

ROSS AND ENDERLIN, PA
ATTORNEYS AT LAW

January 28, 2020

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Mr. Daniel E. Shearouse
Clerk, The S.C. Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

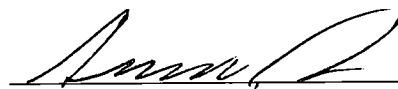
S.C. SUPREME COURT

Re: Bennie L. Griffin v. State
2018-CP-42-1906

Dear Mr. Shearouse:

Enclosed you will find the original Notice of Appeal in the above matter along with Proof of Service upon the Respondent and the Order of Dismissal. These matters are being referred to the Office of Appellate Defense.

Sincerely,



Susannah Ross
Attorney at Law

enclosure

cc: Office of the Attorney General
Office of Appellate Defense
Spartanburg County Clerk of Court

330 E. COFFEE ST. • GREENVILLE/SC • 29601

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

G. Thomas Cooper, Circuit Court Judge

2018-CP-42-1906

Bennie L. Griffin, Appellant,

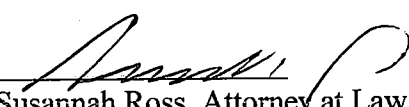
v.

The State, Respondent.

NOTICE OF APPEAL

Bennie L. Griffin appeals the Honorable G. Thomas Cooper's Order of Dismissal filed January 21, 2020.

This 28 day of January, 2020.


Susannah Ross, Attorney at Law
330 E. Coffee St.
Greenville, SC 29601
(864) 242-0029
Attorney for Appellant

Other Counsel of Record:
Jacob A. Isenberg, Assistant Attorney General
P.O. Box 11549
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(803) 734-3970
Attorney for Respondent

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2017 term of the Spartanburg County Grand Jury for possession with intent to distribute (2017-GS-42-4294) and trafficking cocaine in the range of 200 grams (2017-GS-42-4292). Originally, James T. Rutherford, Esquire, represented Applicant, and James Hunter, of the seventh Circuit Solicitor's Office, prosecuted the case. Lawrence W. Crane began representing Applicant on January 22, 2018.

On February 27, 2018, Applicant pleaded guilty to a lesser included offense of trafficking cocaine in the range of 28-100 grams with a negotiated sentence of 15 years. The possession with intent to distribute charge was dismissed. The Honorable Grace Knie accepted the negotiated sentence. Applicant did not appeal.

II. STATEMENT OF THE FACTS

The underlying facts of the convictions for which Applicant is incarcerated were articulated by the State during the plea proceeding as summarized below: (Tr. 9-11).

On January 24, 2017, officers with the Spartanburg County Sheriff's Office Narcotics Unit executed a search warrant at 11 Price Street in Inman, South Carolina in Spartanburg County, which was the residence of the Applicant. They observed the Applicant through a closed glass storm door and demanded he open the door. Applicant took a step towards the door then started going towards the kitchen. Officers broke open the door, and the entered the residence. Applicant was detained in the kitchen. (Tr. 9-11).

When asked if he had any illegal substances in the house, Applicant admitted to having six to seven ounces of cocaine, pills, and marijuana in the kitchen. Officers located United States currency on his person and he claimed to have more in the bedroom. Total officer located 221.98 grams of cocaine and multiple baggies. They also located Hydrocodone, Alprazolam, Quazepam, Diazepam, and over 150 grams of marijuana. Also, Officers located \$9,000 United States

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currency. There was drug residue located on some of the United States currency. Applicant did write a statement claiming these items. (Tr. 9-11).

Applicant's prior record is a 1987 possession of cocaine, 1997 attempted drug conspiracy, 2012 possession with intent to distribute crack, possession with intent to distribute cocaine, possession with intent to distribute marijuana, and 2016 cocaine charge. Upon inquiry by the Court, Applicant confirmed the above articulated facts. (Tr. 9-11).

III. CURRENT APPLICATION

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

1. Failure to investigate
 - a. Ineffective Assistance of Counsel for failure to discharge his duty of diligence to investigate the evidence, facts, and witnesses in the case.
 - b. failed to investigate the Narcotics Investigation information "Timothy Jackson," to make sure he was registered with "Sled" pursuant to policy 13.30" use of informants for investigations and furthermore this investigation was unlawful and illegal.
 - c. Furthermore, the informant was visiting the Applicant's house and using drugs the night before the raid and the informant witnessed 220 grams of cocaine, and a large quantity of money.
 - d. failed to investigate the informant and make sure he was not under the influence of narcotics in this case.
 - e. failed to investigate the narcotic investigator's procedure and testimony, involving the issuing of search warrant by the magistrate judge. Therefore, by the investigators violating Sled Policy 13.30 and failing to register the informant, then came the improper influencing of the magistrate judge to issue the search warrant.
 - f. Applicant's 4th Amendment right of privacy was violated by these actions.
 - g. Counsel failed to investigate witnesses and prepare for trial.
2. Involuntary Plea
 - a. Ineffective assistance of counsel for an involuntary plea.
 - b. Counsel was ineffective for providing erroneous and incorrect advice to plead guilty instead of challenging the State's evidence through the protections of trial. Therefore, Applicant's plea was unknowing and involuntary entered into pursuant to the investigator's violation of "Sled Policy 13.30 informant agreement."
3. Failure to Advise
 - a. Counsel failed to suppress the evidence out of the case, pursuant to violation of "Sled Policy 13.30," by the investigators.

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- b. Counsel failed to provide Applicant with a motion of discovery, so the Applicant could assist and investigate evidence in the case.
 - c. Counsel failed to request a preliminary hearing so Applicant could more adequately be informed about the case.
 - d. Counsel provided erroneous advice about Applicant's sentence being a turnaround at Kirkland and being released.
 - e. Ineffective assistance of counsel for failure to provide a proper defense for physical evidence in the case.
 - f. Abandonment of Client
 - g. Counsel failed to have a valid strategy for the case
4. Subject Matter Jurisdiction
- a. Counsel failed to challenge the subject matter jurisdiction of the Applicant's indictment, pursuant to the investigator's violation of "Sled Policy 13.30" by not registering the informant "Timothy Johnson" for an investigation. Then the investigators improperly influenced the Grand Jury to indict Applicant with tainted evidence and false testimony. Therefore, the trial court lacked jurisdiction to accept Applicant's guilty plea.

Applicant requests relief as follows:

- Reversal and Remand

At the evidentiary hearing, Applicant proceeded forward with the following allegations: 1) failure to investigate confidential informant; 2) failure to challenge a search warrant; 3) failure to advise about relevant SLED policy; 4) failure to move forward with preliminary hearing; 5) failure to challenge subject matter jurisdiction; and 6) involuntary plea without knowledge confidential informant violated policy in failing to be registered. The rest of the allegations were not mentioned and are hereby dismissed with prejudice.

IV. SUMMARY OF TESTIMONY PRESENTED AT EVIDENTIARY HEARING

Applicant

Applicant testified on his own behalf. Applicant testified Spartanburg County Narcotics Investigator Lorin Williams was fired for lying in a search warrant affidavit case about a confidential informant ("CI") being registered with South Carolina Law Enforcement Division ("SLED") when the CI in fact was not. A newspaper article confirming this fact was admitted into

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evidence as an exhibit. Applicant testified Counsel did not investigate the CI whose information formed that basis for the search warrant in this case. Applicant testified he knew the CI, yet Counsel still did not investigate him. Applicant further testified Counsel did not review the search warrant with him, nor discussed suppressing or challenging the search warrant. Applicant testified Counsel did not review any documents regarding SLED policy and, if Counsel had checked to see if CI was registered with SLED, the case might have been different. Applicant testified he believed the warrant could have been suppressed had the Judge known the CI was not registered with SLED. Applicant testified he requested a preliminary hearing but did not receive one.

On cross, Applicant testified Counsel did not inform him that he did not investigate the case. He testified his Counsel did not discuss suppressing the warrant with him. At the plea hearing, Applicant testified he was satisfied with counsel. During the evidentiary hearing, Applicant testified he felt like he had no choice but to testify that he was satisfied with counsel because he thought he would have received 25 years if he went to trial.

Applicant testified he was doing drugs with the CI the night before the raid. CI informed law enforcement there were drugs at Applicant's home. Thereafter, Applicant testified that law enforcement received and executed a search warrant at the home. Law enforcement found drugs during the search and placed him under arrest.

During re-direct, Applicant testified had Counsel investigated SLED policy he would not have pled guilty.

Counsel

Counsel testified on behalf of Respondent. Counsel testified he has been practicing criminal defense law for forty-three years and had represented Applicant multiple times.

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Counsel testified he reviewed all discovery with Applicant. He testified he reviewed the search warrant with Applicant. Counsel testified he did not identify any issues to challenge in the search warrant. He further testified he did not find anything wrong with the confidential informant. Counsel testified the informant correctly identified marijuana in Applicant's home. Counsel testified he went over potential defenses with Applicant by reviewing photos, the search warrant, and other pieces of discovery.

Counsel testified Applicant did not know the name of the CI because the CI was not named in discovery. Counsel testified Applicant floated a potential name to him but Counsel indicated this name was not listed in discovery as the confidential informant. Therefore, he did not investigate the CI based upon not having a name. Counsel testified, based upon his experience, he could not investigate a CI until it is named in discovery.

Counsel testified the plea offers gradually increased each time he talked with the Solicitor. First it was fifteen years. Then the second was eighteen years. The third time was twenty-two years. Counsel testified the Solicitor refused to go under fifteen years. Counsel testified Applicant pled based upon his previous experiences with the legal process. Counsel testified Applicant realized fifteen years was going to be his best offer and Applicant wanted to avoid exposure to twenty-five years at trial.

Counsel testified SLED policy was irrelevant in this case based on Spartanburg County conducting the investigation.

V. 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

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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

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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 conclusory, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his

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statements. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Cl. 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.

I. Failure to Investigate the Confidential Informant

Applicant contends Counsel failed to investigate the CI that law enforcement relied on to secure this search warrant. In reviewing a claim that defense counsel failed to properly investigate a defense to a crime, a court's principle concern is whether the investigation "was itself reasonable." Taylor v. State, 404 S.C. 350, 364, 745 S.E.2d 97, 104 (2013). Additionally, Counsel is not deficient in conducting a reasonable investigation as long as they interview potential witnesses "when it is reasonable to do so." Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011).

Counsel testified that the CI was not named in discovery. Therefore, he could not conduct an investigation until the informant was named. He testified the CI was never named because Applicant accepted a plea instead. Therefore, Counsel testified he never had a chance to investigate the CI.

This Court finds Counsel reasonably decided not to investigate a protected witness because he or she was not named in discovery. As a result, Applicant has failed to overcome the burden to prove Counsel was deficient in this regard.

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Applicant contends the confidential informant would have given impeachable testimony. The prejudice prong is dependent on whether counsel's deficiencies "affected the outcome of the plea process." Frierson v. State, 417 S.C. 287, 789 S.E.2d 762 (Cl. App. 2016), aff'd as modified, 423 S.C. 257, 815 S.E.2d 433 (2018). To establish it through witness corroboration an applicant "must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing." Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. SCRE 801. Mere "speculation" about the details of what a witness would testify about is insufficient to establish prejudice. Dalton v. State, 376 S.C. 130 at 143, 654 S.E.2d 870 at 877.

Applicant admitted he observed this individual using drugs before his arrest. At the evidentiary hearing, Applicant testified he did drugs with the confidential informant. Therefore, this Court finds Applicant has failed to overcome the burden to prove he was prejudiced by a failure to interview this witness.

2. Failure to Investigate Narcotics Investigator

Applicant contends Counsel failed to investigate law enforcement officers who did not follow appropriate procedure to secure a search warrant. In reviewing a claim that defense counsel failed to properly investigate a defense to a crime, a court's principle concern is whether the investigation "was itself reasonable." Taylor, 404 S.C. at 364, 745 S.E.2d at 104. Additionally, Counsel is not deficient in conducting a reasonable investigation as long as he interviews potential witnesses "when it is reasonable to do so." Edwards v. State, 392 S.C. at 457, 683 S.E.2d at 65.

Here, Applicant testified Counsel should have investigated Lorin Williams. Applicant testified Williams had been recently fired for lying in a search warrant. Applicant testified

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Williams lied about the CI's credibility to secure a search warrant. However, Applicant testified Counsel did not conduct any type of investigation into Williams.

On the other hand, Counsel testified the identity of this CI was not turned over in discovery he therefore had no basis to investigate credibility of a CI. Customarily, Counsel testified investigations surrounding a CI begin when a name is provided in discovery. He testified he was aware of Williams' role in law enforcement at the time and Williams was not involved in securing the search warrant in this case. Therefore, Counsel testified he had no reason to investigate Williams.

This Court finds Counsel provided credible testimony on this issue. He had no reason to investigate an officer who was not involved in the case and he had no reason to believe Williams was improperly securing search warrants. Therefore, this Court finds Counsel reasonably decided not to investigate Williams. As a result, this Court finds Applicant has failed to overcome the burden to prove Counsel deficiently failed to investigate Williams.

Applicant contends Williams improperly secured the search warrant at issue. However, Applicant has failed to corroborate this claim. A review of the record provides no indication Williams was involved in securing this search warrant. Moreover, Counsel testified Williams did not play a role in any substantive matter in this case. Therefore, this Court finds Applicant has failed to prove he was prejudiced by a failure to investigate Williams.

3. Failure to Challenge Search Warrant

Applicant contends Counsel failed to challenge the search based upon several factors. However, Counsel testified he reviewed the search warrant and he and Applicant reviewed the search warrant. Counsel did not believe there were any issues to challenge. Moreover, Counsel testified it would not have been appropriate to file a motion to challenge the search warrant while

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negotiating a plea. Instead, Counsel testified these motions are generally saved until trial becomes inevitable. Accordingly, this Court finds Counsel came to a conclusion after reasonable review of the search warrant. Therefore, this Court finds Applicant has failed to overcome the burden to prove Counsel was deficient in this regard.

Applicant contends challenging the legality of this search warrant would have been successful because the CI was not registered with SLED. A search warrant affidavit based solely on information provided by a CI must contain information supporting the credibility of the informant and the basis of his knowledge. State v. Robinson, 415 S.C. 600, 785 S.E.2d 355 (2016). In order to obtain relief on claim that search warrant affidavit contains false statements, a defendant must prove the affiant knowingly and intentionally, or with reckless disregard for the truth, included false statements in the search warrant affidavit. Robinson, 415 S.C. at 606, 785 S.E. at 358.

Here, Applicant inadvertently corroborated the CI's claim of witnessing contraband at Applicant's house. Applicant conceded the confidential informant was at his house on the night in question. Applicant conceded there was contraband at his house when the CI was present. Applicant finally conceded that both of them used this contraband. Taking this into consideration, this Court finds Applicant has not provided sufficient evidence to prove the CI made false statements to secure the search warrant at issue. Accordingly, this Court finds Applicant has failed to overcome the burden to prove prejudice based upon this issue.

3. Failure to Advise about SLED Policy

Applicant alleges Counsel deficiently failed to advise him about SLED requirements in regards to CI's registration requirement. Counsel testified Spartanburg County conducted this

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investigation and therefore, Counsel testified SLED policies and procedures were irrelevant to this case. Counsel testified he did not have any reason, at that time, to discuss SLED with Applicant.

The record reflects this warrant was secured and executed by Spartanburg County law enforcement.

Finally, Applicant has failed to explain the role, relevance, or representation SLED had in his case. Therefore, this Court finds Applicant has failed to overcome the burden to prove Counsel was deficient in not advising him about SLED policy.

Applicant alleges he would not have pled guilty with knowledge of the SLED CI's registration requirements. The question here is whether Applicant, if correctly informed of circumstances surrounding the plea would have pled guilty, not whether counsel would have still advised applicant plead guilty. Turner v. State, 335 S.C. 382, 517 S.E.2d 442 (1999).

Applicant appears to believe SLED conducted the investigation leading to his arrest. However, this is inaccurate. In fact, the Spartanburg County Sheriff's Office conducted this investigation. (Tr. 9-10). The assistant solicitor shared this fact with the plea court. (Tr. 9-10). Counsel testified he was aware of this fact throughout the case. Counsel also testified he reviewed discovery with Applicant. This is corroborated by Applicant's statement to the plea court. (Tr. 11). The record reflects a Spartanburg County Sheriff's Office incident report was included in discovery. An officer from the Spartanburg County Narcotics Unit provided the narrative in this incident report. That narrative reflects that the Spartanburg County Narcotics Unit identified themselves when executing the search warrant. Accordingly, this Court finds credible testimony and evidence to indicate Applicant was aware the Spartanburg County conducted this investigation. Moreover, this Court finds Applicant has not provided any evidence to suggest otherwise. As a result, this Court finds Applicant was correctly informed of the factual basis for

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his negotiated sentence. Therefore, this Court finds Applicant has failed to overcome the burden to prove prejudice.

4. Failure to Request Preliminary Hearing

Applicant alleges he requested a preliminary hearing to Counsel. However, Applicant alleges Counsel failed to formally request one in this case. A defendant must request the preliminary hearing within ten days after notice from the magistrate judge. Rule 2(a), SCRCrimP.

Counsel testified he came on very late in the case and testified he had no such opportunity to make the request. Applicant made his first appearance on January, 25, 2017. During that hearing, the Magistrate Judge informed Applicant both verbally and in writing about the ten day window to request a preliminary hearing. There is no evidence Applicant requested this hearing. Counsel did not begin representing Applicant until January 22, 2018. This was just over a year after Applicant's first appearance. This Court finds Counsel did not represent Applicant during the ten day time period to request the preliminary hearing. Accordingly, this Court finds Applicant has failed to overcome the burden to prove Counsel was deficient in not requesting a preliminary hearing.

Applicant alleges the charges would have been dismissed if Counsel had requested a preliminary hearing. However, a preliminary hearing shall not be held if a defendant is already indicted by a grand jury. Rule 2(b), SCRCrimP; also see State v. Hawkins, 310 S.C. 50, 54-55, 524 S.E.2d 50, 53 (Ct. App. 1992) (holding trial court did not err in refusing to quash defendant's indictments because he did not receive a requested preliminary hearing because he was indicted before a preliminary hearing was held).

The record reflects Applicant was indicted by a grand jury in August 2017. Counsel did not begin representing Applicant until January 2018. At the plea hearing, Applicant affirmed a

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grand jury indicted him on all charges. (Tr. 6). Therefore, this Court finds Applicant would not have been entitled to a preliminary hearing if requested by Counsel. Accordingly, this Court finds Applicant was not prejudiced by any failure to request a preliminary hearing.

5. Failure to Challenge Subject Matter Jurisdiction

Applicant contends Counsel deficiently failed to challenge subject-matter jurisdiction based upon previously-mentioned SLED policy violations. Applicant alleges there was no subject matter jurisdiction after false testimony was provided to a grand jury. Subject matter jurisdiction is satisfied so long as the elements of the offense are sufficiently stated. Thompson v. State, 357 S.C. 192, 593 S.E.2d 139 (2004), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

Applicant provided no evidence of foul play in the grand jury proceedings. Moreover, Applicant failed to substantiate his claim that SLED policy was relevant to this case. The CI worked for Spartanburg County. The search warrant was secured by a Spartanburg County officer. The indictment language refers to contraband collected by the Spartanburg County Narcotics Unit. Accordingly, this Court finds SLED policy would not have been a legitimate reason to challenge subject matter jurisdiction.

Additionally, Counsel reiterated multiples times SLED policy was not relevant to this case. He said it would not have been an appropriate basis for any motion in this case. Therefore, Counsel focused on more important issues such as pursuing a plea offer. Counsel explained fifteen years was the best offer Applicant was going to get. Counsel was satisfied when Applicant accepted the offer. Counsel remembered Applicant being satisfied in avoiding exposure to twenty-five years if he went to trial. Accordingly, this Court finds Counsel gave credible testimony on the

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issue. This Court further finds Counsel reasonably ignored irrelevant issues to focus on diligently pursuing a plea agreement.

Based upon the above findings, this Court finds Applicant has failed to overcome the burden to prove Counsel was deficient. This Court also finds Applicant has failed to overcome the burden to prove he suffered any prejudice from an alleged deficiency.

B. Involuntary Plea

Applicant contends his plea was involuntary based upon having no knowledge the confidential informant violated SLED policy. 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). Additionally, the plea colloquy can cure any alleged deficiency if counsel did 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).

As previously determined, the Spartanburg County Sheriff's Office conducted this investigation. The record reflects Spartanburg County handled the CI in this case. It also reflects Spartanburg County Narcotics' executed the search warrant. Therefore, this Court finds SLED policy information was not relevant to the charges or consequences of Applicant's plea. Accordingly, this Court finds Applicant did not require knowledge of this policy to enter into a knowing and voluntary plea.

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VI. CONCLUSION

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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), SCRPC 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 14 day of January, 2020.

G. Thomas Cooper
G. THOMAS COOPER
Presiding Judge
Seventh Judicial Circuit

 South Carolina

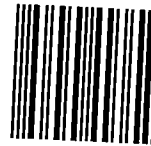
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Mr. Daniel E. Shearouse
Clerk, The S.C. Supreme Court
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