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RECEIVED

APR 03 2020

S.C. SUPREME COURT

Arthur K. Aiken

A. Bea Hightower(Retired)

April 1, 2020

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

Re: Randy Schultz #298635 v. State of South Carolina
Civil Action No.: 2018-CP-02-02395

Dear Mr. Shearouse:

I am appointed counsel for the Applicant, Randy Schultz, in the above captioned post-conviction relief case. I have enclosed, for filing in your office, a Notice of Appeal for this case. Please return the file stamped copy to me in the enclosed SASE.

By copy of this letter with the filing enclosed, I have filed this filing with the Aiken County Clerk of Court and have served this filing on the S.C. Attorney General's Office. Please call with any questions and note our new mailing address above.

Thank you for your help

Sincerely,



Arthur K. Aiken

art@aikenandhightower.com

Enclosures as stated

cc: Aiken County Clerk of Court (w/enclosures)
SC Attorney General's Office (w/enclosures)
Randy Schultz (w/enclosures)

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APR 03 2020

S.C. SUPREME COURT

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Courtney C. Pope, Circuit Court Judge

Case No. 2018-CP-02-02395

Randy Schultz #298635.....Applicant/Appellant

v.

State of South Carolina.....Respondent/Respondent

NOTICE OF APPEAL

This is a post-conviction relief case. Appellant appeals from the Order of Dismissal entered in this case on March 1, 2020. Appellant received written notice of the entry of the Order of Dismissal entered on March 1, 2020 by mail on March 2, 2020. A copy of the Order of Dismissal appealed from is attached.

April 2, 2020



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ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
Randy Schultz, SCDC #298635)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Case No.: 2018-CP-02-02395

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief filed on October 12, 2018, by Randy Schultz (Applicant). The State (Respondent) filed a Return on February 4, 2019, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on January 21, 2020, at the Aiken County Courthouse. Applicant was present at the hearing and represented by Arthur Aiken, Esquire (PCR Counsel). 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. Martin C. Puetz, Esquire, (Counsel), 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 and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. On February 1 and 17, 2016, Applicant sold crack cocaine to an undercover confidential informant at his residence in Beech Island, South Carolina. Applicant was subsequently arrested for these crack cocaine distributions and indicted by the Aiken County Grand Jury for two counts of distribution of crack cocaine-third

or subsequent offense (2016-GS-02-01059, -01060) and for failure to stop for a blue light (2016-GS-02-01057). Counsel represented Applicant on these charges. Deputy Solicitor Elizabeth B. Young of the Second Circuit Solicitor's Office prosecuted the case.

On December 5, 2017, Applicant's case was called to trial in the Aiken County Court of General Sessions before the Honorable Doyet A. Early, III. Following jury selection, court was recessed for the day. On December 7, 2017, Applicant elected to forgo his jury trial and entered guilty pleas as indicted. Judge Early accepted Applicant's guilty pleas and sentenced him to fifteen years of imprisonment for each drug charge and three years for failure to stop for a blue light, all to run concurrently.

Applicant did not pursue a direct appeal.

ALLEGATIONS RAISED

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

1. Involuntary guilty plea
2. Ineffective assistance of counsel
 - a. "Trial counsel was ineffective for failure to interview the State's key witness (CI) on his behalf"
 - b. "Counsel failed to challenge the chain of custody of the alleged drugs"
 - c. "Counsel was ineffective for failure to investigate applicant's case"
 - d. "Counsel failed to challenge the probable cause in applicant's case"
 - e. "Counsel failed to move to suppress the affidavit and search warrant thereby violating applicant's 4th Amendment rights"
3. Motion to Suppress Pursuant to 17-30-110

On May 6, 2019, Applicant filed an amended application alleging the following claims:

1. Ineffective Assistance of Trial Counsel
 - a. Schultz's guilty plea was not made with or based on advice of competent counsel.
 - b. Schultz's guilty plea was not intelligently made.

- c. Trial counsel did not prepare Schultz's case for trial, and Schultz was left with no choice but to plead guilty.
- d. Trial counsel did not discuss the elements of the offense or potential defense with Schultz.
- e. Trial counsel never discussed the advantages and disadvantages of a trial versus the advantages and disadvantages of a plea with Schultz so that Schultz could make an informed choice of whether to enter a plea or try his case.
- f. Trial counsel did not investigate Schultz's case.
- g. Trial counsel did not tell Schultz the possible penalty for his offense.
- h. Schultz asked trial counsel to appeal from his guilty plea, but trial counsel never filed an appeal.
- i. Trial counsel never investigate whether the CI in his case was authorized by any law enforcement agency to serve as a CI.
- j. Trial counsel never interviewed the CI.
- k. If trial counsel did not know the identity of the CI, then trial counsel was ineffective for failing to move to compel the State to reveal the identity of the CI.
- l. Trial counsel did not challenge the admissibility of the evidence secured by execution of a search warrant
- m. Trial counsel never reviewed the evidence with [Schultz].

A hearing was held on January 21, 2020. At the outset of the hearing, PCR Counsel indicated Applicant would be going forward only on the allegations set forth in Applicant's amended application.

FACTUAL BACKGROUND

The Solicitor's Office summarized the facts at Applicant's guilty plea hearing as follows:

"Back in February of 2016, Aiken County Sheriff's Office narcotics investigators developed a confidential informant who stated that she would purchase crack cocaine from the defendant, Randy Schultz.

The first buy took place on February 1st, 2016. The confidential informant met with officers. She was equipped with recording equipment and issued document money from deputies. [The informant] went to the defendant's residence [. . .]. On that particular date, the defendant was standing in the door of his truck in a driveway. It was a 2007 F150 Super Crew, white truck. She walked up to him, she exchanged the funds for suspected crack cocaine and she left. She came back and turned that over to the officers. It was tested. It did come back positive for cocaine base .23 grams.

On February 17th, they did another undercover buy utilizing the same confidential informant, utilizing the same procedures, equipping her with the undercover surveillance

equipment and also issuing her documented money. She went again to his residence [. . .]. Again, she exchanged the funds for the suspected crack cocaine. On that particular date, Mr. Schultz was sitting on his step, and with regard to the evidence developed from the undercover videos on that particular date it was extremely clear, that was the date that we were going to proceed to trial to today. They issued warrants for distribution.

In March, Deputy Sharping with the warrants team observed Mr. Schultz driving, leaving a gas station, so [. . .] he started following him on Cary Drive and then they went down to Old Trail Road. Two passengers jumped out of the truck and ran into the yard; and then there was a vehicle chase that lasted for some period and included reckless driving, such as speeding, running stop signs, and driving outside the line periodically. Ultimately, they were able to get him stopped and arrested him for the warrants. He had \$1,684 in his truck on that date.”

(GP Tr. 30-32).

SUMMARY OF PCR TESTIMONY

Applicant's Testimony

Applicant testified his plea was involuntary. Applicant testified Counsel did not discuss the elements of the crimes for which he was charged. Applicant testified Counsel did not discuss the pros and cons of going to trial versus pleading guilty.

Applicant testified he told Counsel “to do something” after his plea hearing, but they did not discuss an appeal. Applicant testified Counsel did not know the identity of the confidential informant (CI) and did not ask the State to disclose the identity of the CI. Applicant testified only one of the two officers who participated in the controlled buys signed the chain of custody form and sent the drugs to the chemical analyst.

Applicant testified he met with Counsel three times in-person prior to his trial/guilty plea hearing. Applicant testified he reviewed the State’s evidence with Counsel. Applicant testified he and Counsel did not discuss the elements or defenses to his charges, nor did they discuss the advantages and disadvantages of going to trial versus pleading guilty. Applicant testified he recalled giving up his constitutional rights at his guilty plea hearing. Applicant testified he told the court at his guilty plea hearing that he was not coerced, threatened, or promised anything

outside of the terms of the guilty plea for pleading guilty. Applicant testified he told the plea court he was not suffering from any mental disability at the time of his guilty plea hearing. Applicant testified he told the plea court he was satisfied with Counsel's representation. Applicant testified he told the plea court he had enough time to discuss his case with Counsel. After reviewing the plea hearing transcript, Applicant testified he recalled telling the plea court he did not want Counsel to do anything else regarding his case. Applicant recalled telling the plea court he was in fact guilty. Applicant testified he recalled telling the plea court he was pleading guilty on his own free will.

Applicant testified he did not ask Counsel to appeal because he did not know he could appeal his case. Applicant testified he wanted an appeal because he felt that Counsel did not investigate his case.

Counsel's Testimony

Counsel testified he has been practicing law for forty-one years and approximately half of his practice has been in criminal law. Counsel testified he became involved in Applicant's case because either Applicant or his wife retained him. Counsel testified he met with applicant approximately five-to-seven times in person. Counsel testified he discussed the elements and defenses to Applicant's charges. Counsel testified he reviewed the evidence with Applicant.

Counsel testified he knew the identity of the CI by August 2017 because Applicant told him who the CI was. Counsel testified Applicant had a personal connection to the CI. Counsel testified there were two different surveillance videos from two different controlled buys which clearly depicted Applicant as the drug dealer.

Counsel testified his investigation consisted of viewing the videos and still shots from the controlled buys, investigating the background of the CI, and reviewing the drug analysis

documents. Counsel testified Applicant plead straight up to his charges after jury selection. Counsel testified the State asked for twenty years imprisonment, but the judge imposed a fifteen year prison sentence. Counsel testified he believed Applicant expressed an interest in pleading guilty after jury selection because he realized the CI was going to testify.

Counsel testified it is always his client's decision to plead guilty or go to trial. Counsel testified he would have continued trying Applicant's case if Applicant had wanted to finish his trial. Counsel testified he believed it was in Applicant's best interest to plead guilty.

Counsel testified he could not specifically recall discussing Applicant's right to appeal his guilty plea. Counsel testified he subsequently learned that Applicant could get credit for electronic monitoring, so he filed a motion to reconsider Applicant's sentence. Counsel testified the court ultimately gave Applicant credit for 482 days. Counsel testified he did not see any meritorious issues for appeal at the time of Applicant's guilty plea or at the time of Applicant's PCR hearing.

Counsel testified he reviewed the chain of custody documents from both of the controlled buys in preparation for Applicant's trial and did not see anything wrong with either of the documents. Counsel testified there were two distinct controlled buys, which explained why there were different investigator names listed on each sheet.

Counsel testified he and Applicant discussed the possible sentences for each of his charges. Counsel testified they discussed the pros and cons of going to trial versus pleading guilty. Counsel testified he did not believe Applicant had any viable defenses and he told Applicant that he had no viable defenses.

On cross-examination, Counsel testified the CI was an important witness for the State, primarily because the CI would have authenticated the surveillance video. Counsel testified he did not interview the CI. Counsel testified Applicant told him the CI was a crack-addict who was

working off drug charges. Counsel testified he obtained the CI's criminal history and learned that she was prosecuted in federal court in 1996.

APPLICABLE LAW

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove "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. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Strickland*, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. *Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. *Id.* at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. *Id.* Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." *Id.* (quoting *Strickland*, 466 U.S. at 688 (1984)). Second, counsel's 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, 386 S.E.2d at 625. When there has been a guilty plea, the applicant must prove counsel's representation was below the standard of reasonableness and

that, but for counsel's unprofessional errors, there is a reasonable probability he would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

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. 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. *Strickland*, 466 U.S. 668.

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).

FINDINGS OF FACT 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/trial 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).

Involuntary Guilty Plea¹

Applicant alleges his plea was involuntary because he made the decision to plead guilty based on the advice of incompetent counsel.

Applicant testified his plea was not voluntarily and intelligently made because he did not discuss the elements of the offenses, the possible sentences, or the advantages or disadvantages of going to trial versus pleading guilty with Counsel. Counsel testified he discussed the elements of the offenses, the possible sentences, and the advantages and disadvantages of going to trial versus pleading guilty with Applicant. Counsel testified his investigation consisted of reviewing the chain of custody and chemical analysis documents, reviewing the still shots and surveillance videos of the controlled buys, and researching the CI’s background. Counsel testified he believed it was in Applicant’s best interest to plead guilty, and that it was ultimately Applicant’s decision to plead guilty. Counsel testified he would have continued with Applicant’s trial had he wanted to.

¹ This section discusses allegations 1(a), 1(b), and 1(e) of Applicant’s amended application.

This Court finds the testimony of Counsel 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. Counsel's credible testimony shows Applicant wanted to plead guilty and received a great benefit in accepting the State's plea offer. Counsel credibly testified Applicant had all the pertinent information regarding his charges when he decided to plead guilty, including the elements of the offenses, the potential sentences, and the advantages and disadvantages of pleading guilty versus going to trial. Applicant testified at his plea hearing that he was not suffering from any mental disability. (GP Tr. 25). Applicant also told the plea court he was not under the influence of drugs or alcohol at the time of his guilty plea. (GP Tr. 25). Applicant testified at his plea hearing that he was pleading guilty on his own free will. (GP Tr. 25-26). Applicant testified at his plea hearing he was satisfied with his legal services from Counsel. (GP Tr. 25). 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.

Ineffective Assistance of Counsel

1. Failure to Prepare Case for Trial

Applicant alleges Counsel 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).

Counsel testified he reviewed the evidence against Applicant in preparation for trial. Counsel testified Applicant ultimately chose to plead guilty because the CI was going to testify against him. Applicant also testified he and Counsel reviewed the State's evidence against him.

This Court finds the testimony of Counsel and Applicant as to this allegation credible. Counsel reviewed the evidence and file pertaining to Applicant's case. Applicant waived his right to a jury trial by pleading guilty. Moreover, as previously discussed, Applicant testified at his guilty plea hearing that he was satisfied with Counsel's representation and that he did not need any more time to discuss his case with Counsel. (GP Tr. 25.) This Court finds Applicant has failed to establish how Counsel was deficient in any way regarding the preparation of Applicant's case. Applicant has also failed to establish any resulting prejudice from Counsel's alleged deficiency, as Applicant has not provided any evidence showing how any additional preparation could have helped his case. Based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing constitutional ineffectiveness of Counsel and, therefore, this allegation is denied and dismissed with prejudice.

2. *Failure to Discuss Elements of the Offenses and Possible Defenses*

Applicant alleges Counsel was ineffective for failing to discuss the elements of the offenses and possible defenses with Applicant.

Applicant testified Counsel did not discuss the elements of the offenses and did not discuss or defenses with him. However, Counsel testified he discussed the elements of the offenses with Applicant. Counsel also testified Applicant did not have any viable defenses, and he told Applicant that he did not have any viable defenses.

This Court finds the testimony of Counsel as to this allegation very credible, while also finding Applicant's testimony not credible. This Court finds Applicant has failed to establish how Counsel was deficient in any way regarding this allegation. Counsel credibly testified he discussed the elements of the offenses and any possible defenses to the extent Applicant had any defenses. Applicant has also failed to establish any resulting prejudice from Counsel'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 Counsel and, therefore, this allegation is denied and dismissed with prejudice.

3. *Failure to Investigate*

Applicant alleges Counsel was ineffective for failing to sufficiently investigate Applicant's case.

"[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." *Walker v. State*, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012) (reversed on other grounds by *Walker v. State*, 407 S.C. 400, 756 S.E.2d 144 (2014)). Failure to conduct an independent investigation does not constitute ineffective assistance

of counsel when the allegation is supported only by mere speculation as to result. *Porter v. State*, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018) (citing *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)).

As mentioned above, Counsel testified he reviewed the evidence the State had against Applicant, including but not limited to, witness statements, incident reports, and the drug analysis. Applicant testified he generally did not think Counsel did an adequate job at investigating his case, but provides no specific allegations.

This Court finds Counsel's testimony on this issue credible, while also finding Applicant's testimony not credible. Counsel credibly testified he investigated Applicant's case. Additionally, Applicant has not provided any testimony or evidence showing Counsel would have uncovered any additional evidence by way of additional investigation. Accordingly, this Court finds Applicant has failed to show how Counsel was deficient.

This Court further finds Applicant failed to meet his burden of proof as to prejudice, which requires Applicant to show this Court what further information Counsel would have uncovered through additional investigation. Moreover, Applicant has failed to credibly show there is a reasonable probability he would not have pleaded guilty and would have insisted on continuing his trial. *Hill*, 474 U.S. at 58-59; *Roscoe*, 345 S.C. at 16, 20. Accordingly, this allegation is denied and dismissed with prejudice.

4. Failure to Discuss Possible Penalties

Applicant asserts Counsel was ineffective for failing to discuss the possible penalties with Applicant.

Counsel testified he discussed the possible penalties with Applicant, both under the terms of the plea agreement and if he were to be tried and convicted at trial. Applicant testified Counsel did not discuss the possible penalties for the offenses. This Court finds the testimony of Counsel as to this allegation very credible, while also finding Applicant's testimony on this issue not credible. The credible testimony shows Counsel discussed the possible penalties with Applicant. Therefore, this Court finds Applicant has failed to establish how Counsel was deficient in any way regarding this allegation.

Applicant has also failed to establish any resulting prejudice from Counsel'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 Counsel and, therefore, this allegation is denied and dismissed with prejudice.

5. Failure to File a Direct Appeal

Applicant alleges Counsel was deficient for failing to file a direct appeal after Applicant requested an appeal.

Pursuant to *Roe v. Flores-Ortega*, 528 U.S. 470, 480 (2000), "counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." *Id.* Further, "a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings." *Id.*

Applicant testified he told Counsel “to do something” after his plea hearing, but did they did not discuss an appeal. Counsel testified he could not specifically recall whether he discussed Applicant’s right to appeal his guilty plea. Counsel testified he subsequently learned that Applicant could get credit for electronic monitoring, so he filed a motion to reconsider Applicant’s sentence. Counsel testified the court ultimately gave Applicant credit for 482 days. Counsel testified he did not see any meritorious issues for appeal at the time of Applicant’s guilty plea or at the time of Applicant’s PCR hearing.

This Court finds Counsel’s testimony as to this issue very credible, while also finding Applicant’s testimony not credible. This Court finds Counsel was not deficient for failing to file an appeal. In this case, Applicant’s PCR arises out of a guilty plea. As Counsel testified, Applicant did not request an appeal. As Counsel testified, there were no possible meritorious issues for appeal. This Court finds Applicant had no legitimate basis for an appeal. Accordingly, this allegation is denied and dismissed with prejudice.

6. Failure to Identify and Interview Confidential Informant²

Applicant alleges Counsel was ineffective for failing to investigate whether the CI was authorized to serve as a CI, failing to compel the State to identify the CI, and for failing to interview the CI.

Applicant testified Counsel did not know the identity of the CI and did not ask the State to disclose the identity of the CI. Counsel testified he knew the identity of the CI by August 2017 because Applicant told him the name of the CI. Counsel testified Applicant had a personal connection to the CI. Counsel testified the CI was an important witness for the State, primarily because the CI would have authenticated the surveillance video. Counsel testified he did not

² This discussion encompasses allegations 1(i)-1(k) of Applicant’s amended allegations.

interview the CI, and that Applicant told him the CI was a crack-addict who was working off drug charges. Counsel testified he obtained the CI's criminal history and learned that she was prosecuted in federal court in 1996. Counsel testified he believed the CI was a legitimate informant used by the State.

This Court finds Counsel's testimony as to this issue very credible, while also finding Applicant's testimony not credible. Contrary to Applicant's testimony, Counsel knew who the CI was because Applicant told him the name of the CI. Counsel investigated the CI's criminal background. The CI was a legitimate informant who partook in a controlled buy that was recorded on videotape and clearly depicted Applicant as the drug dealer. Additionally, Applicant did not provide any evidence of information that would have been uncovered had Counsel personally interviewed the CI. Accordingly, this allegation is denied and dismissed with prejudice.

7. Counsel did not challenge the admissibility of the evidence secured by execution of a search warrant

In his amended PCR application, Applicant alleges Counsel was ineffective for failing to challenge evidence secured by a search warrant. Applicant did not provide any evidence in support of this claim. Additionally, Applicant's charges arose from controlled buys, and not as the result of any search warrant. Accordingly, this Court considers this allegation waived and abandoned, and this Court denies and dismisses this allegation with prejudice.

8. Failure to Review Evidence with Applicant

Applicant alleges Counsel was ineffective for failing to review the State's evidence with Applicant. Counsel testified the evidence primarily consisted of videos and still shots of the two controlled buys. Counsel testified he reviewed the evidence with Applicant. Applicant also testified he reviewed the evidence with Counsel.

This Court finds Counsel's and Applicant's testimony as to this allegation credible. Counsel and Applicant credibly testified Counsel reviewed the evidence with Applicant. Accordingly, this Court denies and dismisses this allegation with prejudice.

CONCLUSION

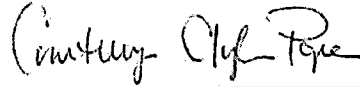
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief pursuant to the Uniform Post Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10 to -160. Counsel was not deficient in any manner regarding his performance, nor was Applicant prejudiced by Counsel'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.



COURTNEY C. POPE
Presiding Circuit Court Judge
Second Judicial Circuit

Feb 21, 2020

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Courtney C. Pope, Circuit Court Judge

Case No. 2018-CP-02-02395

Randy Schultz #298635.....Applicant/Appellant

v.

State of South Carolina.....Respondent/Respondent

PROOF OF SERVICE AND FILING

I certify that, on April 1, 2020, I served and filed the Notice of Appeal in this case by
mailing copies of the Notice to:

South Carolina Attorney General's Office
Assistant Attorney General Brianna L. Schill
PO Box 11549
Columbia, SC 29211

and

The Honorable Robert J. Harte
Aiken County Clerk of Court
PO Box 3047
Aiken, SC 29802-3047

SIGNATURE ON THE FOLLOWING PAGE



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Columbia, SC
April 1, 2020



Aiken & Hightower, PA
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S.C. SUPREME COURT

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