STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
Grace Gilchrist Knie, Circuit Court Judge

2019-CP-46-01703

Maurice Robinson, # 248304,

Appellant,

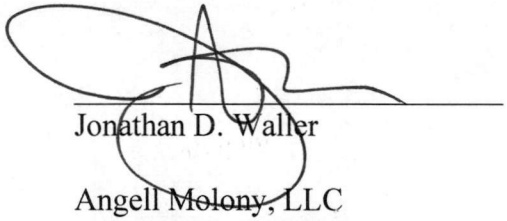
v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Maurice Robinson, # 248304, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed January 7, 2022, issued by the Honorable Grace Gilchrist Knie, Presiding Judge, Sixteenth Judicial Circuit.



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January 17, 2022

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FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2019CP4601703

Maurice L Robinson		South Carolina State Of	

PLAINTIFF(S) **DEFENDANT(S)**

Submitted by: The Court

Attorney for: ☐ Plaintiff ☐ Defendant
☐ 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: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **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:

ORDER OF DISMISSAL

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

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.

s/ Grace Gilchrist Knie — **Circuit Court Judge**

2760 — **Judge Code**

12/29/2021 — **Date**

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 2/17)

For Clerk of Court Office Use Only

This judgment was entered on **January 7, 2022**, and a copy mailed first class or placed in the appropriate attorney's box on **January 7, 2022**, to attorneys of record or to parties (when appearing pro se) as follows:

Jonathan D Waller 210 Newberry Street, NW Aiken, SC 29801

Michael Jacob Neubauer Rembert C. Dennis Bldg. 1000 Assembly St Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - 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.

STATE OF SOUTH CAROLINA COUNTY OF YORK	)	IN THE COURT OF COMMON PLEAS FOR THE SIXTEENTH JUDICIAL CIRCUIT
Maurice Robinson, #248304, Applicant,	)	Case No.: 2019-CP-46-1703
v.	)	**ORDER OF DISMISSAL**
State of South Carolina, Respondent.	)	

This matter came before the Court by way of Maurice Robinson's (Applicant) action for post-conviction relief (PCR) commenced May 15, 2019. The State made its return and motion for a more definite statement on. Applicant, through PCR Counsel, amended his application on December 2, 2021. The Court convened an evidentiary hearing into the matter on December 6, 2021, via Judge Knie's virtual courtroom on Cisco Webex Virtual Platform. Applicant was present at the hearing and represented by Jonathan D. Waller, 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 plea counsel, Devon R. Neilson, Esquire. ("Counsel") also testified. 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. The Court has reviewed the transcript of record from the underlying action, the applications, the return, and other pertinent documents. The Court has also taken into consideration all testimony presented at the Post-Conviction Relief hearing.

Upon review of the transcript of the guilty plea (July 11, 2018) for the criminal offenses of Habitual Traffic Offender and Possession with Intent to Distribute Marijuana 3rd Offense, the Application, the Return, and all other pertinent documents, the Court concludes that the Applicant

does not meet the required standard articulated in Strickland, Butler, and Cherry in which Applicant is required to prove by a preponderance of the evidence that counsel was deficient and that he was prejudiced by any deficiency. Therefore, the Applicant has failed to meet his burden of proof. Specifically, the Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the February 2018 term of the York County Grand Jury for possession with intent to distribute marijuana, third or subsequent offense ("PWID") (2018-GS-46-00950) and habitual traffic offender (2018-GS-46-00951).. Applicant was represented by Assistant Public Defender Devon Neilson. Assistant Solicitors Marina Bender Hamilton and Ryan Newkirk of the Sixteenth Circuit Solicitor's Office prosecuted the case.

On July 11, 2018, Applicant's trial commenced, but Applicant subsequently changed his plea to guilty after Judge Couch ruled on several pre-trial motions made by Applicant. Judge Couch sentenced Applicant to concurrent sentences of five years' imprisonment for habitual traffic offender and twelve years' imprisonment for PWID, provided that upon service of ten years the balance would be suspended with two years' probation.

Applicant filed a timely notice of appeal. On September 6, 2018, The South Carolina Court of Appeals dismissed the appeal due to appellant's failure to provide a sufficient explanation for a guilty plea appeal as required by Rule 203(d)(1)(B)(iv) of the South Carolina Court Rules (SCACR). The remittitur was issued on September 25, 2018

Current Application

Applicant timely commenced this PCR action on May 15, 2019. Applicant alleges:

1. Ineffective Assistance of Plea Counsel
    a. Failure to investigate facts of the case

Applicant lists the following as his requested relief: "Vacate sentence, reverse conviction and remand for a new trial."

On December 2, 2021, Applicant through counsel amended his PCR application, alleging:

1. Ineffective assistance of Counsel for:
    a. failing to advise applicant that his offense was not eligible for parole; and
    b. failing to object to, or appeal, the non-conforming sentence issued by judge Couch.

At the evidentiary hearing, Applicant proceeded forward on the allegations as set forth in his original application and the December 2, 2021, amendment.

II. 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 section 17-27-80 of the South Carolina Code, this Court makes the following findings based upon all of the probative evidence presented.

A. 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 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.

1. Failure to Investigate Facts of the Case

Applicant broadly alleges Counsel was ineffective in failing to adequately investigate his case. "[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 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)).

Applicant offers nothing that Counsel could have or should have investigated in furtherance of his defense. 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. 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. Failure failing to advise applicant that his offense was not eligible for parole

Applicant alleges Counsel was ineffective in failing to advise him that his offense was not eligible for parole. Normally, parole eligibility is a collateral consequence of sentencing of which a defendant need not be specifically advised before entering a guilty plea. *Randall v. State*, 356 S.C. 639, 591 S.E.2d 608 (2004). If a defendant is actively misinformed about parole eligibility he must prove he relied on this information in order to receive post-conviction relief. *Griffin v. Martin*, 278 S.C. 620, 300 S.E.2d 482 (1983); *see Hinson v. State*, 297 S.C. 456, 377 S.E.2d 338 (1989) (relief granted on this ground); *Brown v. State*, 306 S.C. 381, 412 S.E.2d 399 (1991) (plea vacated where *trial judge* misinformed defendant about parole eligibility) *modified by Hunter v.*

State, 316 S.C. 105, 447 S.E.2d 203 (1994), *abrogated on other grounds by Simpson v. State*, 329 S.C. 43, 495 S.E.2d 429 (1998) (erroneous parole advice from the bench *could*, on certain facts, mislead a defendant, but relief is not required without something more).

Applicant testified Counsel did not inform him of parole eligibility consequences. In contrast, Counsel testified he did inform Applicant of the parole eligibility consequences, and that the information he gave Applicant was accurate. This Court finds Counsel's testimony to be credible and Applicant's testimony not credible. This Court finds Counsel accurately advised Applicant he was not eligible for parole and therefore, Counsel was not deficient. This Court further finds Applicant presents no evidence to show any relation between Counsel's advice to Applicant that by pleading guilty, he was not eligible for parole, and Applicant's decision whether to plead guilty. 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.**

3. Failure to object to, or appeal, the non-conforming sentence issued by judge Couch

Applicant alleges Counsel was ineffective, Counsel failed to object to, or appeal, the non-conforming sentence issued by judge Couch. However, Applicant has failed to show any prejudice resulting from Counsel's alleged deficiency as the plea was "straight up" and the Judge could have sentenced Applicant up to twenty-five years.

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

III. 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 29th **day of** December **, 2021.**

GRACE GILCHRIST KNIE
Presiding Judge
Sixteenth Judicial Circuit

Spartanburg, South Carolina