

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)
))
Warren Washington, #305655,)
))
Applicant,)
))
v.)
))
State of South Carolina,)
))
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2018-CP-28-0608

ORDER OF DISMISSAL

JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

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I. INTRODUCTION

The matter before the Court is an action for post-conviction relief (PCR). Warren Washington commenced this PCR action on July 16, 2018. The State made its return on September 26, 2018, requesting an evidentiary hearing. Washington, through counsel, amended his PCR application on August 10, 2019. The Court held an evidentiary hearing on August 22, 2019, at the Richland County Courthouse before the undersigned. Washington was present and represented by Overture E. Walker, Esquire. Assistant Attorney General Samuel L. Key represented the State.

At the PCR hearing, Washington testified on his behalf. Washington’s plea counsel, Kristy G. Goldberg, Esquire, also testified at the hearing. After hearing the testimony presented and reviewing the entire record before the Court, for the reasons discussed below, the Court finds Washington’s allegations are without merit and concludes plea counsel was not constitutionally ineffective. Therefore, the Court denies relief and dismisses the action with prejudice.

II. FACTS & PROCEDURAL HISTORY

Washington is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Kershaw County Clerk of Court. In May 2017, the Kershaw County Grand Jury indicted Washington for trafficking cocaine base—third offense

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(2017-GS-28-1161); possession with intent to distribute (PWID) cocaine base in close proximity to school or park (2017-GS-28-1162); PWID marijuana—first offense (2017-GS-28-1163); PWID cocaine—third or subsequent offense (2017-GS-28-1164). Washington was subsequently indicted in September 2017 for possession of ecstasy—third or subsequent offense (2017-GS-28-1740); trafficking in ice, crank, or crack—third or subsequent offense, PWID methamphetamine (2017-GS-28-1742); and PWID marijuana (2017-GS-28-1743).

Washington's charges stem from two separate incidents. On March 17, 2017, Deputy Lawson of the Kershaw County Sheriff's Department observed three cars parked behind the East Camden Lounge. All three cars were occupied and with each cars' dome lights lit. Lawson spoke with all occupants in the parking lot. When Washington exited from the passenger side of the car he was in, Lawson saw a bag of cocaine on the passenger floorboard. Additionally, Lawson observed, in plain view, marijuana inside the car. After being *Mirandized*, Washington claimed all the drugs inside the car. Lawson recovered approximately eleven ounces of cocaine base, approximately fifty grams of marijuana, and approximately three grams of cocaine. The parking lot was in the proximity of Jackson Elementary School. Plea Tr. 6-8. Washington was released on bond. Plea Tr. 7.

Three-and-a-half months later, on June 29, 2017, Washington was stopped by State Trooper Hathaway near the same location. During this stop, Hathaway observed, in plain view, a pill bottle containing cocaine base on the rear-floorboard of Washington's car. Hathaway then searched the vehicle and discovered a pill bottle containing cocaine base, less than one gram of MDMA (a Schedule I drug), approximately twenty-nine grams of marijuana, and approximately nine grams of multi-colored pills thought to be ecstasy. However, the pills were tested and were methamphetamine. Plea Tr. 7.

Kristy G. Goldberg, Esquire (Counsel) represented Washington. Assistant Solicitor Brett A. Perry prosecuted the case. On October 31, 2017, Washington pleaded guilty before Judge DeAndre Benjamin to the lesser-included offense of trafficking cocaine base—second offense, and as indicted to the proximity charge, two counts of PWID marijuana—first offense, PWID cocaine—third offense, possession of ecstasy—third offense, and PWID methamphetamine. In exchange for his guilty plea, the State dropped the trafficking methamphetamine charge. Washington pleaded guilty to the charges with a negotiated concurrent sentences of twelve years for trafficking cocaine base—second offense, PWID cocaine—third offense, and PWID methamphetamine; ten years for the proximity charge; and five years each PWID marijuana—first offense, and possession of ecstasy. Judge Benjamin accepted Washington’s guilty plea and sentenced him as negotiated. Washington did not appeal.

III. ALLEGATIONS

Washington commenced this PCR action on July 16, 2018. Washington alleged the following claims in his initial PCR application:

1. Ineffective assistance of counsel:
 - a. Failure to investigate.

Washington amended his PCR application, through counsel, on August 10, 2019, as follows:

1. Ineffective assistance of counsel:
 - a. Failure to adequately investigate and prepare a defense for trial;
 - b. Failure to communicate with material witnesses whose testimony would have been favorable to Washington; and
 - c. Failure to inform Washington of his right to a direct appeal.
2. Involuntary guilty plea:
 - a. Counsel pressured and improperly induced Washington to enter an involuntary guilty plea based on statements and representations made by Counsel.

IV. PCR TESTIMONY

Washington's Testimony

Washington testified he was arrested for multiple drug charges in 2017. Washington recalled he pleaded guilty to those charges and was sentenced to twelve years' imprisonment. Washington testified he was represented by Counsel, who was appointed to his case about two months before he pleaded guilty.

Washington testified he met with Counsel approximately two times before his guilty plea. Washington recalled he and Counsel discussed his charges and the indictments. Washington stated Counsel advised him of the potential punishments he faced. However, Washington stated Counsel did not discuss with him the strength of the State's case, and whether they could prove he was guilty. Washington stated Counsel sent him a package of the discovery. Washington stated he requested the discovery because he felt the weights of the drugs were incorrect. Washington testified he understood most of the discovery when he and Counsel reviewed it, but he needed Counsel to clarify and explain some of it, which she did.

Washington testified he requested for Counsel to contact Jason Lennox. Washington explained Lennox was in the car when Washington took responsibility for all the drugs. Washington testified he and Counsel never discussed any possible defenses in his case. However, Washington admitted all of the drugs came from the car he was riding in and he took responsibility for the drugs during the traffic stop.

Washington testified it was his decision to plead guilty, but he felt was pressured into pleading guilty. Washington explained he was in jail, and Counsel went out of town to California. Washington stated that while Counsel was away, a lieutenant gave him a piece of paper from the assistant solicitor saying if he did not plead on the thirty-first, the State was calling his case for

trial the next week. Washington explained the State was pushing him to trial if he did not plead guilty. Washington testified he discussed this with Counsel right before he pleaded guilty, and Counsel knew he did not want to accept the State's offer.

Washington stated he authorized Counsel to enter into plea negotiations with the State. He recalled the first plea offer was for fifteen years, then Counsel told him the State reduced the offer to twelve years. Washington testified when he was in court for his plea, he requested Counsel to re-enter negotiations with the State to try and get a better deal. Washington testified he was pressured into pleading guilty because, if he was convicted at trial, he faced thirty years. Washington stated Counsel advised him to accept the plea offer, so he followed her advice and pleaded guilty. Washington testified he told Counsel he wanted a better plea offer, and Counsel knew he did want to take the twelve-year offer. Washington testified he felt Counsel was ineffective because he could have received the same plea offer if he had represented himself.

Washington testified that at the moment he pleaded guilty, his plea was voluntary. He stated his life was on the line, and he knew if he did not accept the State's offer, the State would call his case for trial. Washington recalled informing the plea court he felt pressured into pleading guilty. Washington testified he pleaded guilty because of the exposure he faced had he proceeded to trial. Washington admittedly knew he could receive thirty to thirty-five years if convicted at trial, and he stated he chose to plead guilty because of his exposure.

Washington testified he felt as though Counsel did not investigate his case well enough because she only met with him two times, and, in his opinion, it seemed as though Counsel was not making an effort to defend him. Washington testified that after his plea hearing, he and Counsel never discussed his right to appeal his plea. However, Washington knew he could appeal his guilty plea, and he asserted he advised Counsel to appeal at the end of the plea hearing on the

record. Washington recalled the plea court's colloquy. He remembered telling the plea court he did not need any more time to confer with Counsel, and he was satisfied with Counsel's representation.

Counsel's Testimony

Counsel testified she has been practicing law since 2005 and all but 3 years have been criminal law. Counsel stated she is a conflict attorney through the Public Defender's office and she was appointed to represent Washington on July 25, 2017. Counsel testified she met with Washington at the jail two times, on July 31, 2017, and on August 24, 2017, one time at a bond hearing on August 30, 2017, and the day of the plea hearing. Counsel testified she and Washington corresponded by mail after the bond hearing, but did not recall whether she went back to the jail prior to the day of the plea.

Counsel testified she received all of the discovery, but did not recall whether she sent the discovery packet to Washington. Counsel testified she heard Washington's testimony he got the discovery packet while in jail, and Counsel affirmed had Washington wanted it, she would have given it to him. Counsel testified she reviewed the discovery with Washington when she met with him. Counsel testified the charges had been pending for some time, and when she met with Washington, he told her what happened and his story matched what was in discovery. Counsel testified there were no discrepancies that needed to be pointed out and she and Washington spoke about the facts generally on several occasions.

Counsel recalled the facts of the incident in March. Counsel recalled the March incident occurred at a night club where narcotics agents went around the parking lot and to talk with patrons and to look for drugs. Counsel recalled officers approached one or two cars with dome lights and people standing around. As officers approached, they smelled weed, looked in the door, and saw

cocaine in a bag. Counsel recalled Officers searched the vehicle and found some other items. Counsel testified Washington took responsibility at the scene and said it was all his. Counsel recalled the second incident was a traffic stop for something small. Counsel recalled the charges stemmed from a lawful search of the vehicle and during the search, officer's found drugs. Counsel recalled another passenger in the car gave a statement against Washington saying he threw the drugs into her lap.

Counsel testified Washington never asked her to look into Jason Lennox. Counsel testified Washington admitted to her he claimed the drugs and he was the driver of the car where the drug were found. Counsel reiterated Washington never asked her to speak with Jason Lennox and Washington never backed down from saying the drugs were his. Counsel recalled Washington also told the plea judge the drugs were his. Counsel testified Washington never indicated he wanted a trial and his only concern was bond.

Counsel testified Washington wanted to get released and hire an attorney. Counsel recalled a bond motion on Aug 30, 2017, which was denied. Counsel recalled on that day, she and Washington talked about the State's offer, which Washington did not want to accept. Counsel testified she was waiting on a drug analysis and once she received the result, she would make a counter offer. Counsel testified that in September, Washington told her he just wanted to do an open plea. Counsel testified she advised Washington against an open plea and explained because the minimum would be twenty-five years, she had to negotiate. Counsel testified Washington agreed to allow her to negotiate. Counsel testified the solicitor told her all Washington would get was fifteen years and after getting the narcotics officer to agree to twelve years, the solicitor agreed to go along with that. Counsel recalled the solicitor told her he would not go below twelve

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years and if Washington did not accept the offer by late October, then the offer would go away and the case would go to trial in November.

Counsel testified there were no defenses available for the March incident. Counsel explained Counsel testified Washington told her the drugs were his and Washington never told her of anyone that would show up and say the drugs were theirs. Counsel testified Washington had no defenses available for the second incident either. Counsel testified there was a video from the incident, but she had not seen it. Counsel testified she made Washington aware she had not seen the video in a letter she sent him. Counsel testified Washington's response to this information was he wanted to go to court. Counsel testified the State was threatening to call the March case and when she told Washington, he stated he did not want to be in jail and wanted to go to court. Counsel testified she would have liked more time, but the State was not giving them time. Counsel admitted there may have been some defenses available, but she did not have enough time to discover them; however, this did not make a practical difference since the State agreed to concurrent sentences for the two incidents.

Counsel testified Washington did not want to go to trial or take the State's plea offer. Counsel explained that Washington was not happy with the decision he had to make to plead guilty, but he ended up choosing what was in his best interest knowing he could take the State's twelve year offer or go to trial and face thirty years or more. Counsel testified she never pressured Washington to plead guilty. Counsel testified she did not remember having a specific conversation before or after the plea regarding Washington's right to appeal, but recalled the judge mentioned it. Counsel testified Washington never asked her to file an appeal, but if Washington had, she would have filed one.

Counsel admitted that Lennox was mentioned in the discovery, and she never talked to him. Counsel testified she reviewed discovery of the March incident and did not see any defenses. Counsel explained the facts of the incident were law enforcement smelled weed and saw drugs in plain view so they had probable cause. Counsel testified Washington admitted to law enforcement the drugs were his. Counsel testified Washington admitted to the facts the first time they met and at no point did Washington ask to go to trial. Counsel testified they never discussed the voluntariness of the statement Washington gave to law enforcement because Washington never said anything to her to cause her to question whether he voluntarily gave the statement.

Counsel testified she knew the video of the second incident existed, but Counsel did not recall watching it. Counsel testified she would have liked more time to see the video, but plea offers can change when you sit on a case, and the State was not giving them the time. Counsel explained the State said it would call the March incident in November and any plea offers would go away, which was not something she could control.

Counsel testified she and Washington never really discussed defenses because Washington was focused on getting out of the situation as best he could, so their conversations focused on negotiations to achieve that goal. Counsel testified Washington was aware of the status of negotiations between her and the State. Counsel explained Washington was aware of the State's original fifteen year offer and the State told her they would not go any lower. However, Counsel testified she was able to eventually get the State to agree to go lower and Washington was aware of that. Counsel testified there may have been some conversations with the State where they refused to budge that she did not mention to Washington, but he was still aware of the status.

Counsel testified she was appointed to represent Washington in July 2017, and Washington pleaded guilty in October 2017. Counsel explained the Solicitor emailed her on August 15 and

informed her Washington's trial was coming up September 11, 2017. Counsel testified she was able to have the trial pushed back to November. Counsel testified she felt she and Washington had adequate time from appointment to plea hearing and any additional time they may have been given would not have made any difference. Counsel admitted more time would have made her more comfortable, but there was not anything else she could have done. Counsel testified she felt her effort to reduce the sentence from twenty-five years minimum to the twelve year agreement was sufficient. Counsel testified she did not recall discussing whether Washington could appeal his guilty plea. However, Counsel stated she knew Washington did not ask her to file one.

V. DISCUSSION

The issue before the Court is whether Washington's conviction and subsequent guilty plea were the results of ineffective assistance of counsel. To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). Courts presume counsel was not deficient and made all significant decisions in the exercise of reasonable professional judgment. *Strickland*, 466 U.S. at 689. An applicant must overcome this presumption in order to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. There is a strong presumption trial counsel's decisions are based on tactical strategy rather than neglect. *Yarborough v. Gentry*, 540 U.S. 1, 8 (2003). To prove prejudice, the applicant must show "a reasonable probability that, but for

counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625.

The test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). "[A] defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). To prove prejudice, the applicant must show a reasonable probability he would not have pleaded guilty and would have insisted on going to trial absent plea counsel's alleged deficiency. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

Washington alleges Counsel was constitutionally ineffective rendering his guilty plea unknowing and involuntary. The Court Disagrees. As discussed below, the Court finds Counsel's representation was reasonable under prevailing professional norms, and Applicant has failed to show prejudice resulted from Counsel's alleged deficiencies. Therefore, the Court denies relief and dismisses this PCR action with prejudice.

1. *Involuntary guilty plea*

Washington asserts his guilty plea was involuntary because Counsel: failed to adequately investigate and prepare a defense for trial; improperly pressured and induced Washington to enter the guilty plea. The Court disagrees and finds: (a) Counsel reasonably investigated and prepared the case; (b) Counsel reasonably advised Washington whether to plead guilty; (c) Washington failed to prove prejudice resulted due to Counsel's alleged deficiencies. Accordingly, for the reasons discussed below, Washington's involuntary guilty plea allegations due to ineffective assistance of Counsel are denied and dismissed with prejudice.

a. Alleged failure to investigate and prepare the case

Washington asserts Counsel was constitutionally ineffective for failure to adequately investigate and prepare a defense for trial. Specifically, Washington alleges Counsel was generally ineffective for failing to investigate, and for failure to communicate with witnesses whose testimony would have been favorable had the case gone to trial. The Court disagrees and finds these allegations without merit.

Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant, and make an independent investigation of the facts and circumstances of the case. *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011); *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). To support a claim that trial counsel was ineffective for failing to interview or call potential witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). The applicant's mere speculation about what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. *Id.*

First, the Court finds Counsel reasonably investigated the case based on Counsel's credible testimony. As noted above, Counsel credibly testified she received the discovery and reviewed it with Washington. Counsel stated that Washington explained his version of events to her, and his story matched what was in the discovery. Counsel testified she did not see any defenses to the charges, and Washington told her the drugs were his. The Court finds Counsel reasonably investigated this case because she went over the discovery with Washington, and Washington's version of events and the discovery matched. Therefore, Counsel reasonably investigated the case and was not deficient.

Next, Washington alleges Counsel was ineffective for failing to investigate Jason Lennox as a potential defense witness. Washington testified he asked Counsel to investigate Lennox as a potential witness. Counsel could not recall if Applicant asked her to investigate Lennox, but admitted that Lennox was mentioned in the discovery, and she never talked to him. Even so, Washington told law enforcement the drugs were his, and nothing in Counsel's discussions with Washington made her believe his statement was involuntary. Further, Washington told Counsel the drugs were his. The Court finds Counsel's failure to interview Jason Lennox reasonable in this case because it was reasonably unnecessary to speak to him. Counsel's decision was reasonable because Washington immediately claimed the drugs, Washington's own version of events matched the discovery, and Washington told Counsel the drugs were his. Therefore, Counsel did not need to interview Lennox because Washington admitted his guilt to her and wanted to plead guilty. Therefore, Counsel's failure to investigate Lennox was reasonable based on the circumstances of this case. As such, Counsel was not deficient.

b. Alleged pressure to enter the guilty plea

Washington asserts Counsel pressured and improperly induced him to plead guilty based on Counsel's statements and representations made. The Court finds Counsel's advice reasonable regarding whether to plead guilty or go to trial; therefore, Counsel was not deficient.

The test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *Alford*, 400 U.S. at 31. "[A] defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999).

Here, Washington explained the State was pushing him to trial if he did not plead guilty. Washington testified he discussed this with Counsel right before he pleaded guilty, and Counsel knew he did not want to accept the State's offer. Counsel testified Washington did not want to go to trial *or* accept the State's plea offer. Instead, Washington told Counsel he wanted to enter an open plea to the charges because he did not like the State's offer; however, Counsel then explained to Washington that if he pleaded to the charges without negotiations, he faced a mandatory minimum of twenty-five years.

The Court finds credible Counsel's testimony regarding this issue. Counsel credibly testified she explained the charges against Washington and the exposure he faced. Further, Washington was aware of the constitutional rights he waived by pleading guilty. Counsel explained to Washington he could either accept the State's negotiated plea offer or go to trial where he faced a minimum twenty-five years. Washington did not like his two options, but that does not mean Counsel was deficient. Indeed, Washington admitted that his decision to plead guilty at the time was voluntary. Based on the foregoing, the Court finds Counsel reasonably advised Washington his choices of pleading guilty or going to trial; therefore, Counsel was not deficient.

c. Prejudice

Washington has failed to show Counsel's alleged deficiencies prejudiced him. First, Washington has failed to show anything that Counsel could have discovered had she investigated the case more. Washington has also failed to show prejudice resulted from Counsel's alleged failure to investigate Jason Lennox. Washington failed to call Lennox as a witness at the PCR hearing; therefore, anything Counsel could have discovered in investigating Lennox is speculation. Therefore, Washington has failed to show prejudice as to this issue. *See Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995) (stating the applicant's mere speculation about what the

witness's testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice).

Second, Washington has failed to show he would not have pleaded guilty had Counsel not allegedly coerced him to plead guilty. As stated above, Counsel reasonably advised Washington on his decision between pleading guilty and going to trial. Washington faced a difficult decision between accepting the State's negotiated plea offer or going to trial and facing a mandatory minimum to which he admitted he was guilty to law enforcement and Counsel. Therefore, the Court finds Washington has failed to prove prejudice.

Based on the foregoing, the Court finds Washington has failed to prove Counsel was constitutionally ineffective, and he knowingly and voluntarily pleaded guilty. As such, the Court denies these allegations and dismisses them with prejudice.

2. *White v. State*

Washington asserts he is entitled to a belated appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974), due to ineffective assistance of Counsel for failing to appeal his guilty plea when Washington asked Counsel to do so. The Court finds this allegation is without merit and Washington is not entitled to a belated appeal.

Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either: (1) that a rational defendant would want to appeal; or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. *Roe v. Flores-Ortega*, 528 U.S. 470 (2000).

Washington has failed to satisfy the requirements set forth in the *Roe* test. Here, Counsel could not recall whether she discussed Applicant's right to appeal his guilty plea. However, Washington testified at the PCR hearing he knew he could appeal his guilty plea. Applicant has

failed to show Counsel was constitutionally ineffective for failing to advise him he had a right to appeal his guilty plea because Washington knew he could appeal his guilty plea. As such, Washington cannot satisfy the first requirement of the *Roe* test.

Second, Washington has failed to show he reasonably demonstrated to Counsel he was interested in appealing. The Court bases this finding on the credible PCR hearing testimony. The Court finds not credible Washington's testimony that he asked Counsel to appeal his guilty plea at the end of the plea hearing. The Court finds credible Counsel's testimony that Washington did not ask her to file an appeal. The Court finds Washington knew he could appeal his guilty plea but did not ask Counsel to file an appeal. Therefore, Washington is not entitled to a belated appeal, and this allegation is denied and dismissed with prejudice.

VI. CONCLUSION

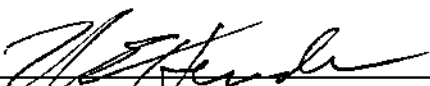
Based on the foregoing, this Court finds and concludes Washington has not established any constitutional violations or deprivations that would require this Court to grant relief. The Court finds Counsel's representation was neither deficient nor prejudicial. Counsel reasonably investigated the case based on her conversations with Washington and review of the discovery. Washington's version of events matched the discovery, and Washington told Counsel the drugs were his. The Court further finds Applicant voluntarily pleaded guilty. Washington did not like the choice he faced, but as he admitted at the PCR hearing, he voluntarily chose to plead guilty. Finally, Counsel was not ineffective for failing to file an appeal because Washington knowingly waived his right to such appeal. Washington knew he could appeal his guilty plea but never asked Counsel to file an appeal. Therefore, the Court denies all allegations and dismisses them with prejudice.

The Court notes Washington 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 pursuant to Rule 203, SCACR. Washington has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCP, provides that if Washington wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on his behalf. Washington is directed to Rule 243, SCACR, for appropriate procedures for appeal.

THEREFORE:

1. The Court denies relief and dismisses the action with prejudice; and
2. Applicant shall be remanded to the custody of the State.

AND IT IS SO ORDERED.



ROGER E. HENDERSON
Presiding Judge
Fifth Judicial Circuit

Chesterfield, South Carolina

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