

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Michael S. Holt, Circuit Court Judge

2018-CP-40-2680

Jaysen R. Hodge, #302270,

Appellant,

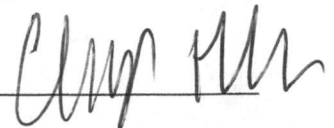
v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Jaysen R. Hodge, #302270, appeals the Order of Dismissal denying his Application for Post Conviction Relief filed October 14, 2021, issued by the Honorable Michael S. Holt, Presiding Judge, Fifth Judicial Circuit.



Cassity A. Brewer
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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 Jaysen R. Hodge, #302270,)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2018-CP-40-2680

ORDER OF DISMISSAL

FILED
 RICHLAND COUNTY
 2021 OCT -8 PM 3:55
 CLERK OF COURT
 S.C. C.P. & F.C.

This matter came before the Court by way of Jaysen R. Hodge’s (Applicant) action for post-conviction relief (PCR) commenced May 16, 2018. The State made its return and motion to dismiss the Application as untimely on March 20, 2020. On January 27, 2021, the Honorable D. Craig Brown filed an order denying the State’s motion to dismiss and equitably tolling the statute of limitations, thereby granting Applicant an evidentiary hearing on his allegations of ineffective assistance of counsel. The State filed its’ amended return on June 23, 2021. The Court convened an evidentiary hearing into the matter on July 12, 2021, at the Richland County Judicial Center in Columbia, South Carolina. Applicant was present at the hearing and represented by Cassity Ann Brewer, Esquire. Michael D. Davidson, Esquire, of the South Carolina Attorney General’s Office, appeared on behalf of the State.

Applicant testified on his own behalf at the evidentiary hearing. Applicant’s cousin, Jahari Crawford, also testified. The State presented testimony from Applicant’s plea counsel, Ronald Moak, Esquire. The Court had before it Applicant’s records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the Clerk of Court regarding the subject convictions, the pleadings, and the exhibits introduced at the evidentiary hearing.

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PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted at the December 2014 term of the Richland County Grand Jury for shoplifting – third offense (2014-GS-40-7604). Applicant was subsequently indicted in May 2015 for grand larceny (2015-GS-40-2289) and first-degree burglary (2015-GS-40-2282). Applicant was represented by Ronald Moak, Esquire. Assistant Solicitor Molly Flynn prosecuted the case.

On May 11, 2017, Applicant pleaded guilty as indicted before the Honorable Steven H. John. Pursuant to the State's recommendation, Judge John sentenced Applicant to imprisonment for concurrent terms of fifteen years for first-degree burglary, ten years for shoplifting, and five years for grand larceny, with credit for time served of 861 days. Applicant did not appeal his conviction or sentence.

Applicant commenced this PCR action on May 16, 2018. In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. "Inadequate representation"
 - a. "Discovery was never done on my behalf. No evidence or charges challenged. Told to sit and wait and eventually waited for more than 2 years instead of bail and independent investigation"
2. "Lack of due process"
 - a. "I was detained for 1 ½ years for shoplifting (until indictments for other unsolved cases could be obtained and connected to me) Served 971 days before plea and sentencing"
3. "Plea deal was a contract of adhesion"
 - a. "Advised to sign a plea deal for 15 years because exercising my right to trial would guarantee a 25 year-life sentence that would be pursued by the solicitor's office. Solicitor told family member that assisting addicts would be politically advantageous"

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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 and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Pursuant to section 17-27-80 of the South Carolina Code, this Court makes the following findings based upon all of the probative evidence presented.

Summation of Testimony Presented at the Evidentiary Hearing

Applicant testified he was represented by a Public Defender until January of 2017 when his cousin, Jahari Crawford, helped him retain Counsel. Applicant testified he reviewed the discovery for the shoplifting charge, but not for the burglary charge. Applicant testified he met with Counsel once when he originally retained him and approximately five or six months later at the courthouse. Applicant testified Counsel never gave him discovery and never reviewed discovery with Applicant. Applicant testified Counsel conveyed a plea offer of fifteen years, which was the same offer his prior public defender had relayed to him. Applicant testified he took the plea because it was the best offer he had and if he went to trial, he would be facing a possible life sentence. On cross-examination, Applicant testified he hired Counsel because he thought he would get a better plea deal with a private attorney than with a public defender, but no better deal was offered to Counsel.

Jahari Crawford testified on Applicant's behalf. Crawford testified he was Applicant's cousin and he was the person who reached out to Counsel to retain him on Applicant's behalf. Crawford testified he played football with Counsel at the Citadel. Crawford testified he wanted to retain Counsel because Counsel's relationships in the Solicitor's office, based on Counsel's prior

employment with the Solicitor's office. Crawford testified Counsel told him that the plea offer was fifteen years, which Counsel thought was excessive for the charge. Crawford testified Counsel informed him if Applicant decided to have a jury trial, Applicant would be facing twenty-five years to life. Crawford testified he met with Counsel several times and attended Applicant's plea hearing. Crawford testified he spoke with Deputy Solicitor Dan Johnson via telephone about Applicant's case. Crawford testified Counsel did not do any investigations or discovery and Counsel told Applicant to take the plea deal because it was Applicant's "best chance." On cross-examination, Crawford testified that Counsel told him he had a conversation with the solicitor on the case who relayed to him that Deputy Solicitor Dan Johnson was standing hard and fast and there would be no better deal than the fifteen years.

Counsel testified he was contacted to represent Applicant by Applicant's cousin, Jahari Crawford. Counsel testified he was specifically retained to negotiate a plea deal for Applicant. Counsel testified he informed Crawford he would take the case for five-hundred dollars and that Crawford could pay two hundred and fifty dollars up front and the remaining balance after the case concluded. Counsel testified he did not promise Crawford or Applicant that he could obtain a better plea deal. Counsel testified he told Crawford that he would try to fix the damage resulting from Crawford calling Deputy Solicitor Dan Johnson, which Counsel did not believe was a good choice.

Counsel testified he received discovery via email after he called the legal assistant at the Solicitor's office. Counsel testified he went over the discovery with Applicant and Applicant also informed Counsel he already went through the discovery with the Public Defenders as well. Counsel testified that Applicant did not give him any additional facts to investigate relevant to the case or regarding the issue of his guilt or innocence. Counsel testified he had a problem with the

plea because Counsel believed the deal was extremely excessive; however, Counsel explained that the Deputy Solicitor determined the deal would not change and therefore, the assistant solicitor couldnot change it. Counsel testified he made appointments to meet with the Deputy Solicitor, but the Deputy Solicitor never showed up.

Ineffective Assistance of Counsel

In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the 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 [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel’s performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP. Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (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). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than

through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109-10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; see also *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”). 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. “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” *United States v. Basham*, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he/she would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant’s right to

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contest the validity of such a plea is usually, but not invariably, foreclosed. *See Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) (“Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.”). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

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. *Strickland*, 466 U.S. at 696. 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. *Id.* at 696-97.

1. Inadequate Representation

Applicant alleges Counsel was ineffective and represented him inadequately because discovery was never done on his behalf and Counsel failed to do an independent investigation. However, this Court disagrees.

“[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation.” *Strickland*, 466 U.S. at 690-91. “In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular

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investigations unnecessary.” *Id.* at 691. “In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments.” *Id.* “The reasonableness of counsel’s actions may be determined or substantially influenced by the defendant’s own statements or actions.” *Id.* “Counsel’s actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant.” *Id.* “In particular, what investigation decisions are reasonable depends critically on such information.”

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. *Harris v. State*, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. *Id.* (citing *Davis v. State*, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); *Skeen v. State*, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.*, 377 S.C. at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

This Court finds that Applicant offered nothing that Counsel could have or should have investigated in furtherance of his defense. Additionally, this Court finds Applicant’s allegation that Counsel never reviewed discovery with him not credible. Counsel, on the other hand, demonstrated through his testimony a thorough command of the facts and circumstances of Applicant’s charges, and credibly testified to fully reviewing the evidence against Applicant in its

entirety, both independently and with Applicant. Furthermore, Applicant at no point offered any testimony to establish that *but for* Counsel's failure to investigate any particular thing, he would not have pled guilty but would have insisted upon going to trial. Applicant has produced no probative evidence towards meeting his burden as to either prong of *Hill*, and accordingly his demand for relief by way of this allegation is **DENIED**.

2. Lack of Due Process

Applicant alleges Counsel was ineffective and he was denied Due Process because he was detained for one and a half years for shoplifting before his plea and sentencing. However, this Court finds Applicant failed to present *any* testimony related to this issue at the evidentiary hearing. *Butler v. State* 286 S.C. 441, 334 S.E.2d 813 (1985) ("The burden of proof is on the applicant in post-conviction proceedings to prove the allegations in his application."). In other words, Applicant has produced no probative evidence towards meeting his burden as to either prong of *Hill*. Accordingly, his demand for relief by way of this allegation is **DENIED**.

3. Plea Deal was a Contract of Adhesion

Applicant alleges Counsel was ineffective, and his guilty plea was not voluntarily entered, because Counsel misadvised him to sign a plea deal for fifteen years. However, this court disagrees.

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he/she would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. *See Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption

of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.”). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel’s representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for trial counsel’s errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001); *Richardson v. State*, 310 S.C. 360, 363, 362 426 S.E.2d 795, 797 (1993). Given Applicant’s burden of proof and the analysis to be applied to this claim, Applicant’s claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

In the present case, Counsel and Applicant both testified that Counsel was specifically retained to negotiate a plea. Both testified they originally hoped to be able to negotiate a better plea deal than the one originally offered, which was fifteen years. This Court finds Applicant has failed to show how Counsel’s performance was deficient, as Counsel did exactly what was asked of him. Additionally, this Court finds Applicant failed to show how he was prejudiced by Counsel’s alleged deficiency, as Applicant chose to plead guilty rather than go to trial and risk facing twenty-five years to life. Furthermore, this Court finds Applicant did not plead guilty because he was misadvised by Counsel, but rather (1) because he was guilty, as he stated at the plea proceeding, and (2) because he wished to accept the State’s offer, which he knew as the best

deal he would get. Accordingly, Applicant has failed to present any evidence to meet his burden as to either prong of *Hill*, and his claim for relief by way of this allegation is **DENIED**.

CONCLUSION

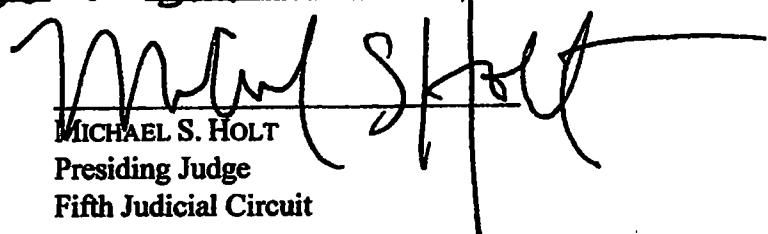
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel 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), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 30 day of SEPT, 2021.


MICHAEL S. HOLT
Presiding Judge
Fifth Judicial Circuit

DARLINGTON, South Carolina

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS)
FOR THE FIFTH JUDICIAL CIRCUIT)

Jaysen Hodge, #302270)

Case No.: 2018-CP-40-2680

Applicant,)

v.)

Certificate of Service

State of South Carolina)

Respondent,)
_____)

1. Undersigned is counsel of record for the Respondent in the above-captioned action.
2. Pursuant to the South Carolina Supreme Court's Order "RE: Operation of the Trial Courts During the Coronavirus Emergency" (Appellate Case No. 2020-000447), dated April 3, 2020, "a lawyer admitted to practice law in this state may serve a document on another lawyer admitted to practice law in this state using the lawyer's primary email address listed in the Attorney Information System (AIS)."
3. Undersigned has served a copy of the Order of Dismissal in the above-captioned matter on opposing counsel by emailing a copy to the email address as listed in the AIS:

Cassity A. Brewer, Esquire
cassity.brewer@yorkcountygov.com

DATED this 14th Day of October, 2021.



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