

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
Michael G. Nettles, Circuit Court Judge

2019-CP-21-00327
2014-CP-21-0369

RECEIVED

APR 23 2020

S.C. SUPREME COURT

Fonnelze Delane, # 298183,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Fonnelze Delane, # 298183, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed October 18, 2018, issued by the Honorable Michael G. Nettles, Presiding Judge, Twelfth Judicial Circuit as allowed by the April 15, 2020 Consent Order Granting Belated Appellate Review Pursuant to Austin v. State issued by the Honorable D. Craig Brown, Presiding Judge, Twelfth Judicial Circuit.



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ATTORNEY FOR PETITIONER

April 21, 2020

Other Counsel of Record:
Lindsey A. McCallister, Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3319

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)
)
)
 Fonnelle T. Delane, #298183,)
)
 Applicant,)
)
 vs.)
)
)
 State of South Carolina,)
)
 Respondent.)
)

IN THE COURT OF COMMON PLEAS
 FOR THE TWELFTH JUDICIAL CIRCUIT

Case No. 2019-CP-21-327

2020 APR 15 AM 10:00
 DONALD H. O'HARA
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

FILED

**CONSENT ORDER GRANTING
 BELATED APPELLATE REVIEW
 PURSUANT TO AUSTIN V. STATE**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed February 8, 2019. Respondent made its return on September 9, 2019. An evidentiary hearing on the matter was convened on December 19, 2019, at the Florence County Courthouse. Applicant was present at the hearing and represented by Jonathan D. Waller, Esquire. Lindsey A. McCallister of the South Carolina Office of the Attorney General represented Respondent.

The Court had before it the plea transcript, the Florence County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the records of Applicant's previous PCR action, and the current application and Respondent's return. Respondent also presented an affidavit from Applicant's previous PCR counsel, Justin Kata.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. In March 2009, the Florence County Grand Jury indicted Applicant for possession of cocaine base with intent to distribute (2009-GS-21-0106). In June 2009, the Florence County Grand Jury indicted Applicant for three counts of distribution of cocaine base (2009-GS-21-0707). While awaiting trial on these

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Donna Paula O'Hara
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

charges, Applicant was arrested for his involvement in the death of two confidential informants. In July 2012, the Grand Jury issued indictments for two counts of murder, two counts of accessory before the fact to murder, two counts of solicitation to commit murder, and a single count of conspiracy (2012-GS-21-0897). Hoffmeyer and Cannarella represented Applicant on all of these charges.

On March 5, 2010, the State served Applicant and his attorneys with a notice of intent to seek the death penalty. The State alleged the aggravating factors warranting the death penalty were that the murders were committed by another person as Applicant's agent or employee, the murders were of two people pursuant to one scheme or course of conduct, and the victims were witnesses who were killed for the purpose of impeding or deterring the prosecution of a crime. The Honorable Thomas A. Russo was appointed to preside over Applicant's case.

On October 8, 2013, after qualifying a jury in preparation for trial, the State withdrew its notice of intent to seek the death penalty, and Applicant pleaded guilty to two counts of accessory before the fact to murder and two counts of distribution of cocaine base. In exchange for the plea, the State dismissed the remaining charges. Applicant entered his plea without negotiations or recommendations as to sentencing, and Judge Russo sentenced Applicant to concurrent terms life without the possibility of parole on each count of accessory before the fact to murder and thirty years for each count of distribution of cocaine base. Applicant did not appeal his plea or sentence.

2014-CP-21-0369

Applicant filed an application for post-conviction relief on February 10, 2014. The State filed its return on June 30, 2014. An evidentiary hearing was convened on January 30, 2018, at the Florence County Courthouse before the Honorable Michael G. Nettles. Applicant was

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represented by Justin Kata, Esquire. The State was represented by Assistant Attorney General Lindsey A. McCallister. On October 4, 2018, Judge Nettles signed an order denying post-conviction relief, which was filed October 8, 2018.

Applicant did not appeal the denial of his application for post-conviction relief. Applicant then filed this PCR action seeking Austin relief.

ALLEGATIONS

In his current application, Applicant alleges he is being held in custody unlawfully for the following reasons:

Applicant's position is he nor his attorney were never put on any notice that Judge Nettles made his decision on October 4, 2018. However, if Applicant was put on notice Applicant would have advised his attorney to file a Rule 59(e) Motion to Alter or Amend Judgment or at the very least, file a "Notice of Appeal" on Applicant's behalf.

At the call of the case, counsel for Respondent informed this Court the parties were in agreement to admit an affidavit from Applicant's previous PCR counsel, Justin Kata, as Respondent's Exhibit 1. Additionally, Respondent indicated, based on the statements contained in the affidavit, Applicant's request for relief pursuant to Austin v. State was proper and relief was appropriate in this case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant alleges he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to section 17-27-100 of the South Carolina Code, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. See also Rule 243, SCACR ("A final decision entered under the Post-Conviction Relief Act shall be reviewed by the Supreme Court upon petition of either party for a writ of certiorari."). When an applicant is denied his right to seek

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P. 395

such review of his initial PCR application due to ineffective assistance of PCR counsel, the Supreme Court has directed the circuit court to hold “an evidentiary hearing on the issue of whether in fact the petitioner requested and was denied an opportunity to seek appellate review.” Austin v. State, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991). If this Court so finds, Applicant shall have the right to petition the Supreme Court for review of the denial of his initial application. Id.

After reviewing of the facts and circumstances surrounding the waiver of the Applicant’s right to appeal the denial of allegations in the Applicant’s post-conviction relief application, both parties have indicated to this Court that they believe Applicant is entitled, pursuant to Austin, to seek belated appellate review of the decision denying relief and dismissing Applicant’s first PCR application. The parties agree Applicant did not voluntarily waive his right to appeal the post-conviction relief court’s denial and dismissal of the Applicant’s application for post-conviction relief in 2014-CP-21-0369. Counsel for Applicant has indicated in his affidavit, which Respondent submitted to this Court as an exhibit, that Applicant wished to appeal the decision denying his first application for post-conviction relief, but, through no fault of Applicant, Counsel failed to file a timely Notice of Appeal of that decision.

Based upon the foregoing, this Court finds granting Applicant the right to seek belated appellate review of the denial of Applicant’s first PCR action (2014-CP-21-0369) pursuant to Austin is warranted. Both Applicant and Respondent consent to granting Applicant the right to seek belated appellate review in this matter.

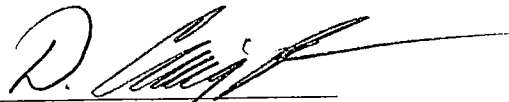
IT IS THEREFORE ORDERED:

1. Applicant shall remain in the custody of the South Carolina Department of Corrections; and
2. Applicant is granted the right to seek belated appellate review of the denial of post-

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conviction relief in 2014-CP-21-0369, in accordance with Austin v. State. Counsel for Applicant is directed to file the appropriate notice of appeal within thirty days of receipt of written notice of the entry of this order.

AND IT IS SO ORDERED this 1 day of April, 2020.

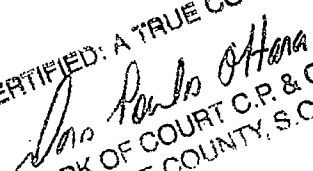

D. CRAIG BROWN
Presiding Judge
Twelfth Judicial Circuit

FILED

2020 APR 15 AM 10:00

DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

DCB
P 595

CERTIFIED: A TRUE COPY

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

FILED

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP2100369

Fonnelze T Delane

2018 OCT 8 AM 11: 20

South Carolina State Of

BORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

10/8/2018
Date

For Clerk of Court Office Use Only

This judgment was entered on October 8, 2018, and a copy mailed first class or placed in the appropriate attorney's box on October 8, 2018, to attorneys of record or to parties (when appearing pro se) as follows:

CERTIFIED: A TRUE COPY
Clerk of Court C.P. & G.S.
FLORENCE COUNTY, S.C.
Boris Poulos O'Hara

Tristan Michael Shaffer PO Box 1027 Chapin, SC 29036
Justin Martin Kata 1315 Blanding St. Columbia, SC 29201

Samuel Leonard Key Rembert C. Dennis Building 1000
Assembly St. Columbia, SC 29201

Lindsey McCallister
PO Box 11549 Columbia SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Doris P. O'Hara

Court Reporter

Doris Poulos O'Hara - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)
Fonelze T. Delane, #298183,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

C.A. No. 2014-CP-21-0369

ORDER OF DISMISSAL

2018 OCT -8 AM 11:09
BORIS POULOS-GHANA
CCCP & CS
FLORENCE COUNTY, SC

FILED

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Fonnelize T. Delane (Applicant) on February 10, 2014. Respondent made its Return on June 30, 2014. An evidentiary hearing into the matter was convened on January 30, 2018, at the Florence County Courthouse before the undersigned. Justin Kata, Esquire, represented Applicant. Lindsey A. McCallister, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Paul Cannarella (Cannarella) and W. James Hoffmeyer (Hoffmeyer), Esquires, Applicant's plea counsels, was also called to testify. This Court also had before it a copy of the records of the Florence County Clerk of Court, records from the South Carolina Department of Corrections, the application, Respondent's Return, and the plea transcript.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. In March 2009, the Florence

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Donna Paula Ottone
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

County Grand Jury indicted Applicant for possession of cocaine base with intent to distribute (2009-GS-21-0106). In June 2009, the Florence County Grand Jury indicted Applicant for three counts of distribution of cocaine base (2009-GS-21-0707). While awaiting trial on these charges, Applicant was arrested for his involvement in the death of two confidential informants. In July 2012, the Grand Jury issued indictments for two counts of murder, two counts of accessory before the fact to murder, two counts of solicitation to commit murder, and a single count of conspiracy (2012-GS-21-0897). Hoffmeyer and Cannarella represented Applicant on all of these charges.

On March 5, 2010, the State served Applicant and his attorneys with a notice of intent to seek the death penalty. The State alleged the aggravating factors warranting the death penalty were that the murders were committed by another person as Applicant's agent or employee, the murders were of two people pursuant to one scheme or course of conduct, and the victims were witnesses who were killed for the purpose of impeding or deterring the prosecution of a crime. The Honorable Thomas A. Russo was appointed to preside over Applicant's case.

On October 8, 2013, after qualifying a jury in preparation for trial, the State withdrew its notice of intent to seek the death penalty, and Applicant pleaded guilty to two counts of accessory before the fact to murder and two counts of distribution of cocaine base. In exchange for the plea, the State dismissed the remaining charges. Applicant entered his plea without negotiations or recommendations as to sentencing, and Judge Russo sentenced Applicant to concurrent terms life without the possibility of parole on each count of accessory before the fact to murder and thirty years for each count of distribution of cocaine base. Applicant did not appeal his plea or sentence.

ALLEGATIONS

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

1. Ineffective Assistance of Counsel
 - a. "Counsel advised applicant to plead guilty only, because counsel DID NOT want to go to trial."
 - b. "Counsel failed to appeal and file motion of re-consideration after applicant asked him to."
2. Involuntary Guilty Plea
 - a. "Applicant plead guilty, because counsel provided applicant with no other reasonable alternative."
 - b. "Counsel was ineffective in failing to ensure that the trial was held outside of Florence County, because applicant would not receive a fair trial in Florence County. Therefore, since counsel refused to do anything about it applicant decided, because of the unfairness he would be against. He shouldn't risk being sentenced to death by a jury of 'Killers' as his attorneys referred to his prospective jurors."

At the conclusion of Applicant's testimony, his PCR counsel moved to amend his application to conform to the evidence presented as to ineffective assistance of counsel for failing to have the mitigation consultant present during mitigation and failing to present any exhibits or witnesses during sentencing. These additional allegations are addressed below. Further, after the presentation of both the State's and Applicant's cases, the State moved to dismiss the allegation regarding venue because Applicant failed to present any evidence on the issue. The motion is hereby granted, and that allegation is deemed abandoned and dismissed.

SUMMARY OF TESTIMONY

Cannarella testified he was appointed to this case along with Hoffmeyer, and although they both worked on the file, Hoffmeyer was the lead attorney who did the bulk of the work. According to Cannarella the main issues in the case were the State seeking the death penalty and whether

Applicant was an accessory or a principal. Cannarella testified he met with Applicant approximately five times over the course of a year, with the meetings becoming "more intense" approaching trial. Cannarella testified he applied to the court for funding for a mitigation expert, which was granted, and they hired a woman from Columbia whom Hoffmeyer recommended. Cannarella testified the mitigation specialist was present at trial when they began picking the jury, and Applicant decided to plead guilty the next day. Cannarella further testified he recalled speaking with Applicant about the decision to plead guilty, but he did not remember the specifics of the conversation.

Hoffmeyer confirmed Cannarella's testimony that they were appointed at the same time, but he was the lead attorney on the case. Hoffmeyer testified he has been practicing law since 1992, with a focus on criminal law since the beginning of his career. Hoffmeyer further testified he had handled three previous capital cases at the time of his appointment to Applicant's case. According to Hoffmeyer, he met with Applicant at least twenty times to discuss discovery and the State's evidence. Hoffmeyer also testified he used a private investigator to check witness backgrounds, gather records, and interview several witnesses.

Hoffmeyer further testified there was significant evidence in the case against Applicant. According to Hoffmeyer, the victims were witnesses in a drug case against Applicant, and the State was prepared to present text messages and phone calls between Applicant and the shooter immediately before and after the murders. Hoffmeyer also testified there was evidence Applicant directed his codefendants to dispose of the gun, and Applicant's girlfriend called police and attempted to warn them the murders were about to take place. In addition, Hoffmeyer testified

several codefendants were prepared to testify against Applicant, implicating him as the mastermind.

Hoffmeyer testified Applicant had no witnesses who could provide a defense and anyone the defense could have called would have lacked credibility compared to the State's witnesses. Hoffmeyer testified his strategy would have been to imply third-party guilt, but there was not a specific third person he could point to. Hoffmeyer testified the defense hired Carolyn Graham, a mitigation specialist. According to Hoffmeyer, she interviewed Applicant, went to his home, interviewed Applicant's family, and reviewed school records. Hoffmeyer further testified they were in constant contact with her in person and by phone, and he met with her approximately eight to ten times. Hoffmeyer testified the defense also hired a jury-selection expert, who was present during jury selection.

Hoffmeyer testified Applicant decided to plead guilty after receiving the list of prospective jury panels, although there had been ongoing discussions regarding a plea since the beginning of his involvement in the case. Hoffmeyer testified he advised Applicant of the pros and cons of pleading guilty and explained he could receive life in prison because the State was not making a recommendation, and ultimately, it was Applicant's decision to plead. Hoffmeyer also testified Applicant seemed to understand their discussions and the charges he was facing. According to Hoffmeyer, the main factor in Applicant's decision was sentencing since the State was seeking the death penalty. Hoffmeyer further testified he filed a motion to compel the State to withdraw the death penalty notice, which was denied.

Hoffmeyer testified the sentencing hearing was delayed until the following morning after the guilty plea was accepted, but he did not recall who he contacted to be present on Applicant's behalf, and no one from Applicant's family contacted him. Hoffmeyer testified he and his private investigator met with Applicant's mother and sister during the preparation of the case, and the family was not interested in being involved. However, Hoffmeyer further testified he recalled a meeting between Applicant and Applicant's mother regarding a potential guilty plea, although that meeting took place at the Solicitor's Office sometime before the plea was entered. According to Hoffmeyer, Applicant did not provide a list of people he wanted to be present on his behalf at the sentencing, although he did discuss some names with the mitigation specialist prior to the guilty plea. Hoffmeyer testified this was not a case where there were people voluntarily coming forward to support Applicant.

Hoffmeyer testified in mitigation he emphasized the victims' drug use and tried to give the court a balanced picture of the facts. Hoffmeyer further testified the mitigation report indicated Applicant did not have a good home life. Hoffmeyer testified the mitigation expert would have been present for sentencing had Applicant continued with a trial and been convicted of murder. However, Hoffmeyer also testified there was no good explanation to present for Applicant's behavior in mitigation because Applicant did not have any mental health issues or a history of abuse. According to Hoffmeyer, they did not discover any information that would explain what occurred in this case.

Finally, Hoffmeyer testified he did not file an appeal, and he testified he would have filed one if Applicant had asked. He recalled the plea court explained the process and timeline during

the plea colloquy. Further, he testified he and Applicant were able to meet in jury room after the plea and discussed the possibility of an appeal. However, Hoffmeyer testified he did not see any issues of merit for an appeal, and Applicant did not request an appeal after their discussion.

Applicant testified he met with Hoffmeyer several times and with Cannarella once, and they talked in detail about the case. Applicant further testified he remembered meeting with the mitigation specialist, and she asked about his history and background, his upbringing, and whether there had been any violence in his home. Applicant agreed she interviewed numerous people and put in a significant amount of work on his case. He also testified there was a second woman involved who interviewed him about his mental health background.

According to Applicant, he decided to plead guilty because he was pressured by “everyone” including the jury consultant. Applicant testified jury screening had begun, but they had not started the selection process when he decided to plead. He testified both Cannarella and Hoffmeyer came to visit him, and they pressured him to accept the guilty plea. Applicant also testified he met with his mother, the solicitor, and the private investigator, and his mother wanted him to plead guilty because she was afraid he would receive the death penalty. Applicant testified the jury consultant also told him the jury was likely to recommend the death penalty. According to Applicant, the sentencing hearing was scheduled for the day following the plea, so they had approximately thirteen hours to prepare. Applicant testified he did not meet with his attorneys, the mitigation specialist, or the jury consultant during that time. He also testified the mitigation specialist was not present, nor did Hoffmeyer introduce any exhibits during the sentencing hearing.

Applicant further testified after the sentence was pronounced, he met with Hoffmeyer in a room in the courthouse, and they discussed the possibility of an appeal. Applicant agreed Hoffmeyer advised him he did not think an appeal was appropriate in this situation, and Applicant dropped the issue after that discussion.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the PCR hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Applicant alleges he received 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).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, an applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63 (1977). Statements 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. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975) overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir. 1985).

This Court finds Applicant has failed to prove either Cannarella's or Hoffmeyer's performance was deficient in any way. Both counsels collectively met with Applicant numerous times, with lead counsel meeting with Applicant on at least twenty occasions, and both had a good relationship with Applicant. The defense also had ample time and resources to prepare and hired multiple experts to deal with the main concern in the case – the State's decision to seek the death penalty.

This Court has also reviewed the transcript and finds no issues with Hoffmeyer's presentation of mitigation. Hoffmeyer credibly testified he was in constant contact with the mitigation specialist throughout his preparation of the case, and even Applicant agreed she did extensive work on the case. Hoffmeyer had the benefit of her report during sentencing, and he credibly testified although the consultant concluded Applicant did not have a great home life growing up, there was nothing in his background to explain the severity of the criminal behavior in this case. Therefore, this Court finds his decision not to call her to testify was reasonable as he was unable to offer anything of value in mitigation. This Court also finds Hoffmeyer also credibly explained the mitigation expert would have been present for sentencing had Applicant continued with a trial. Finally, despite Hoffmeyer's testimony as to Applicant's family's lack of involvement in the case, the record reflects Applicant's mother and sister were in fact present for sentencing, and Applicant's mother spoke to the court on his behalf. See Tr. pp. 83-84, 99.

Further, this Court finds the plea colloquy is determinative as to all of Applicant's issues. Applicant chose to plead guilty in order to avoid possibly being sentenced to death – after being

advised to do so by his attorneys, the experts hired on his behalf, and his family – and this Court finds it was a reasonable recommendation for his attorneys to make in this situation. This Court also finds the decision to plead guilty was freely and voluntarily made. During the guilty plea, Applicant testified he understood the plea was without any negotiation or recommendation from the State as to the sentence except that the sentences for each charge would be concurrent. See Tr. p. 62. The plea judge also explained the possible sentencing range for each charge, and Applicant indicated he understood. See Tr. p. 54. Applicant testified during the plea he was satisfied with the services of his attorneys and agreed they had investigated all aspects of the case and contacted witnesses of his behalf. See Tr. pp. 63-64. 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)). This Court finds Applicant failed to present any such reason in this case.

Finally, this Court has observed the witnesses and finds Hoffmeyer’s testimony as to the appeal issue to be credible. This Court finds there were no issues of merit to appeal, nor did Applicant ever request Hoffmeyer to file it. Hoffmeyer is an experienced attorney who understands his responsibilities to his clients, and this Court finds he would have filed an appeal had Applicant made the request or if he had felt there were any issues of merit.

Accordingly, these allegations are denied and dismissed.

CONCLUSION

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

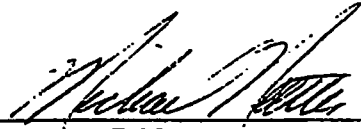
Neither Hoffmeyer nor Cannarella was deficient in any manner, nor was Applicant prejudiced by counsels' representation. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes 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. 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. 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 South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

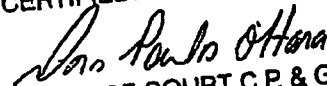
1. the Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall be remanded to the custody of the Respondent.

AND IT IS SO ORDERED.


MICHAEL G. NETTLES
Presiding Circuit Court Judge
Twelfth Judicial Circuit

10-11, 2018

FILED
2018 OCT -8 AM 11:09
BORIS POULOS O'HARA
C.C.P. & G.S.
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.