

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas  
Honorable R. Kirk Griffin, Circuit Judge

**RECEIVED**

JUN 08 2020

S.C. SUPREME COURT

Case No.: 2019-CP-43-0998

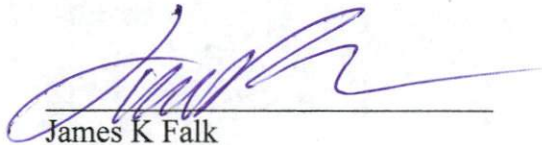
Timothy Odell Head, 303482.....PETITIONER

V.

State of South Carolina.....RESPONDENT

NOTICE OF APPEAL

The Petitioner Timothy Odell Head appeals the Honorable R. Kirk Griffin's May 27, 2020 Order of Dismissal. Undersigned counsel received notice of entry of the order on June 2, 2020. A copy of the order on appeal is attached hereto.



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June 3, 2020

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STATE OF SOUTH CAROLINA  
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS  
FOR THE THIRD JUDICIAL CIRCUIT

RECORDED

2020 MAY 27 A 7:20

Timothy Odell Head, #303482

Case No.: 2019-CP-43-998

JAMES C. CAMPBELL  
CLERK OF COURT  
SUMTER COUNTY, S.C.

Applicant,

ORDER OF DISMISSAL

CERTIFIED TRUE COPY  
OF ORIGINAL FILE

*Barbara Harper*  
DEPUTY CLERK OF COURT  
SUMTER COUNTY  
SOUTH CAROLINA

State of South Carolina,

Respondent.

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed on May 17, 2019, by Timothy Odell Head (Applicant). An evidentiary hearing into the matter was convened on February 24, 2020, at the Sumter County Courthouse. Applicant was present at the hearing and represented by James K. Falk, 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. A. Jack Barnes, Assistant Public Defender of the Third Circuit Public Defender's Office (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, denies relief, and dismisses this application with prejudice.

**PROCEDURAL HISTORY AND ALLEGATIONS RAISED**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. In January 2018, the Sumter County Grand Jury indicted Applicant for armed robbery and possession of a weapon during the commission of a violent crime (2018-GS-43-0059). John P. Meadors of the Third Circuit Solicitor's Office prosecuted the case. Counsel represented Applicant.

On July 24–25, 2018, Applicant pled guilty as indicted to armed robbery before the

Honorable George M. McFaddin. In exchange for the guilty plea, the State dropped the weapons charge. Judge McFaddin accepted Applicant's guilty plea and sentenced him to serve fifteen years' imprisonment. Applicant appealed.

Counsel filed a timely notice of appeal and statement pursuant to Rule 203(d)(1)(B)(iv), SCACR, on August 1, 2018. On September 18, 2018, the South Carolina Court of Appeals dismissed Applicant's appeal for failing to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv), SCACR. *State v. Head*, S.C. Ct. App. Order filed Sept. 18, 2018. The remittitur was issued on October 16, 2018.

On May 17, 2019, Applicant filed this application for post-conviction relief, alleging that he is unlawfully incarcerated for the following reasons:

1. Involuntary Guilty Plea.
2. Ineffective Assistance of Counsel:
  - a. Failure to review pre-trial discovery with Applicant;
  - b. "Trial Counsel never requested applicant be evaluated (mental state of mind) to determine criminal responsibility and comp[et]ency;"
  - c. "Counsel did not advise Applicant to the elements of the charged offenses which must be proved beyond a reasonable doubt; nor did counsel discuss any affirmative defense with Applicant;"
  - d. "Trial Counsel did not investigate and discuss his findings with Applicant;"
  - e. "Trial counsel never discussed the advantages and disadvantages of a plea with Applicant versus the advantages and disadvantages of a trial, so that Applicant an informed choice of whether to enter a plea or try his case;"
  - f. "Trial counsel did not prepare Applicant's case for trial; instead, counsel negotiated with the prosecution or Applicant to enter a plea."
3. Applicant was never appointed appellate counsel to assist and perfect his direct appeal.

As requested relief, Applicant requests the Court "vacate [his] plea – and release from custody." Respondent filed its Return and moved for Applicant's third allegation to be summarily dismissed.

An evidentiary hearing took place on February 24, 2020, at the Sumter County Courthouse. At the outset of the hearing, Applicant, through PCR Counsel, indicated he would be moving forward with his allegations of ineffective assistance of counsel and involuntary guilty plea. However, at the conclusion of the hearing, Applicant stated he was only going forward on the following allegations:

- (1) Failure to request a competency hearing;
- (2) Failure to assert an insanity defense;
- (3) Failure to investigate; and
- (4) Involuntary guilty plea

Therefore, this Court hereby considers any and all remaining allegations waived and abandoned.

### **FACTUAL BACKGROUND**

On August 22, 2017, Applicant robbed a sales associate at the Sonoco on Broad Street in Sumter County. Assistant Solicitor Meadors summarized the facts at Applicant's guilty plea hearings as follows:

“[At] approximately 10:15, Judge, that evening. The defendant comes in Sunoco, gets initially two tall boys I believe, Keystone beers, brings them back to the counter. After that you see him and he goes to the back of the store. We believe at this point he was looking out the window- there's a video of this judge – and an individual has pulled out to one of the gas pumps comes in and pays for the gas it appears, gives money to Ms. Adams. That individual then leaves. Mr. Head then goes back to the counter and asks Ms. Adams for some Newport cigarettes, come[s] back and places them on the counter. And as she started to ring them up he pulls a gun from his back beneath his shirt in the back of his pants, points it at her, says, give me all the money. At that point Ms. Adams was trying to ring up, trying to open the register, has a little trouble, but she finally does a no cash sale or something. The drawer comes open and then she just grabs a bunch of money, gives them to Mr. Head, and then reaches with her own hand and grabs two handfuls of money from the cash register, puts them on the counter. Mr. Head, at that point he had the gun pointed at her initially, Judge, when he said give me all the money. He put the gun down, puts the, both wads of money into a plastic bag and also puts the gun in there. At that point he closes the bag up, tells her don't call the police or don't hit the panic button, don't do anything until I leave. You then see him leaving Sunoco and I believe going, left out of the store. At that point Ms. Adams

hits the panic button and you can see her doing that. She gets her phone and gives a description of the person. The city responds.”

(GP Tr. 11-12).

### SUMMARY OF PCR TESTIMONY

#### *Applicant's Testimony*

Applicant testified he entered his guilty plea on July 24, 2018, and that his case was scheduled to go to trial that week. Applicant testified he asked Counsel to acknowledge his mental health. Applicant stated he wanted more time to prepare his case because Counsel did not take steps to acknowledge his mental health. Applicant testified his mother was abusive toward him and admitted him to a mental health clinic. Applicant testified he suffers from “schizo-type problems” and bi-polar disorder. According to Applicant, he does not suffer from “full schizophrenia,” and that he only suffers from schizophrenia when his bipolar “swings.” Applicant testified he spent his entire life keeping his family together.

Applicant testified he received disability payments in 1999, during which time he was on medication including, lithium, trazodone, and another medication that he could not recall by name, but helped him relax. Applicant testified he has “scattered thinking” and “jumps to conclusion” when he is having a mood swing. Applicant admitted that if he takes his medication properly he is “okay.”

Applicant testified that at some point prior to the crime, he stopped taking his medication for approximately one week. Applicant testified he met with Counsel two-to-three times, and the first thing he discussed with Counsel was Applicant’s mental health. According to Applicant, Counsel did not “go into many details” about his mental competency. Applicant testified Counsel informed him that he did not believe they could prove that he was mentally insane such that they would have a defense based on Applicant’s mental health. Applicant testified he recalled a judge

asking him questions and concluding that he was of a “good mind.” Applicant testified he had been properly taking his medications at the time of that hearing, and believes that his actions were the result of not being on medication at the time of the incident. Applicant testified an unnamed co-defendant forced him to commit the crime.

Applicant testified Counsel did not show him all of the evidence the State had against him, including the video from the gas station. According to Applicant, Counsel did not advise him of the elements of the offenses, nor did Counsel discuss the advantages and disadvantages of going to trial versus pleading guilty. Applicant admitted he understood the possible sentences he faced for the charges.

Applicant also recalled giving up his constitutional rights at his plea hearing. Applicant testified he recalled telling the plea court he had been compliant with his medications at the time of his plea hearing, and that he was not threatened or coerced into pleading guilty. After refreshing his recollection by reviewing the plea transcript, Applicant testified he recalled informing the plea court he was satisfied with Counsel’s representation. Applicant admitted he told the plea court Counsel reviewed the relevant discovery with him. Applicant further testified he told the plea court Counsel answered all of his questions to his satisfaction. Applicant testified he recalled telling the plea court he did not need any more time to discuss his case with Counsel.

#### *Counsel's Testimony*

Counsel testified he has been admitted to practice law since 1994, but began practicing criminal law in 2009. Counsel testified he began working at the public defender’s office approximately four years prior to the PCR hearing.

Counsel testified he first met with Applicant in September 2017. Counsel testified that during this first meeting, Applicant informed him he had long standing mental health issues.

Counsel testified he met with Applicant at least once per month, totaling approximately twelve times, or more, prior to Applicant's plea hearing, and that Applicant's mental health was a common theme or issue during their discussions. Counsel testified he "without a doubt" went over the elements of the charges with Applicant.

Counsel testified Applicant did not have any viable defenses as the evidence was "so clear." Counsel testified Applicant believed he had a defense because, according to Applicant, the gun used was a bb gun. Counsel testified he explained to Applicant that argument did not necessitate a defense because the weapon did not have to be a real gun. Counsel testified that Applicant appeared to understand this after he and Counsel discussed this.

Counsel testified he and Applicant discussed the advantages and disadvantages of pleading guilty versus going to trial and the possible sentences Applicant was facing. Counsel testified Applicant did not give him any possible witnesses or leads regarding his case. Counsel testified he reviewed all discovery with Applicant. Counsel testified the PCR hearing was the first time he ever heard the theory that a co-defendant forced him to commit the crime, as Applicant had never mentioned a co-defendant at any point prior to the PCR hearing. Counsel also testified nothing in any of the police reports or evidence suggested that another individual was involved. Counsel testified Applicant always appeared to understand their conversations, and that Applicant was always engaged in their conversations.

Counsel testified Applicant was not interested in going to trial and that their goal was always to get him the best deal possible. Counsel testified the assistant solicitor did not make many plea offers, and that the assistant solicitor did not make an offer until the week of trial. Counsel testified this offer was for a recommendation of fifteen years. Counsel testified he thought

this was a reasonable deal considering Applicant's extensive criminal history. Counsel testified he and Applicant discussed the terms of the plea offer, and Applicant understood the terms.

Counsel testified that on the Monday prior to trial, Applicant was lethargic, and Counsel was worried about his mental health at that point. Counsel testified he requested a mental health evaluation because of Applicant's behavior. Counsel testified the assistant solicitor would not consent to a mental health evaluation so they had a hearing before Judge McFaddin regarding an evaluation. Counsel testified that Applicant showed up at the competency hearing and was "totally normal." Counsel testified Judge McFaddin went through a thorough colloquy and ultimately denied Applicant's request for a mental health evaluation.

Counsel testified he requested a mental health evaluation for his client pursuant to *Blair*<sup>1</sup>, but also presented a *M'Naghten*<sup>2</sup> issue to the court. Counsel testified he and the solicitor discussed the *M'Naghten* issue, and he did not think Applicant had a meritorious *M'Naghten* argument given video surveillance showed Applicant casing the store before committing the robbery, Applicant seemed to clearly understand what he was doing, and, Applicant admitted to being under the influence of drugs and alcohol at the time of the crime. Counsel also testified Applicant has an extensive memory of the crime. Counsel testified he discussed Applicant's medications with the court.

Counsel testified he had no concerns regarding Applicant's mental health at the time of his guilty plea hearing, and Applicant's ability to enter his guilty plea. Counsel testified that Applicant "absolutely" appeared to understand everything that was occurring during his guilty plea hearing.

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<sup>1</sup> *State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981).

<sup>2</sup> *M'Naghten's Case*, 8 Eng. Rep. 718 (1843).

Counsel also testified that Applicant was “not a stranger” to pleading guilty as he had previously plead guilty to several crimes.

### 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,

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*

An Applicant alleging the guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." *Hill*, 474 U.S. at 56. A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant and statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. *Edmonds v. Lewis*, 546 F.2d 566, 568 (4th Cir. 1976) (citing *Crawford v. U.S.*, 519 F.2d 347, 350 (4th Cir. 1975)).

In post-conviction relief cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. *Al-Shabazz v. State*, 338 S.C. 354, 363, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417 (2001).

## 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 Sumter County Clerk of Court records regarding the subject convictions, the plea transcript, the *Blair/M'Naghten* motion hearing transcript, Applicant's records from the South Carolina Department of Corrections, the appellate records, the application for post-conviction relief, and the legal arguments made by the attorneys. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. § 17-27-80 (2003).

### **Ineffective Assistance of Counsel**

#### 1. *Failure to Request a Mental Health Evaluation*

Applicant alleges Counsel was ineffective for failing to request a mental health evaluation to evaluate Applicant's competency. This Court disagrees.

Applicant stated he wanted more time to prepare his case because Counsel did not take steps to acknowledge his mental health. Applicant testified Counsel did not "go into many details" about his mental competency. Applicant testified he recalled a judge asking him questions and concluding that he was of a "good mind."

Counsel testified he appeared before Judge McFaddin for a hearing in which he requested a mental health evaluation pursuant to *Blair*, and also argued Applicant should be entitled to an *M'Naghten* insanity defense. Counsel testified that during their first meeting, Applicant informed him he had long standing mental health issues. Counsel testified he met with Applicant at least once per month, totaling approximately twelve times, or more, prior to Applicant's case being called for trial, and that Applicant's mental health was a common theme or issue during their

meetings. Counsel testified that on the Monday prior to trial, Applicant was lethargic and Counsel was worried about his mental health at that point. Counsel testified that based on this, he requested a mental health evaluation. Counsel testified the assistant solicitor would not consent to a mental health evaluation so they had a hearing before Judge McFaddin. Counsel testified that Applicant showed up at the competency hearing and was “totally normal.” Counsel testified Judge McFaddin went through a thorough colloquy and ultimately denied Applicant’s request for a mental health evaluation.

This Court finds Counsel’s testimony on this issue very credible, while finding Applicant’s testimony credible only to the extent he testified he recalled Judge McFaddin asking him questions regarding his mental health. As Counsel testified, and as supported by the record, Counsel did move for a mental health evaluation on behalf of Applicant. A hearing took place before Judge McFaddin on July 24, 2018. (*See* Motion Hearing Tr.) Judge McFaddin asked Applicant a series of questions regarding his mental health and his ability to assist in his defense. (Motion Hearing Tr. 9-13). Ultimately, Judge McFaddin denied Applicant’s motion for a mental health evaluation, finding, *inter alia*, that Applicant was “reasonably articulate...clearly oriented times four today... appears to have a reasonable grasp of the roles of what we do in a courtroom and trial.” (Motion Hearing Tr. 14). Moreover, Applicant has not articulated any specific arguments Counsel should have made but did not. Accordingly, Applicant has failed to meet his burden as to deficiency on behalf of Counsel.

This Court further finds Applicant failed to meet his burden to show any resulting prejudice, which requires him to show, 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). Accordingly, this Court finds Applicant has failed to meet his burden showing constitutional ineffectiveness of Counsel, and therefore, this allegation is denied and dismissed with prejudice.

## 2. *Failure to Assert M’Naghten Defense*

In his application for post-conviction relief, Applicant alleges Counsel was ineffective for failing to assert a *M’Naghten* insanity defense. This Court disagrees.

Applicant testified he asked Counsel to acknowledge his mental health. Applicant stated he wanted more time to prepare his case because Counsel did not take steps to acknowledge his mental health. Applicant testified his mother was abusive toward him and admitted him to a mental health clinic. Applicant testified he suffers from “schizo-type problems and bi-polar disorder. According to Applicant, he does not suffer from “full schizophrenia.” Applicant testified he only suffers from schizophrenia when his bipolar “swings.” Applicant testified he has “scattered thinking” and “jumps to conclusion” when he is having a mood swing. Applicant admitted that if he takes his medication properly he is “okay,” but that he had stopped taking his medication at the time of the crime.

Counsel testified he and Applicant discussed Applicant’s mental health issues from the beginning of his representation of Applicant. Counsel testified he did not believe Applicant had a meritorious insanity defense due to the high standard for insanity, and due to the fact that the surveillance video showed Applicant was casing the scene of the crime prior to committing the crime. Counsel testified he still made a *M’Naghten* argument to Judge McFaddin during the motion hearing on July 24, 2018, but Judge McFaddin ultimately denied his motion.

This Court finds Counsel’s testimony very credible, while also finding Applicant’s testimony not credible because Applicant’s allegation is directly refuted by the record. As Counsel

testified, he raised an insanity argument with Judge McFaddin during the July 24, 2018, hearing, but that motion was ultimately denied by the court. (Motion Hearing Tr. 14-15). Additionally, Applicant has not specified any additional arguments Counsel should have made to the court, but did not. Importantly, Applicant informed the plea court he had been taking his medications at the time of the plea hearing, and that he understood he was giving up his constitutional rights, including the right to further pursue any defenses regarding his case. (GP Trial Tr. 10, l. 11-14). Moreover, Applicant has not provided any evidence in support of his claim that he was mentally ill during the crime such that he would have been entitled to an insanity defense, other than his self-serving testimony at the PCR hearing. Accordingly, Applicant has failed to meet his burden as to deficiency.

This Court further finds Applicant failed to meet his burden to show any resulting prejudice, which requires Applicant to show 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). As previously discussed, Applicant has not specifically provided any evidence to show he was incompetent at the time he committed the crime. Accordingly, this Court finds Applicant has failed to meet his burden showing constitutional ineffectiveness of Counsel, and therefore, this allegation is denied and dismissed with prejudice.

### 3. *Failure to Investigate*

#### Failure to Investigate, Generally

"[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)).

#### Failure to Investigate Applicant's Case

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

As mentioned above, Counsel testified he reviewed the evidence the State had against Applicant, including but not limited to, witness statements and surveillance video. Counsel testified the evidence against Applicant was very strong. Counsel testified Applicant did not give him any leads or witnesses to investigate. Applicant testified he generally did not think Counsel did an adequate job at investigating his case, but did not identify what specifically Counsel failed to do regarding his investigation.

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 what Counsel would have uncovered by way of additional investigation. Accordingly, Applicant has failed to meet his burden as to any deficiency regarding Counsel's investigation.

This Court further finds Applicant failed to meet his burden to show any resulting prejudice, which requires Applicant to show this Court 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). Accordingly, this allegation is denied and dismissed with prejudice.

#### 4. *Involuntary Guilty Plea*

Applicant alleges his guilty plea was not freely and voluntarily made. This Court disagrees.

Applicant testified Counsel did not show him all of the evidence the State had against him, including the video from the gas station. According to Applicant, Counsel did not advise him of the elements of the offenses, nor did Counsel discuss the advantages and disadvantages of going to trial versus pleading guilty. Applicant admitted he understood the possible sentences he was facing for the charges. Applicant also recalled giving up his constitutional rights at his plea hearing. Applicant testified he recalled telling the plea court he had been compliant with his medications at the time of his plea hearing, and that he was not threatened or coerced into pleading guilty.

Counsel testified this offer was for a fifteen year recommendation. Counsel testified he thought this was a good deal considering Applicant's extensive criminal history. Counsel testified he and Applicant discussed the terms of the plea offer. Counsel testified he and Applicant discussed the possible sentences for the charges, the elements of the offenses, the advantages and disadvantages of going to trial versus pleading guilty, and the State's evidence against Applicant. Counsel testified Applicant appeared to be of a sound mind during his plea hearing and appeared to understand what was occurring during the plea hearing.

This Court finds Counsel's testimony on this issue very credible, while finding Applicant's testimony credible only to the extent he testified he recalled giving up his constitutional rights during the plea hearing, and to the extent he recalled telling the court he was compliant with his medications, he understood the possible sentences, and that he was not threatened or coerced into

pleading guilty. Applicant's allegation is directly refuted by the record. As Applicant testified, he waived his constitutional rights at his plea hearing, including his right to assert any defenses. (GP Tr. 9-10). Applicant testified told the plea court he had enough time to speak to Counsel regarding his case and that he was satisfied with Counsel's representation of him. (GP Tr. 7). Applicant testified at the guilty plea hearing that he was not coerced or threatened to plead guilty. (GP Tr. 8). Applicant told the plea court he was compliant with his medications on the day of his plea hearing and that he was not currently suffering from any medical or mental conditions that prevented him from understanding what he was doing during the guilty plea hearing. (GP Tr. 8). It is clear from the testimony and the record that Applicant's plea was freely and voluntarily made. Accordingly, this application is denied and dismissed with prejudice.

### **CONCLUSION**

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

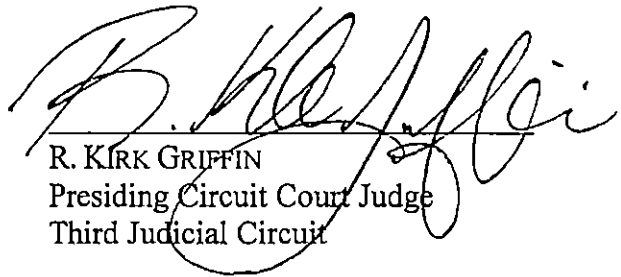
Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR (providing the appropriate procedure to perfect an appeal). Pursuant to *Austin v. State*, 305 S.C. 453, 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.**

  
R. KIRK GRIFFIN  
Presiding Circuit Court Judge  
Third Judicial Circuit

May 27, 2020.  
Sumter, SC