STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Jocelyn Newman, Circuit Court Judge

2015-CP-40-07522

Jermaine Harris, SCDC #336851,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Jermaine Harris, SCDC #336851, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed May 25, 2021, issued by the Honorable Jocelyn Newman, Presiding Judge, Fifth Judicial Circuit.

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June 25, 2021

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Jermaine Harris (SCDC #336851), Applicant, v. State of South Carolina, Respondent.	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT Civil Action No. 2015CP4007522 **ORDER OF DISMISSAL**

RICHLAND COUNTY
FILED
2021 MAY 26 PM 2:15
JENNIFER W. McBRIDE
C.P., G.S., & F.C.

This matter came before the Court upon Application for Post-Conviction Relief filed by Jermaine Harris ("Applicant") on December 18, 2015. The State of South Carolina filed its "Return and Partial Motion to Dismiss" on July 7, 2016. On August 31, 2016, an evidentiary hearing was conducted at the Richland County Judicial Center. Applicant was present along with his counsel, Jonathan D. Waller, Esquire. The State was represented by Assistant Attorney General Jessica E. Kinard.

For the reasons set forth below, the Application for Post-Conviction Relief is DENIED; and this matter is DISMISSED WITH PREJUDICE.

FACTUAL AND PROCEDURAL HISTORY

I. Facts Adduced at Guilty Plea

On November 28, 2011, Applicant entered the Days Inn hotel in Dentsville area of Richland County. Upon entering, he leapt over the front counter and pointed at the desk clerk an object which appeared to her to be a pistol with a laser sigh. Applicant took the clerk's cellphone and approximately five hundred dollars in cash before fleeing. Law enforcement obtained a picture of Applicant from the hotel's surveillance cameras and sent that picture to several media outlets.

Several citizens, including Applicant's sister, identified Applicant as the man in the photo. The hotel clerk also identified Applicant in a photo lineup shown to her by law enforcement.

II. Conviction

Applicant was arrested in January 2012 and charged with Armed Robbery of the Days Inn. He was represented on that charge by Assistant Public Defender Constantine Pournaras ("Plea Counsel"). On January 14, 2015, Applicant waived presentment of the charge to the Richland County Grand Jury and pled guilty to Armed Robbery.[1] In exchange for his plea, the State agreed to a negotiated sentencing range of ten to fifteen years in the South Carolina Department of Corrections. The Honorable Robert E. Hood imposed a fifteen-year sentence, giving Applicant credit for over one thousand one hundred days of pre-trial detention. Applicant did not appeal the guilty plea or sentence.

III. PCR Application

On December 18, 2015, Applicant filed the instant PCR Application. In it, he alleges:

1. Ineffective assistance of counsel.
    i. Attorney was ineffective by failing to request a *Blair* hearing.
2. Erroneous advice on sentencing or collateral consequences that leads to plea.
    i. Attorney erroneously advised me to plea [sic] guilty knowing I didn't understand.
3. I am mental health and was/am incompetent to knowingly plea.
    i. Knowing of my mental health record, I should have been given a sanity hearing before being allowed to plea [sic] guilty.

The State responded to Applicant's allegations, contending that they are meritless, and requested summary dismissal of the PCR Application. In lieu of summary dismissal, the Court convened an evidentiary hearing on August 31, 2016, to address Applicant's allegations.

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[1] On the same date, Applicant pled guilty to Breaking Into a Motor Vehicle (2012GS4001910); however, that conviction is not the subject of this PCR Application.

IV. Evidentiary Hearing

Both Applicant and Plea Counsel testified at the evidentiary hearing.

A. Applicant

According to Applicant, he met with Plea Counsel approximately four times. He testified that during their first meeting, he told Plea Counsel that he had a long history of mental health issues. Applicant testified that he suffers from bipolar disorder and that during his teenage years, he received approximately a year of inpatient counseling at the Department of Mental Health. He also stated that he received mental health treatment continuously from that time until the time of the evidentiary hearing – approximately ten years. Applicant claims to have conveyed this history to Plea Counsel, who initially replied that he'd request a mental health evaluation for Applicant but later said that the evaluation was unnecessary.

Applicant testified that he was not taking any medication at the time of the armed robbery, but by the time he met with Plea Counsel at the county jail, he was taking Risperdal and Remeron. According to Applicant, those medications help increase his level of understanding and keep him calm. Without them, Applicant testified, he is anxious, nervous, and angry. He also has difficulty paying attention, focusing, and understanding, but none of the medications help with those issues. Applicant testified that even while medicated, he still needs help "understanding and knowing what's really going on."

Applicant also testified that he was unable to understand the guilty plea proceeding. Plea Counsel told him "to agree to everything that the judge was saying," and that's why he denied ever having been treated for mental health issues. Applicant testified that he pled guilty to avoid trial because Plea Counsel was not prepared and they had only discussed trial in hypothetical terms. Applicant was unaware of a scheduled trial date until he appeared in court for his plea. At that

time, Plea Counsel told him that pleading guilty would be best. According to Applicant, he "didn't know what was going on" and the plea agreement was different from what he discussed with Plea Counsel, yet he pled guilty because he "felt like [his] word didn't matter." Applicant testified that he didn't know that he was waiving his constitutional rights by pleading guilty; rather, Plea Counsel "manipulated" him.

B. Plea Counsel

At the time of Applicant's arrest, Plea Counsel was employed by the Public Defender's Office. He was appointed to represent Applicant after his arrest.

Plea Counsel admitted that Applicant mentioned his history of mental health issues. He understood that Applicant had suffered from depression, ADHD and mood disorders, all of which had been treated in the past. Plea Counsel was aware that Applicant was taking certain medications to treat his mental health conditions; however, he denied any knowledge of an involuntary commitment at the Department of Mental Health.

He explained that Applicant was sometimes irritable during their meeting, but Plea Counsel believed that was due to the fact that Applicant was facing very serious charges and was unable to post bond while awaiting their resolution. Although Applicant would get angry and raise his voice with Plea Counsel from time to time, Plea Counsel "didn't feel as if it was in any way related to mental health issues." In fact, Plea Counsel testified that it didn't appear to him as though Applicant's psychological concerns impaired his ability to communicate, to focus, or to understand the legal system and the circumstances of his case. Plea Counsel ultimately determined that there was no need to have Applicant submit to a mental health evaluation.

According to Plea Counsel, it was clear that Applicant did not want a trial. After much negotiation with the State, he was able to procure a plea offer that Applicant was comfortable with.

Plea Counsel testified that he explained the trial process and the waiver of constitutional rights to Applicant, who appeared to understand. Although it was evident that Applicant was not interested in trial, Plea Counsel discussed with him the State's evidence, possible defenses to the charges, and a list of potential defense witnesses. Ultimately, because of the strength of the State's case, Plea Counsel agreed that a guilty plea was in Applicant's best interest.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

The Sixth and Fourteenth Amendments to the United States Constitution guarantee criminal defendants the right to the effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984). In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." *Frasier v. State*, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where a PCR Application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

First, the applicant must show that counsel's performance "fell below an objective standard of reasonableness under prevailing professional norms." *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance

is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "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). The 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 the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 117-18, 386 S.E.2d at 625; *see Strickland*, 466 U.S. at 688, 692 ("the defendant must show that counsel's representation fell below an objective standard of reasonableness [and] . . . any deficiencies in counsel's performance must be prejudicial to the defense in order to constitute ineffective assistance under the Constitution."); *see also Porter v. State*, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006) ("PCR applicant must prove: (1) that counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) that the deficient performance prejudiced the applicant's case.").

"Where counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." *Watson v. State*, 370 S.C. 68, 72, 634 S.E.2d 642, 644 (2006) (citing *Stokes v. State,* 308 S.C. 546, 419 S.E.2d 778 (1992)). "Counsel's performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel 'rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.'" *Smith v. State*, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (quoting *Strickland,* 466 U.S. at 690). "Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." *Id.* (citing *Caprood v. State,* 338 S.C. 103, 110, 525 S.E.2d 514,

517 (2000)). "Courts must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992) (citing *Goodson v. U.S.*, 564 F.2d 1071 (4th Cir. 1977)).

I. Involuntary Plea

The essence of Applicant's claim is that his guilty plea was not voluntarily made. According to him, because Plea Counsel failed to request a competency hearing and ensure that Applicant was mentally sound, that rendered the plea involuntary. The Court disagrees.

In order for the Court to find that a guilty plea is voluntarily and knowingly entered into, the record must establish that Applicant had a full understanding of the consequences of his plea and the charges against him. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Dover v. State*, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. *Harris v. Leeke*, 282 S.C. 131, 318 S.E.2d 360 (1984). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, an applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. *Blackledge v. Allison*, 431 U.S. 63 (1977). Statements 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. *Crawford v. U.S.*, 519 F.2d 347 (4th Cir. 1975).

Due process prohibits the conviction of a person who is mentally incompetent. *Bishop v. U.S.*, 350 U.S. 961 (1956). This right cannot be waived by a guilty plea. *Pate v. Robinson*, 383 U.S. 375 (1966). The test of competency to enter a plea is the same as required to stand trial. *State v. Lambert*, 266 S.C. 574, 225 S.E.2d 340 (1976). The accused must have sufficient capability to

consult with his lawyer with a reasonable degree of rational understanding and have a rational and factual understanding of the proceedings against him. *Carnes v. State*, 275 S.C. 353, 271 S.E.2d 121 (1980). In making this assessment, counsel may reasonably rely on his own perceptions of his client. *Jeter v. State*, 308 S.C. 230, 417 S.E.2d 594 (1992). A PCR applicant must, however, show a reasonable probability that he would have been found incompetent in order to sustain his allegation that counsel was wrong and, therefore, ineffective. *Id.*

In this case, Applicant has not sustained his burden of proof. Plea Counsel offered credible testimony that, based on his interactions and conversations with Applicant over a period of approximately three years, he believed that Applicant was competent. Plea Counsel was aware of Applicant's mental health history and generally made it a practice to seek psychological evaluations for clients with whom he has difficulty communicating or who he knows to have a history of psychosis. Neither of those options applied to Applicant, as Plea Counsel never had trouble communicating with Applicant, and Applicant appeared to understand all aspects of his case. Moreover, Applicant failed to present any evidence whatsoever of any probability that he would have been deemed not competent if Plea Counsel had requested an evaluation.

Applicant has failed to provide any credible evidence that Plea Counsel was deficient in his representation. Applicant also failed to prove that he suffered prejudice as a result of any alleged deficiency. On the contrary, the evidence demonstrates that Applicant was competent at the time of his guilty plea, that he had sufficient ability to confer with Plea Counsel, and that he had a reasonable degree of rational understanding of the charges and proceedings. Therefore, this allegation must be denied and dismissed with prejudice.

B. Collateral Consequences

Applicant's only other allegation is that Plea Counsel failed to properly inform him of the

consequences of pleading guilty. Specifically, he contends that Plea Counsel gave him "erroneous advice on sentencing or collateral consequences" and advised Applicant to plead guilty even though he knew that Applicant did not understand the consequences of doing so. Although Applicant contends that these actions rendered his guilty plea involuntary, the Court disagrees.

Plea Counsel offered credible testimony that he met with Applicant on several occasions and discussed with him, at length, the elements of the crimes charged, the State's burden of proof, the possible sentence he could receive, the collateral consequences of pleading guilty, and Applicant's constitutional rights. This testimony is corroborated by Applicant's sworn testimony during the guilty plea (which, of course, contradicts the testimony given at the evidentiary hearing). During the guilty plea, Applicant affirmed that he understood the charges against him, the maximum possible punishment, the consequences of being convicted of a "violent," "most serious" offense, and the constitutional rights he waived by pleading guilty.

Plea Counsel also testified that he discussed with Applicant all of the State's evidence against him and opined that the State's case was strong. He, therefore, agreed with Applicant's decision to plead guilty. Similarly, during the guilty plea, Applicant told the court that Plea Counsel had done everything Applicant asked him to do, and that he was satisfied with the representation. Applicant also made a solemn admission of his guilt and affirmed that he was pleading guilty freely, knowingly and voluntarily, without coercion, threats or promises.

Without any evidence to the contrary, this Court finds that Plea Counsel was effective in his representation. Any potential deficiencies in his representation or misstatements by Plea Counsel were cured by Applicant's thorough colloquy with the plea court. *See, e.g., Wolfe v. State,* 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997). Further, Applicant has failed to provide evidence of any alleged deficiency on the part of Plea Counsel. Therefore, this allegation must be denied

and dismissed with prejudice.

CONCLUSION

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

IT IS, THEREFORE, ORDERED that the Application for Post-Conviction relief is DENIED and DISMISSED with prejudice.

IT IS FURTHER ORDERED that Applicant Jermaine Harris be REMANDED to the custody of the State of South Carolina.

AND IT IS SO ORDERED.

Jocelyn Newman
Presiding Judge

May 26, 2021
Columbia, South Carolina.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015CP4007522

JERMAINE HARRIS (SCDC #336851)	STATE OF SOUTH CAROLINA
PLAINTIFF(S)	DEFENDANT(S)

Submitted by: NEWMAN, J.	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

RICHLAND COUNTY
FILED
2021 MAY 26 PM 2:15

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Jocelyn Newman

Circuit Court Judge	2757 **Judge Code**	May 26, 2021 **Date**

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**
	CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.