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**Apr 12 2022**

**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Honorable D. Craig Brown, Presiding Judge

Case #: 2017-CP-40-6718

Christopher Keitt, #368990, ..... Appellant,

v.

State of South Carolina, ..... Respondent.

**NOTICE OF INTENT TO APPEAL**

Christopher Keitt hereby appeals the Order of the Honorable D. Craig Brown dated February 22, 2022, filed March 8, 2022, and served on Counsel via U.S. mail on March 14, 2022. The Order denies Appellant’s Petition for Post -Conviction Relief.

April 12, 2022

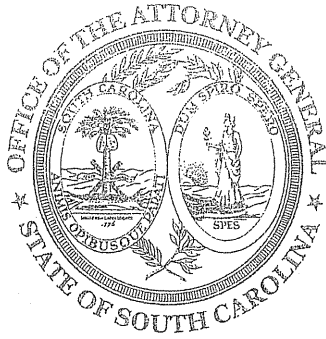


S. Harrison Saunders, VI  
Law Office of S. Harrison Saunders, VI, LLC  
3104 Devine St.  
Columbia, South Carolina 29205  
(803) 779-6333 (o)  
(803) 724-2601 (f)

Attorney for Appellant

Other Counsel of Record:

Assistant Attorney General D. Russell Barlow, II  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211-1549



ALAN WILSON  
ATTORNEY GENERAL

March 14, 2022

S. Harrison Saunders, VI, Esquire  
The Law Office of S. Harrison Saunders, VI, LLC  
3104 Devine Street  
Columbia, SC 29205

**Re: Christopher Keitt, #368900 v. State of South Carolina**  
**2017-CP-40-6718**

Dear Mr. Saunders:

Enclosed for service is a copy of the filed Order of Dismissal in the above-captioned post-conviction relief case, signed by the Honorable D. Craig Brown. Please let me know if I can be of further assistance regarding this case.

Sincerely,

D. Russell Barlow, II  
Assistant Attorney General

DRB/jj  
Enclosed for Service

STATE OF SOUTH CAROLINA )  
 COUNTY OF RICHLAND )  
 )  
 Christopher Keitt, #368990 )  
 )  
 Applicant )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FOR THE FIFTH JUDICIAL CIRCUIT

2017-CP-40-6718

**ORDER OF DISMISSAL**

RICHLAND COUNTY  
 FILED  
 2022 MAR -8 AM 9:45  
 CLERK OF COURT  
 C.C.P., O.S., & F.C.

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Applicant, Christopher Keitt on November 1, 2017. Respondent made its Return, Motion for a More Definite Statement, and Partial Motion to Dismiss on June 22, 2018. An evidentiary hearing into the matter was convened on January 25, 2022, via Cisco WebEx Virtual Platform before the undersigned. Applicant was present at the hearing and represented by H. Harrison Saunders, Esquire. Michael D. Davidson, Esquire, of the South Carolina Attorney General’s Office represented Respondent. At the hearing, Applicant testified on his own behalf. Respondent presented testimony from Rebecca S. Williams and Tracy E. Pinnock, Esquires. Following a thorough review of the record in its entirety, and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to meet his requisite burden of proof, denies relief, and dismisses this application with prejudice.

**PROCEDURAL HISTORY**

The records before this Court establish Applicant (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In October 2015, the Richland County Grand Jury indicted Applicant for

attempted murder (2015-GS-40-4605), first-degree burglary (2015-GS-40-4606), unlawful carrying of a pistol (2015-GS-40-4607), possession of a weapon during violent crime (2015-GS-40-4608), discharging of a firearm into a dwelling (2015-GS-40-4609), grand larceny (2015-GS-40-4610) and armed robbery (2015-GS-40-4611). Rebecca S. Williams and Tracy E. Pinnock, Esquires, represented Applicant. Assistant Solicitor Meghan Walker, Esquire prosecuted the case. On July 19, 2016, Applicant pleaded guilty as indicted to all charges before the Honorable R. Knox McMahan. Pursuant to a negotiated sentence between the State and the Applicant, Judge McMahan sentenced Applicant to imprisonment for concurrent terms of thirty years each for armed robbery and attempted murder, fifteen years for first degree burglary, ten years for grand larceny, five years each for possession of a weapon and discharging a firearm into a dwelling and one year for unlawful carrying of a pistol.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals dismissed Applicant's appeal for failure to provide a sufficient guilty plea explanation, as required by Rule 203(d)(1)(B)(iv), SCACR. The remittitur was returned to the circuit court on August 22, 2017.

#### ISSUES RAISED

Applicant timely commenced this post-conviction relief action on November 1, 2017. In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Upon information and belief, Ineffective Assistance of Counsel"
2. "Upon information and belief, Applicant felt pressured and coerced into pleading guilty."

As relief, Applicant seeks "vacating of the conviction and sentence and a new trial." Applicant, through previously appointed PCR counsel, Cassity A. Brewer, Esquire, filed an amended application on August 11, 2020, alleging:

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1. Ineffective Assistance of Counsel as to Rebecca Williams, Esquire:
  - i) Failed to convey plea offers to Applicant.
  - ii) Failed to provide Applicant with discovery in his case and subsequently to review that discovery with Applicant.
2. Ineffective Assistance of Counsel as to Tracy Pinnock Esquire:
  - i) Pressured Applicant to plead guilty after two days into his trial

At the evidentiary hearing, PCR counsel for Applicant proceeded with the allegations as pleaded in his amended application.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has reviewed the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court further had the opportunity to observe the witnesses at the evidentiary hearing and evaluate their credibility, and the Court has weighed their testimony accordingly in its discussion below. This Court finds the combined record of the trial transcript and the testimony and evidence presented at the evidentiary hearing establishes Applicant received effective assistance of counsel. Accordingly, this Court denies relief and dismisses this application with prejudice. Set forth below are the relevant findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code.

#### **Ineffective Assistance of Trial Counsel**

Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; *Strickland v. Washington*, 466 U.S. 668 (1984); *Lomax v. State*, 379 S.C. 93, 665 S.E.2d 164 (2008). Applicant has the burden of proving the allegations in his PCR action, and when alleging counsel was constitutionally ineffective, he

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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*, 466 U.S. at 686.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*, 466 U.S. 668. First, Applicant must prove counsel’s performance was deficient. *Id.*; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). 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 v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). “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). 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.” *Id.* 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. 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. *Strickland*, 466 U.S. 668.

Moreover, *Strickland* does not require a finding of ineffectiveness merely for deviation from a rigid rule of representation. Rather, *Strickland* requires an applicant to prove “counsel made

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errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” *Id.* at 697. The function of the PCR court is to determine if “in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance” required of a criminal defense attorney.” *Id.* at 690. Although courts may not indulge “post hoc rationalization” for counsel’s decision-making that contradicts the available evidence of counsel’s actions, *Wiggins v. Smith*, 539 U.S. 510, 526-527 (2003), neither may they insist counsel confirm every aspect of the strategic basis for actions. There is a “strong presumption” counsel’s attention to certain issues to the exclusion of others reflects tactics rather than “sheer neglect.” *Yarborough v. Gentry*, 540 U. S. 1, 8 (2003).

With respect to prejudice, an applicant must demonstrate “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. It is not enough “to show that the errors had some conceivable effect on the outcome of the proceeding.” *Id.* at 693. Counsel’s errors must be “so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.” *Id.* at 687. *Harrington v. Richter*, 562 U.S. 86 (2011). “Surmounting *Strickland*’s high bar is never an easy task.” *Padilla v. Kentucky*, 559 U.S. 356, 371 (2010). An ineffective assistance of counsel claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so the *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversarial process the right to counsel is meant to serve. *Strickland*, 466 U.S. at 689–690. Even under *de novo* review, the standard for judging counsel’s representation is a most deferential one. Unlike a later reviewing court, the attorney observed the relevant proceedings, knew of materials outside the record, and interacted with the client, opposing counsel, and the

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judge. It is “all too tempting” to “second-guess counsel’s assistance after conviction or adverse sentence.” *Id.* at 689; *see also Bell v. Cone*, 535 U. S. 685, 702 (2002); *Lockhart v. Fretwell*, 506 U. S. 364, 372 (1993). The question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” not whether it deviated from best practices or most common custom. *Strickland*, 466 U.S at 690.

In assessing prejudice under *Strickland*, the question is not whether a court can be certain counsel’s performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. *Wong v. Belmontes*, 558 U.S. 15 (2009); *Strickland*, 466 U.S. at 693. Instead, *Strickland* asks whether it is “reasonably likely” the result would have been different. *Id.* at 696. 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.” *Id.* at 693, 697. The likelihood of a different result must be substantial, not just conceivable. *Id.* at 693.

“In determining whether the applicant has proven prejudice, the PCR court should consider the specific impact counsel’s error had on the outcome of the trial.” *Smalls v. State*, 422 S.C. 174, 188, 810 S.E.2d 836, 843 (2018) (citing *Strickland*, 466 U.S. at 695-96 (explaining the court must analyze how individual errors of counsel affect the important factual findings in a particular case)).

**1. Ineffective Assistance of Counsel as to Rebecca Williams, Esquire, where Counsel Williams (i) Failed to convey plea offers to Applicant and (ii) Failed to provide Applicant with discovery in his case and subsequently to review that discovery with Applicant.**

Applicant alleges Counsel Williams was ineffective for failing to convey plea offers to Applicant and for failing to provide Applicant with discovery and review the discovery with him. However, this Court finds Applicant has failed to meet his burden of proving he is entitled to post-conviction relief on both allegations of ineffective assistance of counsel.

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i. *Failed to convey plea offers to Applicant*

Applicant alleges Counsel Williams was ineffective for failing to convey plea offers to him. However, this Court disagrees. “Defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused.” *Missouri v. Frye*, 566 U.S. 134, 145 (2012). When alleging plea counsel was ineffective in his or her handling of a plea offer, an applicant “must demonstrate a reasonable probability that: (1) he ‘would have accepted the earlier plea offer had [he] been afforded effective assistance of counsel;’ (2) ‘the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it;’ and (3) ‘the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time.’” *Collins v. State*, 422 S.C. 250, 262, 810 S.E.2d 871, 877 (2018) (citing *Frye*, 566 U.S. at 147); see *Lafler v. Cooper*, 566 U.S. 156, 164 (2012) (stating “a defendant must show that but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court (i.e., that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer’s terms would have been less severe than under the judgment and sentence that in fact were imposed”). An applicant must establish not just that a favorable plea offer was not communicated, but also that “the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it.” *Id.*

At the evidentiary hearing, Applicant failed to identify what plea offers he alleges Counsel Williams failed to convey to him. Counsel Williams on the other hand testified the solicitor offered to let Applicant plead straight up in front of the judge of his choosing. Then in May, the solicitor offered a plea offer of a thirty-year cap or a negotiated twenty-five years. Counsel Williams

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testified she relayed both offers to Applicant and he did not like either offer. Counsel Williams explained that from those conversations, they planned to go to trial. Counsel Williams testified after they were unsuccessful at pretrial motions, the solicitor offered a negotiated thirty-year sentence. Counsel Williams testified they discussed the offer and the risks of losing at trial and eventually Applicant decided to choose the plea. Applicant testified he chose to plead guilty to avoid potentially spending the rest of his life in prison. This Court finds Counsel Williams testimony credible and further finds she conveyed all plea offers to Applicant. Therefore, this Court finds Counsel was not deficient. Accordingly, for the reasons stated above, the Court denies relief and dismisses the allegation with prejudice.

*ii. Failed to provide Applicant with discovery in his case and subsequently to review that discovery with Applicant*

Applicant claims Counsel Williams was ineffective for failing to provide him with discovery in his case. Applicant further claims Counsel Williams never went over discovery with him. However, this Court finds Applicant's own testimony refutes his claim that Counsel Williams never went over discovery with him. At the evidentiary hearing, Applicant testified they went over the discovery in his third meeting with Counsel Williams and that meeting lasted about forty-five minutes. Similarly, Counsel Williams testified that she went over the discovery with Applicant numerous times and even went over the discovery with Applicant's family. Accordingly, this Court finds Applicant's own testimony and Counsel Williams testimony to be credible and dispositive of Applicant's claim that Counsel Williams was ineffective for failing to review the discovery, and this claim is therefore denied and dismissed with prejudice.

Furthermore, Applicant alleges he asked for a copy of the discovery, but Counsel Williams never gave it to him. However, this Court finds Applicant failed to show how he was prejudiced by not receiving a copy of the discovery. At the evidentiary hearing, Applicant testified he asked

for a copy, but he never received one. However, Applicant admitted he and Counsel Williams went over the discovery and she answered all of the questions that he had. Counsel Williams testified she did not believe she provided a copy of the discovery, but she did not believe he asked for a copy. Counsel Williams testified her typical practice when a client asks for a file is to inform them of the risks associated with having the discovery in the jail and then she has a form that her client signs acknowledging the risks. Counsel Williams testified she did not have a signed form in Applicant's file. Counsel Williams testified that if Applicant did ask for a copy, then perhaps she misunderstood.

This Court finds Counsel Williams' testimony credible and therefore finds Counsel Williams was not deficient. Further, this Court finds even if Applicant asked and Counsel Williams failed to provide it to him, he cannot show any resulting prejudice as he cannot show that but for failing to have a copy of the discovery, he would not have pleaded guilty. Accordingly, for the reasons stated above, the Court denies relief and denies dismisses the allegation with prejudice.

**2. Ineffective Assistance of Counsel as to Tracy Pinnock Esquire, where Counsel Pinnock Pressured Applicant to plead guilty after two days into his trial**

Applicant claims Counsel Pinnock was ineffective because she pressured Applicant to plead guilty after two days into his trial. However, this court disagrees and finds Applicant's own testimony at the PCR hearing along with the record establish Applicant was not pressured by Counsel Pinnock, but rather the chance that he could spend the rest of his life in jail that caused him to choose to plead guilty in exchange for a shorter, thirty year sentence. Applicant testified he chose to plead guilty because he was scared to go to jail for the rest of his life. Furthermore, Applicant testified that it was his decision to plead guilty. Counsel Pinnock testified "No, it's not

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my intention to come off as pressuring. I try to have direct conversations with people. I can't say how he was feeling at that time, but not my goal to force someone." This Court finds Applicant's testimony with regards to why he chose to plead guilty credible and contrary to the assertion his plea was coerced. Additionally, this Court finds Counsel Pinnock's testimony credible. 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 and dismissed with prejudice.

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**CONCLUSION**

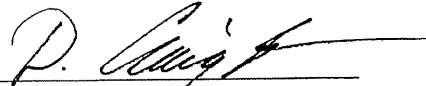
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. The Court finds Trial Counsel and Appellate Counsel's representation was neither deficient nor prejudicial. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes 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), SCRPC, 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. Post-conviction relief is denied and the application for post-conviction relief be dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 22 day of February, 2022.

  
D. CRAIG BROWN  
Presiding Judge  
Fifth Judicial Circuit

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*2/11/22*

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

Christopher Keitt,

Applicant,

v.

State of South Carolina,


Respondent.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the Order of Dismissal have been served upon the applicant by mailing one copy in the United States mail, postage prepaid, addressed to:

**S. Harrison Saunders, VI, Esquire  
The Law Office of S. Harrison Saunders, VI, LLC  
3104 Devine Street  
Columbia, SC 29205**

This 14<sup>th</sup> day of March, 2022.

  
\_\_\_\_\_  
Jennifer Jennison  
Administrative Coordinator for Respondent