

11-18, 2019


L. CASEY MANNING
Presiding Circuit Court Judge
Eighth Judicial Circuit