THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY

Court of Common Pleas

HONORABLE WILLIAM A. MCKINNON

2020-CP-42-02659

DOUGLAS WRIGHT, SCDC# 336546

APPELLANT,

vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

Douglas Wright appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable William A. McKinnon, Circuit Judge on September 17, 2021 an Order issued on November 24, 2021 and filed on December 6, 2021. The Appellant received notice of the judgment on December 7, 2021.

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STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
Douglas Wright, SCDC No. 336546	)	Case No. 2020-CP-42-02659
Applicant,	)	**ORDER OF DISMISSAL**
v.	)	
State of South Carolina	)	
Respondent.	)	

This matter comes before the Court by way of Applicant Douglas Wright's August 10, 2020 application for post-conviction relief. Respondent made its return on January 7, 2021, moving for a more definite statement and requesting an evidentiary hearing. An evidentiary hearing convened on September 17, 2021, at the Spartanburg County Courthouse in Spartanburg, South Carolina. Applicant was present at the hearing and represented by Attorney Rodney Richey. Assistant Attorney General William H. Ray, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the hearing. Applicant's plea counsel, Attorney James Cheek, also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, the Spartanburg County Clerk of Court's records, a copy of the original plea transcript, and the pleadings. The Court has reviewed the record and pleadings, observed the witnesses and heard their testimony, and finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. During its February 2019 term, the Spartanburg County Grand Jury indicted Applicant for possession of a firearm or

ammunition by person convicted of a violent crime (2019-GS-42-1336), first degree burglary (count one) and possession of a weapon during a violate crime (count two) (2019-GS-42-1337), petit larceny (2019-GS-42-1338), carjacking (count one) and possession of a weapon during a violent crime (count two) (2019-GS-42-1451), and first degree assault and battery (2019-GS-42-1452). Applicant was represented by James Cheek, Esquire. Assistant Solicitor Spenser H. Smith of the Seventh Circuit Solicitor's Office prosecuted the case. On September 9, 2019, Applicant appeared before the Honorable Grace G. Knie, circuit court judge, and pled guilty as indicted, with the exception of the first degree burglary charge, which he pled to the lesser included offense of second degree violent burglary. The only recommendation in the case was concurrent sentencing. Judge Knie sentenced Applicant to twenty years' imprisonment, suspended upon service of ten years, for carjacking and possession of a weapon during a violent crime, fifteen years, suspended upon ten years' service, for second degree burglary, ten years for petit larceny, ten years for assault and battery, and five years for the three remaining weapons possession charges, sentences running concurrently. Applicant did not pursue a direct appeal.

II. FACTUAL HISTORY

On September 11, 2018, the police received a call concerning a woman, Ms. Pace, was driving down the road and came across Applicant and his co-defendant, Jennifer Dillard, in the middle of the road, blocking the way. (Tr. 21-22). Pace slowed down and Applicant began yelling at her to stop and get out of the car. (Tr. 22). Applicant pulled out a gun and pointed it at Pace. Dillard screamed "you don't want to do that" and pulled out a gun. (Tr. 22). Pace put her car in reverse and began backing up. (Tr. 22).

A driver operating their car in the opposite lane witnessed this and called 911. (Tr. 22). The witness stated they saw the man fire two to three shots in the air and then both individuals stash

the pistols. (Tr. 22).

Another incident happened that night concerning the two co-defendants. (Tr. 22). Here, there was a home invasion of a weed dealer who allegedly owed Applicant drugs. (Tr. 22). Applicant and Dillard went to the house to "settle [the] score." (Tr. 22). Applicant and Dillard may have been let in under the guise of buying marijuana, but at some point it turned to pistols being drawn and Applicant and Dillard attempting to get money from the male occupant of the house. (Tr. 22-23).

A female and her children were in the house at the time. (Tr. 23). At this, they ran out of the house to the next door neighbor's. (Tr. 23). Applicant went after them with a pistol and knocked on the neighbor's house. (Tr. 23). Applicant claimed he was not trying to scare the children, but claimed he was not expecting them at the house at the time and wanted to apologize. (Tr. 23). Applicant was met in the foyer by Mr. Pierson, the victim. (Tr. 23). Applicant stated he wanted not apologize and did not want to scare them. (Tr. 23). Applicant was armed with a pistol. (Tr. 23).

The petit larceny charge stems from a man, Mr. Clary, that let them stay at his place. (Tr. 23). Clary made it back to his house and noticed some of his belongings were taken, including two handguns used in the case. (Tr. 23). Both co-defendants gave incriminating statements to police. (Tr. 24).

III. CURRENT APPLICATION

In his *pro se* PCR application, Applicant alleges he is detained unlawfully for the following reasons (excerpts verbatim):

1. "Ineffective assistance of counsel."
    a. "I dismiss[ed] my public defendant at a hearing, the Judge force[d] the attorney on me, I did not want the public defender's office to represent me"
    b. "[T]he [public defender's] office did no[t] investigat[e] [] my case, look at the charges stack[ed] on me."
    c. "[My] co-defendant lied about the case, my attorney never talk[ed] to her."

d. "After I tried to dismiss my attorney, they violated my constitutional rights, I was pressure[d] by my attorney and the public defend[er's] office."

At the evidentiary hearing Applicant's counsel stated that he was proceeding forward on the following allegations:

1. Ineffective assistance of counsel
   a. Failure to investigate
   b. Involuntary plea because Applicant was forced into entering the plea.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed 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 records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his/her 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 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.

Failure to Investigate

Applicant claims that his counsel was ineffective for failing to investigate his case. This allegation is without merit.

Applicant testified that he was represented by Attorney James Cheek. He had initially been represented by Attorney Paul Neely, who he had disagreements with. He stated that he was uninterested in proceeding forward with Mr. Neely, and would not have entered his plea had Mr. Neely continued to represent him. He acknowledged that he did enter his plea with Mr. Cheek as his counsel of record, and stated that counsel did the best that he could for him. He stated that he met Mr. Cheek many years prior to this case, and stated that he respects him and the work he does.

He stated that he initially did not want to enter a plea, and instead wanted to go to trial, but that he ultimately entered his plea to begin the process of pursuing post-conviction relief. He stated that it was his fifth time doing time, and he wanted to enter his guilty plea specifically so that he could pursue post-conviction relief. Confusingly, he also stated that his Mr. Neely had allowed the solicitor to bully him into entering his plea, and said that if he did not do so the solicitor would have thrown the book at him. He complained that his attorney did not do enough to investigate the solicitor's willingness to aggressively pursue the most serious charges in this case.

Counsel Cheek testified that he knew of the disagreements between Mr. Neely and Applicant, and believed that they were the result of incompatible personalities. He stated that he represented Applicant for purposes of entering his plea after the relationship with Mr. Neely had soured. He obtained the plea offer in this case, which had previously been extended through Mr. Neely, and which Applicant ultimately accepted.

Counsel stated that he received discovery and both him and Mr. Neely had reviewed it with Applicant. There was significant evidence against him, including witnesses who were willing to

testify. He stated that Applicant never expressed a desire to go to trial, despite knowing that he had the right to do so. Counsel also stated that Applicant never indicated he wanted anything investigated further prior to the plea hearing. He stated that Applicant's best option was to enter his guilty plea.

This Court finds that Applicant's allegations are without merit. As an initial matter, Applicant does not complain of the performance of Attorney Cheek, who was counsel of record at the guilty plea hearing. The record and testimony shows that both Cheek and Neely received and reviewed discovery with Applicant. The record shows that there was significant evidence against Applicant, and he was made aware of this fact by his attorneys. Applicant's claim that he wanted counsel to investigate the solicitor's strategy in handling the case is incoherent. The Court can discern no deficiency for failure to investigate or review discovery in this matter.

Furthermore, Applicant has not proven he was prejudiced by counsel's performance. He stated that he would not plead guilty if represented by Mr. Neely. The evidence shows that once Attorney Cheek came on to the case he was willing to enter his plea for a variety of reasons. Applicant has made no showing that but for counsel's failure to prepare or investigate he would have proceeded to trial. Therefore, the allegation must be dismissed with prejudice.

Involuntary Guilty Plea

Applicant alleges that his plea was made involuntarily because he was forced into taking the plea. This allegation is without merit.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of the plea and the charges against him or her. *Dover v. State*, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991); *see also Boykin v. Alabama*, 395 U.S. 238, 243 (1969) (Courts must make sure defendants have "a full understanding of what

the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought, and forestalls the spin-off of collateral proceedings that seek to probe murky memories."). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. *See Harris v. Leeke*, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

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).

The plea transcript shows that Applicant did not indicate that he had been threatened or coerced into taking his plea when he was prompted by the court. (Tr. 12, 13-16). He explicitly stated that he was entering his plea freely, knowingly, and voluntarily. (Tr. 21, 13-15). The court accepted the plea as being voluntarily made after a thorough colloquy where Applicant was advised of his constitutional rights as well the charges against him and the sentencing exposure.

Applicant testified that he was forced into taking the plea offer because he was not allowed to fire Mr. Neely as his lawyer, the State was going to throw the book at him at trial, and he would risk life in prison if he was found guilty at trial. He stated that he entered his plea to get it over with and to pursue post-conviction relief.

Counsel testified that he explained the plea offer to Applicant, its terms, and that it was final. He stated that Applicant never expressed a desire to go to trial. He stated that he did not do

anything for force Applicant into entering his guilty plea. He advised him to enter the plea after reviewing the evidence and the offer extended by the State.

This Court finds that Applicant's plea was knowingly and voluntarily entered. ~~The claim that the State was going to throw the book at Applicant is clearly not the case considering the fact that he entered his plea pursuant to a plea offer that included a lesser included offense and a recommendation for concurrent sentences.~~ All of this was made clear to applicant at the plea hearing. Applicant acknowledged the terms of the plea agreement and indicated his understanding of the consequences. He did so with the advice of counsel. There is nothing in the record to indicate that he did not understand what he was doing. Furthermore, there is nothing in the record to suggest that Applicant would have proceeded to trial but for counsel's performance in this regard. Therefore, this Court finds that the application must be denied and dismissed with prejudice.

V. 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 24 **day of** November **, 2021.**

WILLIAM A. MCKINNON
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina