THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Post Conviction Relief

Jennifer B. McCoy, Circuit Court Judge

Lower Court Case No.: 2018-CP-10-00602

Te'Quan Perry #361380,...................................... Petitioner

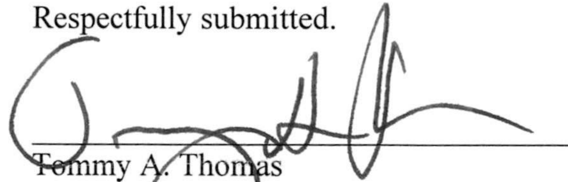
vs.

State of South Carolina, ...Respondent.

NOTICE OF APPEAL

The Appellant, Te'Quan Perry #361380, appeals the Order of Dismissal, signed by The Honorable Jennifer B. McCoy on February 9, 2022 and filed on February 9, 2022. Appellant received written notice of entry of this order on February 14, 2022.

Respectfully submitted.



Tommy A. Thomas
Attorney for Petitioner
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

February 15, 2022

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Te'Quan Perry, SCDC #361380, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2018-CP-10-00602 **ORDER OF DISMISSAL**

FILED
2022 FEB -9 PM 4:45
JULIE J. ARMSTRONG
CLERK OF COURT

This matter comes before this Court by way of post-conviction relief (PCR) action commenced by Applicant Te'Quan Perry on February 7, 2018. The State requested an evidentiary hearing through its return filed on April 23, 2018. An evidentiary hearing into the matter convened before the undersigned on December 9, 2021, at the Charleston County Courthouse. Applicant was present and represented by Tommy A. Thomas, Esquire. Assistant Attorney General Samantha J. Weidauer represented the State. Applicant testified on his own behalf at the hearing. Plea counsel, Tamara Van Pala Skrobacki, Esquire, also testified virtually via Webex.

In addition to the pleadings in this action, this Court had before it a copy of the Charleston County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the trial transcript and subsequent plea transcript.

After hearing the testimony at the PCR hearing and a full review of the record, this Court finds Applicant's allegations regarding ineffective assistance of counsel and involuntary guilty plea are without merit. Therefore, for the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

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I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was indicted at the February 2016 term of the Charleston County Grand Jury for murder (2016-GS-10-01058), and at the April 2017 term of the Charleston County Grand Jury for criminal conspiracy (2017-GS-10-01410). On June 12-15, 2017, Applicant proceeded to a jury trial before the Honorable R. Roger Couch. Tamara Van Pala Skrobacki (Counsel) and Theresa Norris, Esquire, represented Applicant. David Osborne of the Ninth Circuit Solicitor's Office prosecuted the case. After hearing testimony from several State's witnesses, Applicant elected to plead guilty. On June 16, 2017, Applicant pleaded guilty before Judge Couch to a negotiated plea for the lesser-included offense of voluntary manslaughter and to criminal conspiracy pursuant to *North Carolina v. Alford*[1].

In accordance with the parties' negotiated sentence, Judge Couch sentenced Applicant to concurrent sentences of thirty years' imprisonment for voluntary manslaughter and five years' imprisonment for criminal conspiracy. Applicant did not appeal his convictions or sentences.

II. Facts Giving Rise to the Plea

On March 23, 2015, Applicant shot and killed Brandon Washington (Victim) in the "Back to Green" neighborhood in Charleston. (Trial Tr. 425-432). As captured on one of the City of Charleston's video surveillance cameras, Victim was dropped off in the Back to Green neighborhood in front of his cousin, Demarco Jones' (Duke), house. (Trial Tr. 427, 612). Shortly after Victim's arrival to the area, Applicant is seen on surveillance footage wearing a tan jacket. (Trial Tr. 428). The surveillance footage shows Applicant and Victim speaking with each other from a distance. (Trial Tr. 428). As Victim begins walking towards Applicant, Applicant is seen coming out of an alley with multiple other persons emerging from the alley behind him. (Trial

[1] 400 U.S. 25 (1970).

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Tr. 428). The footage shows Victim walk over to the group of individuals, shows Applicant and Victim walk away for a period of time, and then shows Applicant and Victim walk back to the crowd. (Trial Tr. 428-429).

Following Applicant and Victim's return to the group of individuals, co-defendant, Devin Middleton, is seen initiating an attack on Victim by "swinging" at him. (Trial Tr. 429). As seen on the surveillance footage, Victim is further attacked by multiple other individuals, including: Davontay Bryant (Smash), Denardo Felder (Nardo) and Duke. (Trial Tr. 429). Victim is then seen picking up a piece of wood and throwing it down again before he is surrounded by the individuals and they all disappear from the camera's view into an alley. (Trial Tr. 430). After the camera pans back to the entry of the alleyway, everyone in view is running from the scene[2]. (Trial Tr. 430). The video then shows Applicant walk out of the alley with his hands in his pockets. (Trial Tr. 430). Before pleading guilty, testimony was elicited from Witness, Hugo Paredes, who testified he was driving near the Back to Green neighborhood when he stopped at a red light and heard a gunshot. (Trial Tr. 455). Mr. Paredes testified he looked around when he heard the gunshot and saw an individual wearing a khaki jacket standing between two houses "pointing down". (Trial Tr. 448-459). Mr. Paredes testified that when the light he was stopped at turned green, he drove until seeing a police patrol car, which he stopped at to inform about the gunshots he had heard. (Trial Tr. 460). When asked if Paredes saw anyone else in the alleyway, he testified he did not see anyone else standing with the man in khaki jacket, nor did he see any other individuals fleeing the area. (Trial Tr. 462, 472-473). Paredes was shown a still photo from the surveillance camera footage and identified the khaki jacket shown in that photo as the same color as the jacket worn by the individual he saw in the alleyway. (Trial Tr. 471-472).

[2] The City of Charleston cameras are in fixed locations. (Trial Tr. 616). The surveillance cameras rotate every 60 seconds. (Trial Tr. 616).

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Thereafter, the State called multiple other witnesses including: responding officers, Jason Shepard and Jamal Medlin, and Jessica Sanford, a data integration and analysis manager employed with the City of Charleston Police Department to oversee the camera staff in charge of the aforementioned surveillance cameras. Additionally, the defense made multiple motions to suppress evidence including: a motion to suppress the search warrant, a motion to suppress an identification made in the case, a motion to suppress the surveillance video footage and still photos taken from that footage, a motion to suppress jail calls made by Applicant, and a motion to suppress Facebook records. The Court denied all above-mentioned motions made by the defense.

Before the State had opportunity to call all of their witnesses and rest the State's case, Applicant decided to plead guilty. At the guilty plea hearing, the Court stated: "I think I have heard a good bit of facts unless there is something I haven't heard". (Plea Tr. 23-24). In lieu of a reading of the State's factual summation, the State agreed with the Court that there was "more than enough on the record". (Plea Tr. 24). Importantly, this Court notes Applicant made the decision to plead guilty after multiple days of testimony from State's witnesses.

III. Issues Before This Court

In his original application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on:

1. Ineffective assistance of counsel
    a. "Counsel did not file an appeal after being asked by me."
2. Involuntary guilty plea
    a. "Counsel forced me into taking a plea without any evidence of guilt. Counsel did didn't have a defense for trial reason for counsel [sic] wanting me to plea."

To the extent the allegations set forth in Applicant's original application can be construed as separate grounds for relief from the grounds stated at the PCR hearing, the Court finds those

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claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice. S.C. Code Ann. § 17-27-90.

IV. Testimony Presented at Evidentiary Hearing

Plea Counsel Tamara Van Pala Skrobacki's Testimony

At the evidentiary hearing, Counsel testified this case involved Applicant and two co-defendants. Counsel credibly testified she met with Appliciant often in preparation for his trial, went through discovery with Applicant, and discussed Applicant's rights with him. Counsel testified that the State's theory of the case was that Applicant was the gunman and Applicant and his co-defendants, Devin Middleton and Davontay Bryant[3], had conspired to murder the Victim. Counsel testified the main evidence in this case involved jail phone calls and Facebook records. Counsel also testifed there was video surveillance in this case. Counsel testified that part of their defense was that the camera panned away from the scene and therefore, there was no video evidence that Applicant was the shooter.

Counsel stated she argued a number of pre-trial motions including a motion to sever and motion to exclude. Counsel noted the defense was not successful on any of their pre-trial motions. Counsel additionally testified she was not aware of any plea offers until the last day of trial. When asked whether she had knowledge of a 15-18 year plea offer made prior to trial, Counsel testified she did not. When asked whether there were any concerns about Applicant's competency – specifically, whether Applicant understood what was going on – Counsel testified she had no concerns regarding Applicant's competency and believed Applicant was very smart.

[3] At the outset of the trial, the State requested a continuance in its case against co-defendant Davontay Bryant. (Trial Tr. 3). The State informed the Court they had been unable to secure a crucial witness in their case against co-defendant. (Trial Tr. 3). They further noted the witness's presence did not affect the prosecution's ability to move forward with their cases against Applicant and co-defendant Middleton. After argument, the Court granted the State's request for a continuance for its case against co-defendant Bryant. (Trial Tr. 28).

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Counsel testified she was fully prepared to proceed to trial when Applicant decided to plead guilty and had actually tried the case for three days prior to Applicant's decision to plead. Counsel further testified she did not pressure Applicant to plead guilty.

Applicant's Testimony

At the evidentiary hearing, Applicant testified he only went to school until ninth grade and had trouble reading and writing. When asked if he was ever enrolled in special classes as a result, Applicant testified he was not. Applicant testified Counsel did not come to see him at all, that he never saw witness statements from discovery, but conceeded he did speak with Counsel regarding the video evidence the State intended to present against him. Applicant maintained at the PCR hearing it was not him in the surveillance footage.

Regarding the trial, Applicant claims he did not understand what was going on during pre-trial motions. He testified he did not have any knowledge regarding Facebook records as he was incarcerated at the time of the posts and did not see the subject Facebook pages prior to becoming incarcerated. Applicant further testifed he did not think Counsel understood everything that was going on during his trial.

Regarding his guilty plea, during cross-examination by the State, Applicant testified he understood at the time of the plea he would be found guilty, but he wanted to now prove his innocence through this PCR hearing. When asked why this Court should believe him regarding the truthfulness of his statements at the evidentiary hearing, Applicant testified he did not want to plead guilty during his guilty plea. However, Applicant conceeded he did feel like pleading guilty was his best option at the time.

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V. Standard of Review

An applicant may seek PCR upon the following types of allegations:

> 1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
>
> 2. That the court was without jurisdiction to impose sentence;
>
> 3. That the sentence exceeds the maximum authorized by law;
>
> 4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
>
> 5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
>
> 6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland*

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to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. *Strickland v. Washington*, 466 U.S. 668 at 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, *Hill v. Lockhart*, 474 U.S. 52 (1985), extended the two-part *Strickland* test to challenge guilty pleas based on ineffective assistance of counsel. *See Padilla v. Kentucky*, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). The analysis of counsel's performance under the first prong of *Strickland* remains unchanged—the applicant must show that counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. *Hill*, 474 U.S. at 58–59; *accord Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000).

An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the competence demanded of attorneys in criminal cases." *Hill*, 474 U.S. at 56. The second, or "prejudice" prong, however,

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"focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." *Id.* at 58–59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." *Id.* at 59.

This inquiry "focuses on a defendant's decisionmaking" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. *Lee v. United States*, 582 U.S. ___, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. *Padilla*, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—*not* whether counsel would have still advised him or her to plead guilty. *Turner v. State*, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

VI. Findings of Fact & Conclusions of Law

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsels, as well as the record in this action incorporated by way of the State's return, this Court proceeds to the claims raised at the evidentiary and finds each to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

The issue before this Court is whether Applicant received ineffective assistance of counsel, rendering his guilty plea involuntary and unintelligently entered. This Court disagrees,

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and finds the combined record from the plea hearing and the evidentiary hearing establishes Applicant freely, knowingly, and voluntarily pleaded guilty.

Involuntary Guilty Plea

Applicant contends his plea was involuntary because he felt forced to take the plea, because did not understand what was going on during his trial, and because he did not want to plead guilty at the plea hearing. This Court disagrees, and finds Applicant knew the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty pursuant to the requirements of *Boykin* and *Pittman*. The plea transcript reflects Applicant entered his plea knowingly and voluntarily, engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the court's questions.

"[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced." *Reed v. Becka*, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). Accordingly, because a criminal defendant waives several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Pittman v. State*, 337 S.C. 597, 524 S.E.2d 623 (1999). To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. *Brady v. United States*, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant's choice. *Id.* at 755; *see also United States v. Smith*, 440 F.2d 521, 528–529 (7th Cir.) (Stevens, J., dissenting) (explaining that voluntariness relates to the trustworthiness of the admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

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Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. *Boykin*, 395 U.S. at 243. Additionally, the defendant "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). The defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993); *See also Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997) (guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge). To ensure the defendant understands the consequences of his guilty plea, the plea judge "usually questions the defendant about the facts surrounding the crime and punishment that could be imposed." *Dover v. State*, 304 S.C. 433, 434–35, 405 S.E.2d 391, 392 (1991). However, the plea judge "does not have to direct the defendant's attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea." *Carter v. State*, 329 S.C. 355, 362, 495 S.E.2d 773, 776 (1998).

The test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). It is "well established that a guilty plea is not rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment." *United States v. Cox*, 464 F.2d 937,

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942 (6th Cir. 1972) (*citing Brady*, 397 U.S. 742). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, *Brady*, 397 U.S. at 750-753, or by increasing the risks of punishment on those who do not. *North Carolina v. Alford*, 400 U.S. 25, 37 (1970).

Nonetheless, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual . . . , a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977); *see also Jamison v. State*, 410 S.C. 456, 469–71, 765 S.E.2d 123, 129–30 (2014) (observing that "guilty plea[s] must be treated as final in the vast majority of cases" and instructing that caution must be exercised so as not to "undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea"). Indeed, 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." *Dalton*, 376 S.C. at 137–38, 654 S.E.2d at 874 (internal citations and quotation marks omitted); *cf. Blackledge*, 431 U.S. at 73–74 (pointing out that representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a "formidable barrier in any subsequent collateral proceedings").

The voluntariness of a guilty plea, however, "is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). An applicant who enters a plea on the advice of counsel may "only attack voluntary, knowing and intelligent character of the

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plea by showing that plea counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the [applicant] would not have pled guilty, but would have insisted on going to trial." *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. *Wolfe*, 326 S.C. at 165, 485 S.E.2d at 370; *cf. Rayford v. State*, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that, where the transcript of the guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant's claim his lawyer misadvised him).

Surmounting *Strickland's* high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." *Lee*, 582 U.S. ___, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); *cf. Hill*, 474 U.S. at 58 ("[R]equiring a 'prejudice' showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.' "). Reviewing "[c]ourts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies." *Lee*, 582 U.S. ___, 137 S. Ct. at 1967. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences." *Id.* Thus, in determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the guilty plea and the evidence presented at the PCR hearing. *Harres*, 282 S.C. at 134, 318 S.E.2d

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at 361.

At the plea hearing, Counsel advised the plea court she had had adequate opportunity to fully discuss the charges with Applicant, Counsel was satisfied Applicant had understood their discussions, Applicant had been able to fully assist in his defense, and it was Applicant's decision to accept the negotiated plea. (Plea Tr. 11-12). Judge Couch explained to Applicant the constitutional rights he waived by pleading guilty, including the rights to: remain silent, challenge the State's evidence, and present a defense. (Plea Tr. 16-20). Applicant informed the court he understood both the original charges and the lesser-included offenses was pleading to and affirmed for the court Counsel had explained the charges to him (Plea Tr. 4). Applicant further indicated he was satisfied with the services provided to him by Counsel. (Plea Tr. 6-7).

Judge Couch informed Applicant that the offense is classified as violent and most serious, which could be used for enhancement purposes were Applicant to commit similarly classified crimes. (Plea Tr. 4-5). Applicant affirmed he understood and wished to proceed forward. (Plea Tr. 10). Applicant advised the court he had not been threatened, pressured, intimidated, or promised anything in exchange for his guilty plea. (Plea Tr. 9, 15-16). When questioned whether he had been truthful with the court in his answering of the Court's question, Applicant affirmed he had. (Plea Tr. 20).

The plea transcript reflects Applicant understood the proceedings, interacted intelligently with the plea court, and entered his guilty plea knowingly and voluntarily. Applicant has failed to present any valid reason why he should be able to depart from the above statements made during his guilty plea. *See Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975), *overruled on other grounds by United States v. Whitley*, 759 F.2d 327 (4th Cir. 1985) (finding that the accuracy and truth of an accused's statements at a guilty plea proceeding are "conclusively"

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established unless he makes some reasonable allegation why this should not be so).

Additionally, Counsel credibly testified at the evidentiary hearing that she met often with Applicant in preparation for his trial, discussed discovery, and discussed Applicant's constitutional rights with him. Counsel testified she had no concerns regarding Applicant's competency. Counsel further testified it was Applicant's decision to plead guilty – notably, after she had already tried the case for three days prior to him pleading guilty.

Based on the foregoing, the record contradicts Applicant's assertion he was under a misapprehension of what was happening and that his plea was involuntary as a result of ineffective assistance of counsel. Thus, based on the evidence presented at the PCR hearing and the record of the plea proceeding, this Court finds Applicant's plea was freely, knowingly, and voluntarily entered into. Accordingly, Applicant's request for relief by way of this allegation is **DENIED.**

VII. All Other Allegations

As to any and all allegations raised in the application or at the hearing in this matter and not specifically addressed in this order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds those claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice. S.C. Code Ann. § 17-27-90.

VIII. Conclusion

Based on the evidence presented at the PCR hearing and the record of the plea proceeding, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's

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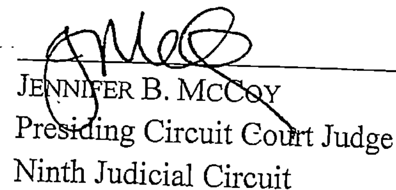
representation. This Court finds Applicant freely, knowingly, and voluntarily pleaded guilty and further failed to present any justification as to why the statements he made during the guilty plea hearing should not be considered conclusive. Therefore, based on the foregoing, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). 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 appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 9 day of Feb., 2022.



JENNIFER B. MCCOY
Presiding Circuit Court Judge
Ninth Judicial Circuit

Charleston, South Carolina

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Te'Quan Perry, #361380

Applicant,

v.

State of South Carolina

Respondent,

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2018-CP-10-00602

Certificate of Service

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:

Tommy A. Thomas, Esquire
thomaslaw@mc.com

DATED this 14th Day of February, 2022.

Samantha J. Weidauer
Assistant Attorney General

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
sammieweidauer@scag.gov