

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No. 2019-CP-04-2435

Randall Matthew Simpson, #315061,

Applicant,

vs.

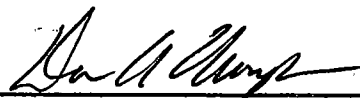
State of South Carolina,

Respondent.

NOTICE OF APPEAL

Randall Matthew Simpson appeals the order of the Honorable Letitia H. Verdin, dated March 16, 2021. Appellant received written notice of entry of this order on March 22, 2021.

March 23, 2021



Don A. Thompson
(S.C. Bar No. 5545)
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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Randall Matthew Simpson, #315061,)

Case No. 2019-CP-04-2435

Applicant,)

v.)

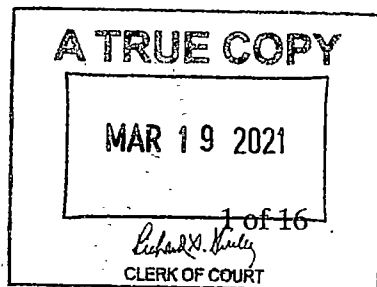
ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

This matter comes before this Court by way of an application for post-conviction relief filed on December 3, 2019, by Randall Matthew Simpson (“Applicant”). The State (“Respondent”) filed its return on February 28, 2020, wherein it moved for a more definite statement of Applicant’s claims and requested the convening of an evidentiary hearing. An evidentiary hearing in this matter was held before the undersigned on February 2, 2021, with the parties appearing by WebEx due to the ongoing COVID19 pandemic. Applicant appeared by WebEx from Lee Correctional Institution and was represented by Don A. Thompson, Esquire. Assistant Attorney General Taylor Z. Smith of the South Carolina Attorney General’s Office represented Respondent. Applicant testified on his own behalf. Respondent called Gregory Lee Cole, Jr. (“plea counsel”), Esquire, and Lucas C. Marchant, Esquire, as witnesses. Following a thorough review of the record in its entirety and the testimony and evidence presented at the evidentiary hearing, this Court finds that Applicant has failed to prove that he is entitled to post-conviction relief and denies the application for post-conviction relief with prejudice.

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PROCEDURAL HISTORY

Applicant is presently incarcerated in the South Carolina Department of Corrections. During its February of 2017 term, the Anderson County Grand Jury indicted Applicant for the possession of a weapon during the commission of a violent crime (2017-GS-04-465), attempted armed robbery (2017-GS-04-465), and two counts of murder (2017-GS-04-464; -466). Applicant was represented by plea counsel) and Marchant, then and assistant solicitor of the Tenth Circuit Solicitor's Office, prosecuted the case. On May 15, 2017, Applicant appeared before the Honorable R. Scott Sprouse and pleaded guilty to murder (-464), the possession of a weapon during the commission of a violent crime, attempted armed robbery, and voluntary manslaughter (-466). Judge Sprouse sentenced Applicant to imprisonment for thirty years for murder, fifteen years for attempted armed robbery, five years for the possession of a weapon, and twenty years for voluntary manslaughter. Judge Sprouse gave Applicant credit for his time served, and ordered that the sentences for murder, attempted armed robbery, and possession of a weapon be served consecutively, with the sentence for voluntary manslaughter running concurrent to the others, such that Applicant's sentence is an aggregate of fifty years in prison. On May 18, 2017, plea counsel filed a motion for a reconsideration of the sentence, arguing that, pursuant to S.C. Code Ann. Section 17-25-50, Applicant's crimes may be considered as a single offense, and that Applicant's sentences should run concurrently instead of consecutively. Judge Sprouse denied the motion in an order issued on July 11, 2017.

Plea counsel filed a timely notice of appeal. Appellate Defender Taylor Davis Gilliam of the South Carolina Commission for Indigent Defense represented Applicant on appeal. Gilliam filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), on April 18, 2018, arguing that Judge Sprouse erred in finding Applicant knowingly and voluntarily pleaded guilty after denying

Applicant's motion to relieve plea counsel and his motion for a continuance; Gilliam also filed a motion to be relieved as counsel. On May 21, 2018, Applicant filed a pro se Anders response, arguing that Judge Sprouse erred in denying his motion to relieve plea counsel, erred in denying plea counsel's motion for reconsideration, and violated Rule 501, SCACR. The South Carolina Court of Appeals dismissed the appeal and granted Gilliam's motion to be relieved in an unpublished opinion. State v. Simpson, Op. No. 2019-UP-008 (S.C. Ct. App. filed January 4, 2019). The remittitur was issued on January 23, 2019.

CURRENT PROCEEDING

In his application for post-conviction relief, filed on December 3, 2019, Applicant alleges that he is entitled to post-conviction relief upon multiple grounds, which are: (1) plea counsel was constitutionally ineffective for failing to investigate and prepare for trial, (2) plea counsel was constitutionally ineffective for failing to engage in meaningful plea negotiations, (3) plea counsel was constitutionally ineffective for failing to protect Applicant's interests when the trial counsel denied his motion for a continuance, (4) plea counsel was constitutionally ineffective for failing to ensure that Applicant's guilty pleas were knowingly and voluntarily entered, (5) plea counsel was constitutionally ineffective for failing to move for reconsideration on the ground that Applicant's guilty pleas were not knowingly and voluntarily entered, and (6) Applicant's guilty pleas were not knowingly and voluntarily entered. Applicant prays that the PCR court would grant relief by granting him a new trial "and/or whatever relief the court deems proper."

At the beginning of the evidentiary hearing before this Court on February 2, 2021, Respondent requested that Applicant state on the record the claims that he would be arguing at the hearing. Thompson stated that the single claim upon which Applicant would move forward was that plea counsel was constitutionally ineffective for not ensuring that Applicant was heard on his

pro se motion to relieve counsel in a timely fashion. This Court finds that Applicant abandoned and waived all claims except for this single claim.¹

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety. Before this Court are: the records of the Anderson County Clerk of Court regarding Applicant's convictions and sentences; the records from Applicant's direct appeal, including the record on appeal, Gilliams' Anders brief, Applicant's pro se Anders brief, and the dispositive opinion; Applicant's records from the South Carolina Department of Corrections; the parties' filings in this matter; and the exhibits admitted into evidence at the evidentiary hearing. Set forth below are the relevant findings of facts and conclusions of law with regards to the claim Applicant advanced at the evidentiary, as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Summary of the testimony presented at the evidentiary hearing.

Applicant testified on his own behalf at the evidentiary hearing. He testified that plea counsel represented him in the underlying criminal case. He testified that he was in jail for the entirety of the representation because he was never bonded out. He testified that he spent about seventeen or eighteen months in jail. He testified that, during that time, he met with plea counsel on two or three occasions only. He testified that plea counsel did not have a copy of discovery with him during their first meeting. He testified that his second meeting with plea counsel took place about six months after the first when he was at a bond hearing, and that plea counsel still did not have discovery at that point. He testified that he saw plea counsel again about one week before his trial date, and that plea counsel still did not have discovery to review with him. He testified that a

¹ Applicant stated that, although he was not arguing it as a standalone claim, he felt that his motion to relieve counsel was justified because he did not believe that plea counsel was prepared to try the case.

disc containing the discovery was dropped off for him at jail, but that plea counsel did not go over the disc's contents with him.

Applicant testified that he found out that his trial date had been set by seeing a news broadcast on television in jail. He testified that plea counsel came to visit him two weeks later and told him that the trial date was approaching. He testified that he told plea counsel that he was trying to retain private counsel and he filed a motion to relieve counsel when his attempts to hire a private lawyer did not prove successful. Without objection, his motion to relieve counsel was admitted into evidence at the hearing as Applicant's Exhibit One. He testified that he sent multiple letters to plea counsel but received no response. He testified that he and plea counsel did not discuss the possibility of pleading guilty. He testified that plea counsel told him that they were going to trial, but he did not feel that plea counsel was adequately prepared. He testified that plea counsel had not prepared him for trial, either. He testified that, shortly before trial, plea counsel told him that he had received new discovery, consisting of statements, but Applicant testified that he did not get a copy. He testified that he was forced to plead guilty because, once Judge Sprouse indicated that the trial would not be continued to give him time to secure other representation, he had no other choice since he would not have time to prepare for trial.

On cross-examination, Applicant testified that he never discussed pleading guilty with plea counsel. He testified that he wanted to go to trial for the entirety of plea counsel's representation of him and that at no point did he want to plead guilty. He admitted to answering questions asked of him by Judge Sprouse during the colloquy when he pleaded guilty.

Plea counsel testified at the evidentiary hearing. He testified that he was appointed to represent Applicant through the 608 program, and that he had been practicing law for approximately five years at the time of his representation of Applicant. He testified that he met

with Applicant on five occasions and mailed seven letters to Applicant. He testified that he talked to Applicant's family members with Applicant's consent. He testified as to the items that he received in discovery generally: audio and video recordings, photographs, a statement from Applicant's codefendant, and police reports. He testified as to the facts of the crime, saying that Applicant and his codefendants attempted to rob someone, that the codefendant who was the first into the victim's home was shot and killed by the victim, that Applicant was the second of the robbers into the home, and that Applicant returned fire and killed the victim. He testified that he discussed the discovery with Applicant on multiple occasions. He testified that he told Applicant that, if Applicant proceeded to trial, his codefendants would testify against him.

Plea counsel testified that there was a delay in the State's prosecution of the case, which he assumed was caused by the State's waiting for the codefendants to plead guilty and agree to cooperate before trying Applicant. He testified that he discussed with Applicant the trial rights that Applicant could exercise if he proceeded to trial. He testified that he discussed with Applicant thoroughly the possibility of Applicant pleading guilty, and that they discussed the matter on at least two occasions. He testified that Applicant was interested in pleading guilty.

Plea counsel testified as to the preparation that he did to get ready for trial: he looked at the discovery turned over by the State, reviewed the statements of those who would testify against Applicant, talked to the lawyers of some of the codefendants about the testimony that the codefendants would give at trial, saw that there was not much exculpatory evidence that could be used to defend Applicant, looked for information that could potentially be used to impeach the codefendants, and considered the advisability of a "stand your ground" hearing. He testified that he thought that the chances that Applicant would be acquitted at trial were low. He testified that

Applicant would have only an imperfect defense of self-defense because he was at fault in bringing on the difficulty.

Plea counsel testified that he discussed the case with Marchant by phone and over email. He testified that he and Marchant could not reach mutually acceptable terms for Applicant to plead guilty and he thought that Applicant could be sentenced to life imprisonment. He testified that there was no contentiousness in his relationship with Applicant. He testified that he moved for a continuance because he received discovery on a late date, but testified that Judge Sprouse denied that request.

Plea counsel testified that he received the letter from Applicant with the motion to relieve counsel on May 3, 2017. He did not know that Applicant wanted to relieve him as counsel until he received the motion. He received a phone call from Applicant's mother a few days later, in which she told plea counsel that Applicant was hiring another attorney to represent him. He tried to confirm that fact with that attorney, but was unable to do so. He sent an email to Judge Sprouse's office on May 9, 2017, notifying Judge Sprouse that Applicant wanted to have him relieved as counsel. Judge Sprouse's office responded by saying that, since a hearing was already scheduled to be held in the case on May 15, 2017, Judge Sprouse would consider the motion at that time. Plea counsel testified that he still discussed the case with Applicant when they met again before May 15, and that they discussed at that meeting the possibility of Applicant pleading guilty, whether Applicant was hiring another attorney, and what would happen if Applicant proceeded to trial.

Plea counsel testified on cross-examination that he received two "batches" of discovery from Marchant. He testified that he received the second batch about three weeks before Applicant's trial was scheduled to begin. He testified that he discussed the contents of that batch with

Applicant, but could not remember if he provided a hard copy of all documents contained therein with Applicant. He remembered that that batch contained forensic evidence and ballistics. He did not think that the items in that batch affected his ability to be prepared to defend Applicant at the upcoming trial.

Plea counsel testified that he received a copy of Applicant's motion to have him relieved on May 3, 2017, but could not remember whether he received a copy of it from the staff at the Public Defender's Office or the Anderson County Clerk of Court. He reiterated that he notified Judge Sprouse of the motion on May 9, 2017, and informed Judge Sprouse that he was available to discuss the matter at any time.

Plea counsel testified that, whenever Judge Sprouse discussed Applicant's motion on May 15, Judge Sprouse Applicant that he would be required to proceed to trial as a pro se defendant if Applicant pursued his motion. He testified that Applicant did not indicate at any point that he was uncomfortable with plea counsel's representation of him or that he felt like he was being forced to plead guilty. He testified that he does not believe that Applicant could have successfully represented himself at trial. He testified that Judge Sprouse did not set a date for a hearing on Applicant's motion and that the decision was Judge Sprouse's alone.

Marchant testified before this Court at the evidentiary hearing. He testified that he is currently engaged in the private practice of law and that the Tenth Circuit Solicitor's Office hired him on a contract basis to prosecute some cases that were pending. He testified that he began working for the Tenth Circuit Solicitor's Office in or around February of 2012. He began by talking to all of the defense attorneys with clients with pending cases. He testified that he agreed with plea counsel's summary of the evidence of Applicant's guilt. He described the crime as a robbery gone wrong in which Applicant was the shooter and the result was a double homicide. He testified that

the State's case would have been built mostly on the testimony of Applicant's codefendants. He acknowledged that any delay in his prosecution of Applicant would have been due to his trying to get the codefendants to cooperate with the State in the prosecution of Applicant because pressure from codefendants helps.

Marchant testified about discussing discovery with plea counsel on multiple occasions. He testified that he discussed Applicant's case with plea counsel more than he discussed any of his other pending cases with any other defense attorney. He testified that plea counsel told him that Applicant was considering pleading guilty. He testified that it was possible that Applicant would have been sentenced to life without the possibility of parole if Applicant had been convicted following trial and that the Solicitor's Office may have recommended that sentence. He testified that he agreed that he would be silent as far as recommendations go if Applicant pleaded guilty.

Marchant testified that the parties addressed Applicant's motion to relieve counsel on the day of trial. He does not remember whether there was any discussion of Applicant hiring a new lawyer.

Marchant was questioned on cross-examination. He testified that the final discovery disclosure he made to plea counsel was made on May 9, 2017. He testified that that was the last written correspondence he had with plea counsel before trial. He believed that that disclosure would have included two pieces of evidence and a laboratory report.

He testified that he notified plea counsel of the trial date by email on May 9, 2017. He did not remember whether he and plea counsel discussed Applicant's motion to relieve plea counsel.

Applicant has failed to prove that he is entitled to post-conviction relief based upon his claim that plea counsel was constitutionally ineffective for not ensuring that Applicant was heard on his pro se motion to relieve counsel in a timely fashion

Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that counsel was constitutionally ineffective, he must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result.” Strickland, at 686. In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, at 117, 386 S.E.2d at 625 (quoting Strickland, at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Applicant such that “there is 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. With respect to plea counsel, Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985). A defendant who pleads

guilty on the advice of counsel may collaterally attack the plea only by showing: (1) counsel was deficient and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). The "prejudice prong ordinarily requires more than simply a defendant's assertion that but for counsel's deficient performance he would not have pled but would have gone to trial." Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009).

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, at 670. Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 697. Therefore, the function of the post-conviction relief court is to determine if "in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance" required of a criminal defense attorney. Id. at 690.

"A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (S.C. Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977)). "Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea." Garren v. State, 423

S.C. 1, 12, 813 S.E.2d 704, 712 (2018); see Jamison v. State, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014) (observing that “guilty plea[s] must be treated as final in the vast majority of cases” and instructing that caution must be exercised so as not to “undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea”). The South Carolina Supreme Court has instructed that:

The longstanding 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. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him.

State v. Inman, 395 S.C. 539, 556, 720 S.E.2d 31, 40 (2011) (internal quotations and citations omitted). “[A] guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights.” Jamison, at 468, 765 S.E.2d at 129 (citations omitted).

This Court finds that Applicant has failed to prove that there was any deficiency in plea counsel’s performance. Although Applicant alleges that plea counsel delayed in bringing to the courts’ attention the motion to relieve counsel, this allegation is without merit. The motion was filed with the Anderson County Clerk of Court on May 2, 2017. Plea counsel’s credible testimony proves that plea counsel received a copy of the motion (and his first notice of it) on May 3, 2017, the following day. Plea counsel credibly testified that he informed Judge Sprouse of the motion on May 9, 2017, which was only six days after learning of it. Plea counsel’s testimony proves that Judge Sprouse wanted to hear the motion on May 15, which was a date upon which Applicant, plea counsel, and Marchant were already scheduled to be before Judge Sprouse. While that date was approaching, plea counsel and Applicant still met and worked to prepare for a guilty plea hearing or a trial. A defense attorney’s performance is not deficient if he notifies the presiding judge of his client’s motion to relieve counsel six days after he learns of it. Plea counsel’s performance did not fall short of “the range of competence required in criminal cases.” Butler, at

442, 334 S.E.2d at 814.

This Court finds that Applicant has failed to prove that there is a reasonable likelihood that he would have proceeded to trial absent some deficiency in plea counsel's performance. Applicant speculates that, had he been heard on his motion to relieve counsel earlier than May 15, Judge Sprouse may have continued the trial so that Applicant could hire another attorney or be prepared to go to trial as a pro se defendant. Applicant has not proven that his dissatisfaction with plea counsel—regardless of the apparent baselessness of that dissatisfaction—would have required Judge Sprouse to relieve plea counsel and continue the trial so that Applicant could hire another attorney. See State v. Jones, 270 S.C. 587, 588-89, 243 S.E.2d 461, 462 (1978) (holding that, “at least after the trial has begun, a mere disagreement between a defendant and his counsel as to a matter of trial tactics is not sufficient cause, in itself, to require the trial court to replace or to offer to replace court appointed counsel with another attorney at that time) (citations omitted). Plea counsel credibly testified that Judge Sprouse declined to continue the trial when plea counsel requested a continuance around the same time as when Applicant filed his motion. The fact that Judge Sprouse denied plea counsel's continuance request is evidence that Judge Sprouse would not have been inclined to continue the trial even if Judge Sprouse would have been notified about Applicant's motion by plea counsel a few days earlier. As Judge Sprouse informed Applicant at the hearing on May 15, Applicant's “relieving [his] attorney [was] not grounds for a continuance of [the] trial,” and Judge Sprouse was “not going to put [his] case off because [he] want[ed] to fire” plea counsel. Plea Tran. 4-5. Applicant has not proved that Judge Sprouse's ruling would have been any different if plea counsel notified Judge Sprouse of the motion on May 3.

This Court finds that Applicant has failed to prove that he did not knowingly and voluntarily plead guilty. The Due Process Clause of the United States Constitution requires that a

defendant enter a guilty plea voluntarily, knowingly, and intelligently. Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citing Boykin v. Alabama, 395 U.S. 238 (1969)). The defendant must be aware of the right to confront his accusers, the privilege against his self-incrimination, the right to be tried by a jury, the nature and crucial elements of the offense for which he is being accused, the maximum and minimum possible penalties, and the nature of any constitutional rights being waived by the entry of a guilty plea. Id. (citations omitted). It is not required that a court direct a defendant's attention to "each and every constitutional right and obtain a separate waiver for each." Staté v. Lambert, 266 S.C. 574, 578-79, 225 S.E.2d 340, 342 (1976) (citing Wade v. Coiner, 468 F.2d 1059 (4th Cir. 1972)). Even if plea counsel misadvised or failed to advise Applicant regarding one of the aforementioned matters, Judge Sprouse's colloquy likely would have cured such an error. Holden v. State, 393 S.C. 565, 575, 713 S.E.2d 611, 616 (2011) (citations omitted) (concluding that any alleged deficiency in plea counsel's advice to Holden was cured by the plea court's colloquy), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

Once Applicant decided to plead guilty rather than proceed to trial on May 15, Marchant read the indictment numbers, offense descriptions, and status as true-billed indictments for each indictment to which Applicant pleaded guilty. Plea Tran. 5-6. Judge Sprouse informed Applicant of the name and potential sentencing range for each offense, and Applicant affirmed that he understood. Plea Tran. 6-7. Applicant affirmed that he understood that Judge Sprouse could impose the sentences consecutively. Plea Tran. 7. Applicant affirmed that he understood that he was pleading guilty without the benefit of a sentencing recommendation from the State, meaning that Marchant could ask for the maximum sentence and plea counsel could ask for the minimum sentence. Plea Tran. 7. Applicant affirmed that he was pleading guilty of his own free will, without

being under the influence of any judgement-impairing substances. Plea Tran. 8. Judge Sprouse informed Applicant of his trial rights and Applicant affirmed that he understood them and that he would be waiving them by pleading guilty. Plea Tran. 8-9. Applicant affirmed that he had had enough time to talk with plea counsel, that plea counsel had answered all of his questions, that he had no more questions to ask of plea counsel, that plea counsel had done all that he had asked him to do, and that he was “completely satisfied” with plea counsel’s services. Plea Tran. 10. Applicant affirmed that he understood that he could be sentenced to life without the possibility of parole if he pleaded guilty, and plea counsel stated that he had discussed the matter with Applicant, whom plea counsel believed understood the significance of that fact. Plea Tran. 11-12. After hearing Marchant provide a recitation of facts that the State would attempt to prove if Applicant proceeded to trial, Applicant affirmed that the recitation stated the facts of the case. Plea Tran. 12-15. This Court’s review of the transcript from Applicant’s guilty plea hearing, coupled with plea counsel’s credible testimony before this Court, the credibility of which was affirmed by Marchant’s corroborating testimony, establishes the knowing and voluntary nature of Applicant’s entry of his guilty pleas. Applicant’s testimony before this Court that his guilty pleas were not knowingly and voluntarily entered and that he believed that plea counsel was not prepared for trial are not credible.²

CONCLUSION

² Even if this Court accepted the testimony that Applicant gave before it as credible, it would still be cognizant of the fact that Applicant would have therefore been lying to Judge Sprouse at the guilty plea hearing when he affirmed his satisfaction with plea counsel’s services. See Kolle v. State, 386 S.C. 578, 596-97, 690 S.E.2d 73, 82-83 (2010) (stating the view that an applicant’s entry of a guilty plea should not be found to have been involuntary when the applicant falsely testified as to his satisfaction with his defense attorney at the guilty plea hearing) (Kittredge, J., dissenting), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

Based on all the foregoing, this Court finds that Applicant has not proven any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application is denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal, through counsel, within thirty days from the receipt of this order to secure the appropriate appellate review. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to the assistance of appellate counsel in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that, if the applicant wishes to seek appellate review, he must serve and file a notice of appeal. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

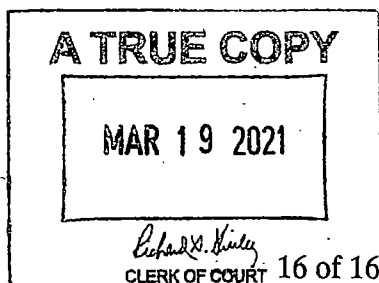
AND IT IS SO ORDERED this 16 day of March, 2021.



Letitia H. Verdin
Presiding Judge

Oranville, South Carolina

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S.C. SUPREME COURT