STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM RICHARD COUNTY
Jocelyn Newman, Circuit Court Judge

2016-CP-40-7261

Richard B. Mock, # 369163,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Richard B. Mock, # 369163, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed June 5, 2020, issued by the Honorable Jocelyn Newman, Presiding Judge, Fifth Judicial Circuit.

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June 19, 2020

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-40-07261

RICHARD MOCK (SCDC #369163)	STATE OF SOUTH CAROLINA
PLAINTIFF(S)	DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ 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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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 : _____

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.

Jocelyn Newman

Circuit Court Judge	2757 Judge Code	JUNE 3, 2020 Date

For Clerk of Court Office Use Only

This judgment was entered on the 5th day of June, 2020 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT Jeanette W. McBride

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-Filers 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 RICHLAND Richard B. Mock (SCDC #369163), Applicant, v. State of South Carolina, Respondent.	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT Civil Action No. 2016CP4007261 **ORDER OF DISMISSAL**

This matter came before the Court upon Application for Post-Conviction Relief ("PCR") filed by Applicant Richard B. Mock on December 8, 2016. Respondent filed its Return on February 17, 2017. An evidentiary hearing was conducted at the Richland County Judicial Center on December 4, 2018. Applicant appeared along with his counsel, Jonathan D. Waller, Esquire; and Respondent was represented by Assistant Attorney General Lindsey A. McCallister, Esquire.

For the reasons set forth below, the PCR Application is DENIED, and this matter is DISMISSED WITH PREJUDICE.

PROCEDURAL BACKGROUND

Applicant is currently confined at the South Carolina Department of Corrections ("SCDC") pursuant to orders of commitment of the Richland County Clerk of Court. He was indicted by the Richland County Grand Jury for four counts of Committing a Lewd Act on a Minor[1] and five counts of Criminal Sexual Conduct ("CSC") with a Minor in the First Degree[2] during its August 2014 term. During the July 2016 term, the Richland County Grand Jury also indicted Applicant

[1] Indictments 2014GS4004831, 4832, 4833 and 4834
[2] Indictments 2014GS4004835, 4836, 4837, 4838 and 4839

for five counts of Sexual Exploitation of a Minor in the Third Degree.[3] Applicant was represented by Tracy E. Pinnock, Esquire ("Plea Counsel") on all charges.

On July 28, 2016, Applicant pled guilty to two counts of Committing a Lewd Act on a Minor and five counts of Sexual Exploitation of a Minor in the Third Degree. Pursuant to negotiations with the State, Applicant was sentenced by the Honorable William P. Keesley to forty years' imprisonment. Specifically, he received consecutive fifteen-year sentences on each count of Committing a Lewd Act on a Minor, a consecutive ten-year sentence for one count of Sexual Exploitation of a Minor, and concurrent ten-year sentences on the four counts of Sexual Exploitation of a Minor. In exchange for Applicant's guilty plea, the State *nolle prossed* five counts of CSC with a Minor and the remaining two counts of Committing a Lewd Act on a Minor. Pursuant to the terms of his plea agreement, Applicant did not file a direct appeal of his conviction.

On December 8, 2016, Applicant filed his PCR Application in which he alleges "ineffective assistance of counsel." Specifically, he contends that his guilty plea was involuntary and that he was "ill-advised" by Plea Counsel to plead guilty. By document filed on March 16, 2017, Applicant amended his PCR Application to include the following allegation:

> The State did not have any evidence period, solid, or adequately to charge Applicant with crimes of five (5) CSC 1st. degree. The State used that tacit to hold Applicant in Jail without bond, and threaten Applicant if he didn't plea to lesser offenses, sign away his rights to appeal, he would go to trial and he would get twenty five (25) to life without parole.

The Court has had the opportunity to review the record in its entirety (including the guilty plea transcript, records from the Richland County Clerk of Court, and records from the South Carolina Department of Corrections) and has heard the testimony and arguments presented at the

[3] Indictments 2016GS4004221, 4222, 4223, 4224 and 4225

evidentiary hearing. The Court has also had the opportunity to observe each witness who testified at the evidentiary hearing, to closely pass upon their credibility, and to weigh their testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. CODE ANN. §17-27-80 (2003).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Sixth and Fourteenth Amendments to the United States Constitution guarantee criminal defendants the right to the effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984). Where a PCR Application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Id.* at 686; *see also Butler v. State*, 286 S.C. 441 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Strickland,* 466 U.S. at 691. An applicant must overcome this presumption in order to receive relief. *Bell v. State,* 321 S.C. 238 (1996); *see also Cherry v. State*, 300 S.C. 238 (1989); Rule 71.1(e), SCRCP.

The court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117 (citing *Strickland*, 466 U.S. at 688). 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. Specifically, where an applicant has pled guilty, he must prove that

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

I. Involuntary Guilty Plea

Applicant alleges that his guilty plea was not knowingly and intelligently made. Specifically, he contends that Plea Counsel was deficient in her representation by failing to employ an investigator to assist in his defense, to interview witnesses, and to follow up on leads which could support his defense to the charges. According to Applicant, this lack of preparation on the part of Plea Counsel prejudiced him in that he felt forced to plead guilty instead of proceeding to trial. The Court disagrees that any of this rendered Applicant's guilty plea involuntary.

A defendant who pleads guilty on the advice of counsel may collaterally attack the voluntariness of the plea only by showing that (1) counsel's performance was deficient, and (2) there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty. *Johnson v. Catoe*, 336 S.C. 354, 520 S.E.2d 617 (1999); *Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997); *Satterwhite v. State*, 325 S.C. 254, 481 S.E.2d 709 (1997). In addition,

> [I]n many guilty plea cases, the "prejudice" inquiry will closely resemble the inquiry engaged in by courts reviewing ineffective-assistance challenges to convictions obtained through a trial. For example, where the alleged error of counsel is a failure to investigate or discover potentially exculpatory evidence, the determination whether the error "prejudiced" the defendant by causing him to plead guilty rather than go to trial will depend on the likelihood that discovery of the evidence would have led counsel to change his recommendation as to the plea. This assessment, in turn, will depend in large part on a prediction whether the evidence likely would have changed the outcome of a trial.

Stalk v. State, 383 S.C. 559, 562, 681 S.E.2d 592, 594 (2009) (citing *Hill*, 474 U.S. at 52).

Similarly, "[W]here counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." *Watson v. State*, 370 S.C. 68, 72, 634 S.E.2d 642, 644 (2006) (citing *Stokes v. State,* 308 S.C. 546, 419 S.E.2d 778 (1992)). "Counsel's performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel 'rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.'" *Smith v. State*, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (quoting *Strickland,* 466 U.S. at 690). "Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." *Id.* (citing *Caprood v. State,* 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)). "Courts must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992) (citing *Goodson v. U.S.*, 564 F.2d 1071 (4th Cir. 1977)).

During the evidentiary hearing, Applicant testified that he only met with Plea Counsel a few times. During those meetings, which began in the summer of 2014, they reviewed some of the discovery in his case; however, according to Applicant, Plea Counsel would not give him copies of the witnesses' statements, telling him that it wasn't a good idea for him to have them in jail. He testified that they never reviewed all of the discovery – only some – and that Plea Counsel neither investigated his defense to the charges nor discussed defenses with him. In fact, Applicant stated that he provided Plea Counsel with the names of several witnesses who could be favorable to him, but Plea Counsel never hired an investigator to interview them, blaming lack of funding to do so. He also testified that Plea Counsel never discussed with him the procedure for a potential jury trial and that she barely reviewed the plea agreement with him.

In response, Plea Counsel testified that she met with Applicant on at least twenty-one occasions, the first being four days after his arrest. During those meetings, they discussed the potential for trial (although Applicant was not interested in that option), they discussed pre-trial arguments that she could make on his behalf, and they reviewed discovery. According to Plea Counsel, she was absolutely prepared for trial, which had been scheduled for August 2016, even involving additional attorneys to assist in the trial preparation and issuing witness subpoenas. She also engaged in continuing plea negotiations with the State, eventually negotiating a forty-year, nonviolent sentence for Applicant so that he would only have to serve about twenty years in prison. Plea Counsel also reviewed with Applicant the written plea agreement and an "Advice of Rights" form, both of which Applicant signed, and she discussed with him the agreement to waive any appeals and parole eligibility. Applicant seemed to understand all aspects of the plea and, in the end, it was Applicant's decision to accept the negotiated plea.

Based on the foregoing, Applicant is unable to demonstrate that Plea Counsel was ineffective. Although Applicant now disputes it, based on the record and the credible testimony offered by Plea Counsel, the Court finds that Applicant had a full understanding of both the charges against him and the consequences of his plea. *See, e.g., Boykin v. Alabama*, 395 U.S. 238, 243-44 (1969) (accused must have "a full understanding of what the plea connotes and of its consequence"); *Crawford v. U.S.*, 519 F.2d 347 (4th Cir. 1975) (statements made during a guilty plea should be considered conclusive unless there is a valid reason why an applicant should be allowed to depart from the truth of his statements). To the extent that Plea Counsel may have overlooked some detail, the plea court completely and thoroughly reviewed all aspects of the plea with Applicant.

In addition, although Applicant claims that he only pled guilty because Plea Counsel was

not prepared for trial, this is not supported by the evidence. Applicant's uninformed belief that Plea Counsel was not ready for trial is insufficient to sustain his burden of proof. Plea Counsel thoroughly investigated and prepared for trial and presented her progress to Applicant over the course of many meetings. Applicant understood the adversities and options that he faced and made an informed, voluntary decision to plead guilty. Finally, while Applicant relies on the alleged threat of a life sentence if he didn't plead guilty, the Court finds no credible evidence that that conversation occurred. However, even if it did, it was accurate – if convicted on all charges, Applicant could have been imprisoned for eighty years.

Applicant cannot demonstrate that Plea Counsel was deficient in any manner. Moreover, there is a complete lack of evidence as to any prejudice alleged suffered by Applicant as a result of the actions of Plea Counsel. Because Applicant has been unable to sustain his burden of proof, this allegation must be denied and dismissed with prejudice.

II. Actual Innocence

Applicant also alleges that he is entitled to post-conviction relief because he is not guilty of the allegations to which he pled guilty. Specifically, he contends that the State "did not have any evidence, period, solid, or adequately to charge [him]" with the crimes. The Court denies the PCR Application on that basis.

"Where a defendant voluntarily, intelligently and understandingly enters a plea of guilty, this makes it unnecessary for the State to offer evidence to prove the offense charged in the warrant or indictment." *State v. Allen*, 261 S.C. 448, 451, 200 S.E.2d 684, 686 (1973). "A plea of guilty is an admission or a confession of guilt, and is as conclusive as the verdict of a jury; it admits all matter of fact averments of the accusation." *Id.* (*citing* State v. Fuller, 254 S.C. 260, 174 S.E.2d 774 (1970)). A guilty plea waives any defenses, including challenges to the sufficiency of the

evidence. *See, e.g., Whetsell v. State*, 276 S.C. 295 (1981). Therefore, a claim of actual innocence or lack of evidence is not a valid PCR allegation.

Consistent with the Court's finding that Applicant's guilty plea was not involuntary, the Court must also find that Applicant cannot made a valid challenge to the sufficiency of the evidence against him. When he pled guilty, Applicant admitted the truth of the allegations against him, irrespective of whether the State had evidence to support those allegations. Therefore, this allegation is denied and dismissed with prejudice.

CONCLUSION

Based on the foregoing, the Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant the requested relief. Therefore, the Application for Post-Conviction Relief is denied.

The Court notes that Applicant must file and serve a notice of appeal within thirty (30) days from 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) of the South Carolina Rules of Civil Procedure provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS, THEREFORE, ORDERED that the Application for Post-Conviction Relief is DENIED and DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED that Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED.

JOCELYN T. NEWMAN
Presiding Judge

June 3, 2020
Columbia, South Carolina.