

**NOTICE OF APPEAL FROM A PCR DENIAL BY THE COURT OF
COMMON PLEAS**

THE STATE OF SOUTH CAROLINA
In Supreme Court of SC

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

R. Kirk Griffin, Circuit Court Judge

Case #2020-CP-43-0482

The State,

Respondent,

v.

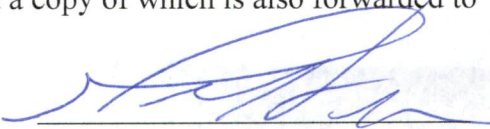
Michael Rose

Appellant.

NOTICE OF APPEAL

Michael Rose, appeals the decision of the Court, in the order dated April 27, 2021, received by counsel on May 3, 2021, where Mr. Rose was denied his request for Post-Conviction Relief. Mr. Rose was represented at the hearing by Timothy L. Griffith, Attorney at Law who files this notice on behalf of the Appellant. The order herein attached and a copy of which is also forwarded to the SCCID Appellate Division.

Dated 5/4/21


Timothy L. Griffith, Esquire
2338 Mount Vernon Dr.
Sumter, SC 29154
Telephone: (803) 499-2012
Attorney for Appellant (relieved)
Will not be representing on appeal

Other Counsel of Record:
Michael Neubauer, Esquire
Assistant Attorney General
South Carolina Attorney General's Office
P.O. Box 11549, Columbia, S.C. 29211

RECEIVED

MAY 11 2021

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

RECORDED

FOR THE THIRD JUDICIAL CIRCUIT

2021 APR 27 PM 2:18

Michael Rose, #283221,
Applicant,

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

2020-CP-43-0482

v.

State of South Carolina,
Respondent.

ORDER OF DISMISSAL

CERTIFIED TRUE COPY
OF ORIGINAL FILED

Sherry H. Hunt
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This matter comes before the Court by way of an application for post-conviction relief filed on March 23, 2020, by Michael Rose (Applicant). The State (Respondent) filed a Return on September 18, 2020, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on March 8, 2021, remotely via the WebEx virtual courtroom. Applicant was present at the hearing and represented by Timothy Griffith, Esquire. Assistant Attorney General Michael Neubauer 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, Esquire, Deborah Butcher, Esquire, and Assistant Solicitor Margret M. Held of the Third Circuit Solicitor's Office 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 and denies and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. In October 2019, Applicant was indicted by the Sumter County Grand Jury for Burglary, 1st degree (2019-GS-43-1099). A. Jack Barnes, Esquire, represented Applicant. Assistant Solicitor Margret M. Held of the Third Circuit

Solicitor's Office, prosecuted the case.

On December 9, 2019, Applicant entered a negotiated plea before the Honorable R. Ferrell Cothran, Jr., for the lesser included offense of second degree burglary. Applicant was also indicted for first-degree burglary in 2016, and pleaded guilty on the same day to second-degree burglary for his 2016 indictment (2016-GS-43-0619). Judge Cothran sentenced Applicant to eight years of imprisonment for each of his burglary charges. Applicant did not appeal his conviction or sentence.

SUMMARY OF FACTS

The underlying facts of the crimes for which Applicant is incarcerated were articulated by the State during Applicant's guilty plea hearing as follows:

"...For the indictment 2016-619...On February 4, 2016, at 592 South Main, Ms. Barbra Evans, who was the renter of the house at the time had been gone for a couple of days staying at her mother's house around the corner. She came into her house and noticed a black bag and an umbrella on a table in the front room. She thought, oh, somebody's been in my house; but she went, she didn't hear or see anything right away. She went down the hallway and went into her bedroom; and the next thing she knew she heard Mr. Rose behind her saying, oh, Barbara, it's me. They apparently had known each other from when they grew up together and so she knew who it was. He left. When the police came to investigate they discovered that some wires in the attic, plastic copper wires wrapped in plastic, multiple of those had been cut and four were left at the house that were cut, and she had seen Mr. Rose with those in his hand...

...for the other indictment, that happened on June 22, 2018, at 220 Dingle Street which is Burgess Brogdon Do-It-Yourself Center and Mr. Gene Weston is the proprietor of that establishment. Mr. Rose lives—they, you can see the house and the business from each other's yards and so it turned out that when the law enforcement responded to 220 Dingle Street which is in the – and I neglected to say, Your Honor, the other 592 South Main is, of course, in the city of Sumter as in the indictment that ends in 1099. They came to the Do-It-Yourself Center and they discovered there were multiple things. The plexiglass was broken. There was a lawn trimmer moved, stolen, and some hammer drills. And the neighbor had called 9-1-1 and identified Mr. Rose as the person who was committing, he saw the burglary in progress and that's how they knew it was Mr. Rose."

GP. Tr. 7-9.

ALLEGATIONS RAISED

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

1. Ineffective Assistance of Counsel
 - a. "Trial counsel failed to review and discuss all discovery information and evidence."
2. Involuntary Guilty Plea
 - a. "Trial Counsel was ineffective in that he did unfairly and improperly pressure and coerce me into signing up any rights in accepting a plea offer."
3. "Trial counsel was ineffective in that he should have been able to negotiate a better deal on my behalf."

As requested relief, Applicant states he is seeking "conviction reversed with remand for new trial."

On February 25, 2021, Applicant, through his counsel, filed an amended application alleging:

- a. I have spoken at length with Mr. Rose so as to help him understand the PCR and so that I can articulate his concerns and claims. His application is for burglary 2nd degree: 2019-GS-43-1099 he plead guilty to another burglary 2nd degree: 2016-GS-43-0619 but did not understand that he had plead to the second one – though the transcript shows he did – he therefore had not filled the application on both. Mr. Rose would amend his application to include both cases 2019-GS-43-1099 and 2016-GS-43-0619.
- b. Ineffective Assistance of Counsel; Mr. Rose claims that although he did receive a copy of his discovery, neither of his attorneys went over the discovery to explain it to him. If he had been able to go over the discovery with his attorneys, he would have proceeded to trial.
- c. Ineffective Assistance of Counsel: Mr. Rose claims that he only met with his attorneys on the day of his plea so therefore did not have time to understand what he was pleading to.
- d. I did discuss with Mr. Rose the concept of "lesser included," and I believe he is more clear on that issue.
- e. Mr. Rose will claim that the Court did not have jurisdiction to accept the plea in his cases. I have explained that the Court most likely did have jurisdiction, however, he would like to present that to the Judge.
- f. We did discuss many other concerns he had which I explained to him were not PCR issues but were issues for appeal or to be handled at trial. He did not appeal though the transcript shows the Judge informing him – but he says he did not know what he was supposed to do to get his attorney to appeal so.

g. Ineffective Assistance of Counsel: Failure of attorney to file appeal.

At the evidentiary hearing, Applicant stated he was going forward on the allegations set forth in his original application and his amended application.

FINDINGS OF FACTS 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 Clerk of Court records regarding the subject convictions, the trial transcript, the application for post-conviction relief, the amended 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).

1. Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 334 S.E.2d 813 (1985). Where the 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 on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the ranged of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decision in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at

117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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 117-118, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

a. Trial Counsel failed to review and discuss all discovery information and evidence.

Applicant alleges his attorneys failed to review and discuss all discovery information and evidence with him. This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in his case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). (citing Strickland).

Applicant testified he met with both Mr. Jack Barnes and Ms. Deborah Butcher. Applicant testified his attorneys did not discuss the State's evidence with him. Applicant testified at his plea hearing that he met with Ms. Butcher, he was satisfied with her representation, and consented to conducting his guilty plea without her being present. Applicant, at his plea hearing, testified he had enough time to talk with his lawyer.

Ms. Butcher testified she met with Applicant three to four times and sent Applicant multiple letters. Ms. Butcher testified she discussed the elements of Applicant's charges and the indictments. Ms. Butcher testified she discussed the State's evidence with Applicant and the State's burden of proof in criminal cases. Ms. Butcher testified she went through discovery with

Applicant but she did not talk to the victim in Applicant's case. Ms. Butcher testified she discussed the strength of the State's case against him, this included multiple individuals who knew Applicant and identified Applicant in each case. Additionally, each witness identified Applicant in a six-person photo lineup. Ms. Butcher testified she fully went over Applicant's discovery and asked Applicant if he had any questions regarding his discovery.

Mr. Barnes testified he met with Applicant six times. Mr. Barnes testified he discussed the discovery in Applicant's case numerous times. Mr. Barnes testified he felt he had enough time to meet with Applicant prior to his plea. Mr. Barnes testified he does not have an independent recollection of discussing Applicant's indictments but is confident he did discuss them. Mr. Barnes testified he typically reads and discusses each client's indictments with them.

This Court finds Applicant has failed to show his counsel was ineffective. Applicant has failed to show his counsel was deficient, Applicant's counsel testified they met with Applicant and discussed the strength of the State's case against him. Individuals who knew Applicant identified him in each case. Each witness identified Applicant in a six-person photo lineup. Attorney Jack Barnes testified that he met with Applicant six times, and that the discovery in each case was not voluminous. The Court finds Mr. Barnes' testimony credible. Applicant admitted in his plea hearing that he met with Ms. Butcher, was satisfied with her representation, and consented to conducting his guilty plea without her being present. Additionally, Applicant has failed to provide "any evidence of how additional preparation or communication would have resulted in a different outcome." Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012); see Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (explaining that, where an applicant failed to present any evidence of what counsel could have discovered or what other defenses he would have requested counsel pursue had counsel more fully prepared for the trial, applicant failed to

show his counsel's lack of preparation prejudiced him); Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (finding that, when there is evidence counsel met with a defendant in preparation for trial and there is no evidence additional preparation on the part of counsel would have affected the outcome at trial, counsel cannot be said to have been ineffective), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). Accordingly, Applicant's claim his trial counsel failed to review and discuss all discovery information and evidence is without merit. This claim is denied and dismissed with prejudice.

b. Trial Counsel was ineffective in that he did unfairly and improperly pressure and coerce me into signing up any rights in accepting a plea offer.

Applicant asserts his counsel was ineffective for pressuring and coercing Applicant into signing away his rights by accepting a plea.

In evaluating issues concerning guilty pleas, this Court will consider the entire record, including the transcript of the guilty plea proceeding and the evidence presented at the post-conviction relief hearing. Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2000). Voluntariness of a guilty plea is not merely determined by an examination of a specific inquiry by the plea court alone but rather is determined by the record of both the guilty plea proceeding and the post-conviction relief hearing. Id. In order to find a guilty plea was knowingly and voluntarily entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969). Further, “[a] guilty plea is a solemn, judicial admission of the truth of the charges” against the applicant; thus, an applicant's right to contest the validity of such a plea is usually foreclosed. Dalton v. State, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions “made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his

statements.” Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975)); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Applicant testified he felt a lot of pressure to plead guilty in this case. Applicant testified he did not want to plea. Applicant also testified he did not plead guilty at his plea hearing. However, at Applicant’s plea hearing, Applicant testified he was pleading guilty because he was in fact guilty. GP Tr. p. 9. Additionally, at Applicant’s plea hearing, Applicant testified he was not threatened in any way. GP Tr. p. 5.

Mr. Barnes testified Applicant did not want to go to jail, because nobody ever wants to go to jail. Mr. Barnes testified he did not coerce or force Applicant to plead guilty. Mr. Barnes testified he is confident he discussed Applicant’s indictments with Applicant. Mr. Barnes testified Applicant understood the charges he was facing and the possible sentences he could receive. Mr. Barnes testified Applicant understood he was facing two concurrent eight year sentences if he plead guilty, or the possibility of life in prison if he were convicted at trial. Mr. Barnes testified he did not coerce or force Applicant to plead guilty. Mr. Barnes testified he did not coach Applicant on how to answer the plea judge’s questions, nor did Applicant need to be coached.

This Court finds Applicant failed to show his Counsel was deficient. Applicant has not shown Counsel coerced or forced him in any way. Additionally, Applicant has failed to show that he was prejudiced by Counsel’s actions at Applicant’s plea. Applicant has not provided any evidence, outside of self-serving testimony, to show he would have proceeded to trial instead of pleading guilty. Therefore Applicant’s claim his trial counsel unfairly and improperly pressured and coerced Applicant into signing away his rights by accepting a plea offer is without merit. This claim is denied and dismissed with prejudice.

c. Trial Counsel was ineffective in that he should have been able to negotiate a better deal on my behalf.

Applicant asserts Counsel was ineffective because he should have been able to negotiate a better deal for Applicant's plea.

Applicant at his PCR hearing testified he did not have any option except to plea. On cross-examination Applicant testified he was not told of any plea offers prior to the one he accepted. Applicant additionally testified he did not plead guilty at his plea hearing. However, this Court takes judicial notice that Applicant plead guilty to two counts of second-degree burglary.

Deborah Butcher testified she met with Applicant multiple times prior to his plea. Ms. Butcher testified she discussed Applicant's chances at trial, and believed the State could prove Applicant's guilt beyond a reasonable doubt. Ms. Butcher testified she and Mr. Barnes were able to get a plea offer that Applicant was willing to plead to.

Jack Barnes testified he spoke with Applicant about the facts of Applicant's case and any possible defenses, including a possible alibi. Mr. Barnes testified he was able to get Applicant a plea deal to concurrent terms of ten years for two counts of second-degree burglary. Mr. Barnes testified prior to Applicant's plea, Mr. Barnes was able to convince Margret Held to drop the plea from ten years to eight years concurrent for what was originally second-degree and first-degree burglary charges. Mr. Barnes testified he spoke with Applicant about the eight year plea offer, and that Applicant understood he could either plea to eight years concurrent or risk a possibility of life without parole if Applicant went to trial. Mr. Barnes testified he felt it was in Applicant's best interest to plead guilty.

This Court finds Applicant's allegation is without merit. Applicant was facing one count of Burglary in the First Degree, and one count of Burglary in the Second Degree (Violent). Counsel was able to negotiate a reduction of the Burglary in the First Degree to Burglary in the Second Degree Violent. Applicant pleaded guilty to two counts of Burglary in the Second Degree

(Violent), and received concurrent eight-year sentences. Mr. Barnes was successful in reducing the initial plea offer by two years. This Court finds Applicant has failed to show how Counsel was deficient, or how Applicant was prejudiced by Counsel's performance while negotiating a potential plea deal. Therefore this claim is denied and dismissed with prejudice.

d. Mr. Rose claims that although he did receive a copy of his discovery, neither of his attorneys went over the discovery to explain it to him. If he had been able to go over the discovery with his attorneys, he would have proceeded to trial.

Applicant alleges he did not have an opportunity to discuss his discovery with his attorneys. Applicant alleges he would have proceeded to trial if he had the opportunity to discuss the discovery in his cases.

Applicant testified he met with both Mr. Jack Barnes and Ms. Deborah Butcher. Applicant testified his attorneys did not discuss the State's evidence with him. Applicant admitted in his plea hearing that he met with Ms. Butcher, he was satisfied with her representation, and consented to conducting his guilty plea without her being present.

Ms. Butcher testified she met with Applicant three to four times and sent Applicant multiple letters. Ms. Butcher testified she discussed the elements of Applicant's charges and the indictments. Ms. Butcher testified she discussed the State's evidence with Applicant. Ms. Butcher testified she went through discovery with Applicant but she did not talk to the victim in Applicant's case. Ms. Butcher testified she fully went over Applicant's discovery and asked Applicant if he had any questions regarding his discovery.

Mr. Barnes testified he met with Applicant six times. Mr. Barnes testified he discussed the discovery in Applicant's case numerous times. Mr. Barnes testified he felt he had enough time to meet with Applicant prior to his plea. Mr. Barnes testified he does not have an independent

recollection of discussing Applicant's indictments but is confident he did discuss them. Mr. Barnes testified he typically reads and discusses each client's indictments with them.

This Court finds Applicant has failed to show his counsel was ineffective. Applicant has failed to show his counsel was deficient, Applicant's counsel testified they met with Applicant and discussed the strength of the State's case against him. The State's evidence against Applicant included individuals who knew Applicant and identified him in each case. Each witness identified Applicant in a six-person photo lineup. Mr. Barnes testified that he met with Applicant six times, and that the discovery in each case was not voluminous. The Court finds Mr. Barnes' testimony credible. Applicant admitted in his plea hearing that he met with Ms. Butcher, was satisfied with her representation, and consented to conducting his guilty plea without her being present. Additionally, Applicant has failed to present "any evidence of how additional preparation or communication would have resulted in a different outcome." Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012); see Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (explaining that, where an applicant failed to present any evidence of what counsel could have discovered or what other defenses he would have requested counsel pursue had counsel more fully prepared for the trial, applicant failed to show his counsel's lack of preparation prejudiced him); Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (finding that, when there is evidence counsel met with a defendant in preparation for trial and there is no evidence additional preparation on the part of counsel would have affected the outcome at trial, counsel cannot be said to have been ineffective), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). Accordingly, Applicant's claim his trial counsel failed to review and discuss all discovery information and evidence is without merit. This claim is denied and dismissed with prejudice.

e. Mr. Rose claims that he only met with his attorneys on the day of the plea so therefore he did not have time to understand what he was pleading to.

Applicant asserts he was not able to speak with his attorneys until the day of his plea and he did not have time to understand what he was pleading to.

Applicant testified he did not talk to his attorneys before his plea and he only spoke with them on the day he went to court. Applicant testified his attorneys only told him if he went to trial he would lose. On cross examination, Applicant testified he only met with Ms. Butcher in 2019 when he went to the court house and the prosecutor took him before the judge. Applicant testified he did not discuss the evidence against him with his attorneys. Applicant testified he never discussed any possible defenses with his attorneys. Applicant testified he did not speak with Jack Barnes prior to his plea hearing.

Ms. Deborah Butcher testified she sent Applicant several letters, and met with Applicant three to four times in person. Ms. Butcher testified she discussed the elements of Applicant's charges and the indictments with applicant. Ms. Butcher testified she discussed Applicant's version of the facts, including Applicant assertion he did not commit the crime. Ms. Butcher testified she met with Applicant, and with Applicant and Mr. Barnes in order to consolidate both of Applicant's charges into one plea deal. Ms. Butcher testified she felt she had enough time to meet with Applicant prior to his plea hearing. On cross examination Ms. Butcher testified she was able to determine Applicant understood everything she discussed with Applicant.

Mr. Jack Barnes testified he met with Applicant six times prior to Applicant's plea hearing. Mr. Barnes testified he discussed discovery with Applicant, including eye witness statements, incident reports, photo lineups, and Applicant's NCIC report. Mr. Barnes testified the discovery in Applicant's case was not voluminous, or something Applicant had to "wade through." Mr. Barnes testified he discussed possible defenses with Applicant, including Applicant's assertion his

brother committed the crime, instead of Applicant. Mr. Barnes testified he reached out to Applicant's brother who adamantly denied committing the crime.

This Court finds Applicant has failed to show his counsel was ineffective by failing to meet with Applicant prior to his plea. Both of Applicant's attorneys testified they met with Applicant multiple times prior to Applicant's plea hearing. Additionally, both of Applicant's attorneys testified they discussed with Applicant both the charges applicant was facing, and the State's evidence against Applicant. Applicant, at his plea hearing indicated he understood what he was doing. Applicant has failed to show how his counsel was deficient in meeting with Applicant and discussing the charges Applicant was facing. Additionally, Applicant has failed to present "any evidence of how additional preparation or communication would have resulted in a different outcome." Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012); see Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (explaining that, where an applicant failed to present any evidence of what counsel could have discovered or what other defenses he would have requested counsel pursue had counsel more fully prepared for the trial, applicant failed to show his counsel's lack of preparation prejudiced him); Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (finding that, when there is evidence counsel met with a defendant in preparation for trial and there is no evidence additional preparation on the part of counsel would have affected the outcome at trial, counsel cannot be said to have been ineffective), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). This court finds Applicant's allegation he only met with his attorneys on the day of his plea and Applicant did not have time understand what he was pleading to is without merit. Therefore this claim is denied and dismissed with prejudice.

f. The Court did not have jurisdiction to accept Applicant's plea in his cases.

Applicant alleges the Court did not have jurisdiction to accept the plea in his case. "The court of general sessions has subject matter jurisdiction to try criminal cases." State v. Smalls, 364 S.C. 343, 346, 613 S.E.2d 754, 756 (2005). Applicant testified he was arrested on first-degree burglary, however his indictment was for second-degree burglary. Applicant testified he believes the Court did not have jurisdiction to accept his plea because he was indicted for a different charge than he was arrested for.

Margret Held testified Applicant's indictment 2019-GS-43-1099 was for first-degree burglary, however Ms. Held filed an amended indictment for second-degree burglary which was true billed. Ms. Held also testified Applicant's indictment 2016-GS-43-0619 was also true billed by the Sumter County Grand Jury. Ms. Held testified Applicant signed the sentencing sheets for both indictments prior to his plea hearing while Applicant was meeting with his attorneys.

"We hold that signing a sentencing sheet for a charge to which a defendant has pled guilty constitutes a written waiver of presentment. Moreover, a signed document that informs a defendant of the charges against him such as a sentencing sheet gives rise to a presumed regularity in the proceedings and signifies that the defendant has been notified of the charges to which he has pled guilty." Id. 364 S.C. at 347, 613 S.E.2d at 756.

This Court finds Applicant's allegation to be without merit. Applicant pleaded guilty to a lesser-included offense of Burglary in the First Degree on true-billed indictment 2016-GS-43-0619. Applicant pleaded guilty as indicted to Burglary in the Second Degree (Violent) on true-billed indictment 2019-GS-43-1099. Applicant has failed to provide any evidence to support his allegation that the Court lacked jurisdiction to accept Applicant's pleas. Therefore, this claim is denied and dismissed with prejudice.

CONCLUSION

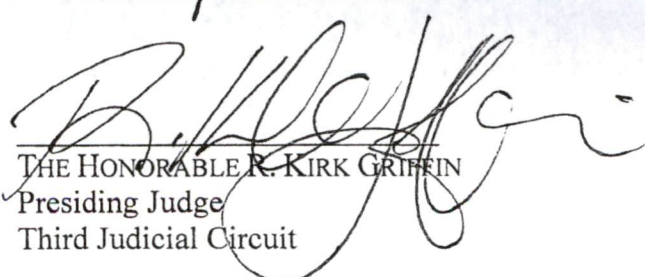
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty days from post-conviction relief counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant is to remain in the custody of the Respondent.

AND IT IS SO ORDERED this 27th day of April, 2021.


THE HONORABLE R. KIRK GRIFFIN
Presiding Judge
Third Judicial Circuit

Sumter, South Carolina